

# Transactional Sex and the Peacekeeping Economy: Examining the Practical Application of United Nations Policy on Women in Post-Conflict Societies

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The United Nations ('UN') zero-tolerance policy response to sexual exploitation and abuse has ostensibly laudable intentions which are not fulfilled in practice. Women in post-conflict societies are rational and autonomous economic actors and the real operation of the policy has a deleterious impact, stripping these women of their economic autonomy. There has been substantial research into transactional sex, peacekeeping economies and the zero-tolerance policy. The objective of this paper is to reconcile the breadth of research into these three topics in order to examine the impact of the policy on local women who participate in the market for transactional sex in the peacekeeping economy. The UN must consider the lived experience of local women in order to create policy directives which achieve their protective goals.

## Introduction

The United Nations ('UN') deploys peacekeeping operations in post-conflict societies with the aim of restoring peace through providing humanitarian aid, fostering the rule of law and protecting and promoting human rights.<sup>1</sup> Peacekeeping operations have profound economic consequences for the post-conflict societies in which they are deployed. Relevantly, the sudden influx of international personnel fuels demand for low-skilled services and associated infrastructure; this is the problem of the 'peacekeeping economy'.<sup>2</sup> The issues within the peacekeeping economy are exacerbated by the application of the UN's zero-tolerance policy to sexual exploitation and abuse. The focus of this article is not the causes and responses to sexual exploitation and abuse.<sup>3</sup> While of course sexual exploitation and abuse is abhorrent, and the UN should take an active stance to abolish its occurrence, I argue that the zero-tolerance policy is a disproportionate and flawed response. The policy suffers from issues of scope and definition, capturing conduct which its intended beneficiaries do not necessarily consider to be exploitative. Within the peacekeeping economy, the market for transactional sex serves as a forum for local women to act as rational

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<sup>1</sup> See, eg, United Nations Department of Peacekeeping Operations and Department of Field Support, *United Nations Peacekeeping Operations: Principles and Guidelines* (Guidance Document, March 2008) 6; United Nations Department of Peacekeeping Operations and Department of Public Information, *United Nations Peacekeeping* (Background Note, April 2014).

<sup>2</sup> See, eg, Bernd Beber et al, 'The Promise and Peril of Peacekeeping Economies' (2019) 63(2) *International Studies Quarterly* 364; Kathleen M Jennings, 'Peacekeeping as Enterprise: Transaction, Consumption, and the Political Economy of Peace and Peacekeeping' (2018) 20(2) *Civil Wars* 238 ('Peacekeeping as Enterprise'); Kathleen M Jennings, 'Life in a "Peace-kept" City: Encounters with the Peacekeeping Economy' (2015) 9(3) *Journal of Intervention and Statebuilding* 296 ('Encounters with the Peacekeeping Economy'). See below Part V.

<sup>3</sup> See generally Bruce Oswald, 'Sexual Exploitation and Abuse in UN Peace Operations' (2016) 20(3-4) *Journal of International Peacekeeping* 143, 169; Rosa Freedman, 'UNaccountable: A New Approach to Peacekeepers and Sexual Abuse' (2018) 29(3) *European Journal of International Law* 961; Stephen Mathias, 'UN Peacekeeping Today: Legal Challenges and Uncertainties' (2017) 18(1) *Melbourne Journal of International Law* 138.

economic agents, taking advantage of the opportunity presented to them. However, transactional sex is prohibited by the zero-tolerance policy.

I contend that the scope of the UN's zero-tolerance policy is too wide; through capturing and prohibiting transactional sex, it restricts the ability for women in post-conflict societies to engage in the peacekeeping economy as rational economic agents. I aim to reconcile the body of research on transactional sex, peacekeeping economies and the zero-tolerance policy to critically analyse the impact of the policy on women who engage in the market for transactional sex. As will be discussed in Part II, a key challenge in undertaking this research is the distance between theoretical discussions and their practical application. The UN's current approach is based on rhetoric and theoretical assumptions that simply do not align with the practical and lived experience of women in post-conflict societies.<sup>4</sup> Therefore, I proceed with cognizance of the limitations of applying specific international law methods, to do so may lead to a discussion which has little practical utility. Notwithstanding this concession, I have written this article within a loose framework of the 'law and economics' method, which concerns the implications of certain preference-maximising behaviour.<sup>5</sup>

Without drawing out the analogy to economics further than is necessary, I am not advocating for a laissez-faire approach where the UN plays no role in the market for transactional sex in the peacekeeping economy.<sup>6</sup> Rather, I argue that the UN must facilitate the transactions and cease to turn a blind eye to the reality of peacekeeping operations. To elucidate this thesis, I intend to offer clarity on fundamental concepts and provide substantive discussion and examination on the effect of the zero-tolerance policy.

Part II notes that many papers in this area suffer from a lack of statistical fortitude; I also concede my own similar methodological challenges I faced when undertaking this research. As Part II considers, the academic discussion on the zero-tolerance policy is often stuck at a level of abstraction too far removed from reality; as demonstrated by the policy itself. In accepting this common issue, Parts III and IV provide an applied overview of the zero-tolerance policy as a response to sexual exploitation and abuse in peacekeeping operations.

Parts V, VI and VII critically examine the impact that the zero-tolerance policy has on women in the peacekeeping economy, in particular those women participating in the market for transactional sex. In doing so, I argue that the net effect of the policy is that it strips women of their agency and ability to act rationally, thereby reinforcing damaging stereotypes of women as vulnerable victims in need of protection.

Part VIII introduces a potential way for the UN to redefine the zero-tolerance policy, collaborating with locals in order to devise a policy that can achieve its goals. However, this is just one of many aspects of my forthcoming discussion that merit further deliberation and exploration.

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<sup>4</sup> See generally Olivera Simić, *Regulation of Sexual Conduct in UN Peacekeeping Operations* (Springer, 2012) ('*Regulation of Sexual Conduct*'); Bernd Beber et al, 'Peacekeeping, Compliance with International Norms, and Transactional Sex in Monrovia, Liberia' (2017) 71(1) *International Organization* 1 ('Transactional Sex in Monrovia'); Fifi Edu-Afful and Kwesi Aning, 'Peacekeeping Economies in a Sub-Regional Context: The Paradigmatic Cases of Liberia, Sierra Leone and Côte d'Ivoire' (2015) 9(3) *Journal of Intervention and Statebuilding* 391.

<sup>5</sup> Jeffrey L Dunoff and Joel P Trachtman, 'The Law and Economics of Humanitarian Law Violations in Internal Conflict' in Steven R Ratner and Anne-Marie Slaughter (eds), *The Methods of International Law* (William S Hein & Co, 2004) 211, 212–3. See also Jeffrey L Dunoff and Joel P Trachtman, 'Economic Analysis of International Law' in Joseph Weiler and Alan T Nissel (eds), *International Law* (Routledge, 2011) vol 6, 47.

<sup>6</sup> See, eg, Gabrielle Simm, 'Regulating Sex in Peace Operations' in Peter Drahos (ed), *Regulatory Theory: Foundations and Applications* (Australian National University Press, 2017) 415, 423.

## Challenges in Research

There were significant challenges in undertaking this research. As I discuss throughout this article, the UN's zero-tolerance policy demonstrates a disconnect between theory and practice. The theoretical bases for prohibitive policies appear justified when discussed at a certain level of abstraction, but evidence from women in peacekeeping economies illustrate a different story. For example, a basic justification for the broad zero-tolerance policy is that transactional sex is inconsistent with UN development goals. However, Beber et al posit that women who engage in transactional sex actually convey the highest level of satisfaction with the contribution of peacekeeping operations.<sup>7</sup> Simić's research also gives a voice to these women and exemplifies the disconnect between policy and practice.<sup>8</sup> The breadth of discourse also depicts peacekeeping economies as being anywhere from a positive place where women are able to take advantage of opportunities,<sup>9</sup> to the more germane representation of inequality and destitute.<sup>10</sup> This is an example of the difficulty inherent in relying on statistics — two equally qualified bodies can come to contrasting conclusions using the same datasets.<sup>11</sup>

These challenges exist alongside the other significant difficulty commentators face when undertaking research on sexual exploitation and abuse in peacekeeping operations: insufficient data.<sup>12</sup> Moreover, the UN does not take an active role in monitoring compliance with the zero-tolerance policy, it instead relies on an allegation-based system.<sup>13</sup> This system is only effective if locals, peacekeepers and other international personnel diligently report instances of sexual interaction. As will be discussed, the UN have not hidden the desire to protect its institutional reputation.<sup>14</sup> Therefore, examining certain datasets must be done critically and with an understanding of the 'function that [reporting] statistics serve for the UN'.<sup>15</sup>

There are a number of issues which lead to inaccurate reporting. Grady makes particular note of methodological challenges such as the report from one victim of abuse by two peacekeepers being reported as a single incident.<sup>16</sup> Jennings contends that women who are affected by misconduct fear that the UN will simply take the peacekeeper's side to protect the institutional reputation and will thus refrain from

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<sup>7</sup> Beber et al, 'Transactional Sex in Monrovia' (n 4) 4–5 n 23.

<sup>8</sup> Simić, *Regulation of Sexual Conduct* (n 4).

<sup>9</sup> See, eg, Edu-Afful and Aning (n 4) 400; Kathleen M Jennings and Morten Bøås, 'Transactions and Interactions: Everyday Life in the Peacekeeping Economy' (2015) 9(3) *Journal of Intervention and Statebuilding* 289–90.

<sup>10</sup> See, eg, Olivera Simić, 'Policing the Peacekeepers: Disrupting UN Responses to "Crises" Over Sexual Offence Allegations' (2016) 20(1–2) *Journal of International Peacekeeping* 69, 76 n 40; *United States v Ronghi*, (US Ct Crim App, No 03-0520, 30 June 2004).

<sup>11</sup> See generally Jerome B Cohen, 'The Misuse of Statistics' (1938) 33(204) *Journal of the American Statistical Association* 657; John Gardenier and David Resnik, 'The Misuse of Statistics: Concepts, Tools, and a Research Agenda' (2002) 9(2) *Accountability in Research: Policies and Quality Assurance* 65.

<sup>12</sup> Kate Grady, 'Sex, Statistics, Peacekeepers and Power: UN Data on Sexual Exploitation and Abuse and the Quest for Legal Reform' (2016) 79(6) *Modern Law Review* 931. See generally Virginia Page Fortna and Lise Morjé Howard, 'Pitfalls and Prospects in the Peacekeeping Literature' (2008) 11 *Annual Review of Political Science* 283.

<sup>13</sup> Beber et al, 'Transactional Sex in Monrovia' (n 4) 23.

<sup>14</sup> See below Part IV(B).

<sup>15</sup> Grady (n 12) 931, 943. See also Marie Deschamps, Hassan B Jallow and Yasmin Sooka, 'Taking Action on Sexual Exploitation and Abuse by Peacekeepers: Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic' (Report, United Nations, 17 December 2015) 4–6.

<sup>16</sup> Grady (n 12) 936.

reporting.<sup>17</sup> Beber et al astutely note that the UN's Conduct and Discipline Unit have the responsibility to both prevent misconduct and solicit allegations. As such, there is a reluctance to solicit and process allegations because doing so could be viewed as an admission of the Unit's own negligence.

Moreover, definitional constraints which blur the line between consensual and non-consensual interactions pose a challenge to accurate reporting.<sup>18</sup> This is a particular focus of this article and creates issues for reporting. For example, transactional sex largely goes unreported because many women do not regard it as exploitative.<sup>19</sup> However, it falls within the zero-tolerance policy and should therefore be reported and form part of the UN's statistics.

The data provided by the UN may accurately reflect the number of complaints or communications, but may not accurately reflect the breaches of the zero-tolerance policy. This poses a difficulty in assessing the efficacy of the policy. Without conducting my own primary research, it is difficult to draw conclusions. However, I have sought to undertake a balanced and critical approach to the existing literature.

### **Sexual Exploitation and Abuse in Peacekeeping Operations**

The core principles which underscore all peacekeeping operations are that peacekeepers must be impartial, refrain from the use of force unless required for self-defence or to defend their mission mandate and that parties must consent to their presence.<sup>20</sup> The wealth of literature on peacekeeping operations suggest that they achieve 'core security objectives',<sup>21</sup> and empirical findings indicate that the presence of peacekeepers increase the likelihood of enduring post-conflict peace.<sup>22</sup> Unfortunately, the reputation of UN peacekeeping operations has been tarnished by, inter alia, the persistence of peacekeepers engaging in sexual exploitation and abuse of the women and children they are tasked with protecting.<sup>23</sup>

Moreover, there are increasing concerns about the peacekeeping economies which develop during a peacekeeping operation; critics note that these two-speed economies accommodate for the preferences of international personnel to the long-term detriment of locals and the local economy.<sup>24</sup> As I intend to discuss throughout this

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<sup>17</sup> Kathleen M Jennings, 'Service, Sex, and Security: Gendered Peacekeeping Economies in Liberia and the Democratic Republic of the Congo' (2014) 45(4) *Security Dialogue* 313, 320 ('Service, Sex, and Security').

<sup>18</sup> Olivera Simić, 'Distinguishing Between Exploitative and Non-Exploitative Sex Involving UN Peacekeepers: The Wrongs of "Zero Tolerance"' (Expert Analysis, Norwegian Peacebuilding Resource Centre, November 2013) 1 ('Wrongs of Zero Tolerance'). See also Grady (n 12) 940.

<sup>19</sup> Simić, *Regulation of Sexual Conduct* (n 4) ch 6. See below Part VII.

<sup>20</sup> 'Principles of Peacekeeping', *United Nations Peacekeeping* (Web Page) <<https://peacekeeping.un.org/en/principles-of-peacekeeping>>. See also Dyan Mazurana et al, 'Introduction: Gender, Conflict and Peacekeeping' in Dylan Mazurana, Angela Raven-Roberts and Jane Parpart (eds), *Gender, Conflict and Peacekeeping* (Rowman & Littlefield, 2005) 1, 19; Freedman (n 3) 963; Mathias (n 3) 140.

<sup>21</sup> Beber et al, 'The Promise and Perils of Peacekeeping Economies' (n 2) 364; Beber et al, 'Transactional Sex in Monrovia' (n 4) 1. See generally James H Allan, *Peacekeeping: Outspoken Observations by a Field Officer* (Praeger, 1996) 12–14; Virginia Page Fortna, *Does Peacekeeping Work? Shaping Belligerents' Choices after Civil War* (Princeton University Press, 2008); Lise Morjé Howard, *UN Peacekeeping in Civil Wars* (Cambridge University Press, 2008).

<sup>22</sup> See, eg, Michael W Doyle and Nicholas Sambanis, *Making War and Building Peace: United Nations Peace Operations* (Princeton University Press, 2006); Michael J Gilligan and Ernest J Sergenti, 'Do UN Interventions Cause Peace? Using Matching to Improve Causal Inference' (2008) 3(2) *Quarterly Journal of Political Science* 89.

<sup>23</sup> See below Part IV(B).

<sup>24</sup> Beber et al, 'Transactional Sex in Monrovia' (n 4) 2. See below Part V(B).

article, the institutional response to sexual exploitation and abuse contributes to the problems associated with the peacekeeping economy.

## Sexual Exploitation and Abuse

The issue of sexual exploitation and abuse ('SEA') has been alive in peacekeeping operations as far back as the United Nations Emergency Force in the Sinai in 1956.<sup>25</sup> However, formal allegations were not lodged against peacekeepers until 1992's United Nations Transitional Authority in Cambodia ('UNTAC').<sup>26</sup> The Secretary-General's Special Representative, Yasushi Akashi's responded with acquiescence, remarking 'boys will be boys'.<sup>27</sup> This was the UN's first institutional response to allegations of sexual exploitation and abuse, and it was repudiated by the international community.<sup>28</sup> Kofi Annan claimed that sexual exploitation and abuse have 'always been unacceptable behaviour ... for [UN] staff'.<sup>29</sup> Akashi's deference acts as a reminder that sexual exploitation and abuse was once accepted as a norm of institutional behaviour.

## Causes

The problem of sexual exploitation and abuse is insidious and there is no single basis for its occurrence.<sup>30</sup> The recurring themes in the discourse are the physical conditions of the operations and the fragile nature of the post-conflict state, the composition of peacekeeping personnel and the insufficient accountability measures.<sup>31</sup> These issues are complex, and this article is not the appropriate forum for a comprehensive discussion. I briefly introduce two purported causes to illustrate the institutional issues that plague peacekeeping operations.

## Peacekeeping Personnel

There are two fundamental problems with the composition of peacekeeping personnel which contribute to the occurrence of sexual exploitation and abuse: gender disparity

<sup>25</sup> See, eg, Brian Urquhart, *Ralph Bunche: An American Life* (WW Norton, 1998) 295–6; Colum Lynch, 'UN Faces More Accusations of Sexual Misconduct', *The Washington Post* (Washington, DC) 13 March 2005, A22. See also Jennine Carmichael, 'First, Do No Harm: Addressing the Problem of Sexual Exploitation and Abuse by International Aid Workers and Peacekeepers' (MA Thesis, The University of Melbourne, 2006) 3.

<sup>26</sup> See, eg, Oswald (n 3) 146.

<sup>27</sup> See, eg, Bert Hoak, 'Akashi's Response Not Enough', *The Phnom Penh Post* (online, 20 November 1992) <<http://www.phnompenhpost.com/national/akashis-response-not-enough>>; The Independent Voices, 'Profile: Bureaucrat at Large in the Balkans: Yasushi Akashi, Almost Painfully Diplomatic UN Envoy' *Independent* (online, 30 April 1994) <<https://www.independent.co.uk/voices/profile-bureaucrat-at-large-in-the-balkans-yasushi-akashi-almost-painfully-diplomatic-un-envoy-1373287.html>>.

<sup>28</sup> See, eg, Sandra Whitworth, *Men, Militarism, and UN Peacekeeping: A Gendered Analysis* (Lynne Rienner Publishers, 2004) 71; Kien Serey Phal, 'The Lessons of the UNTAC Experience and the Ongoing Responsibilities of the International Community for Peacebuilding and Development in Cambodia' (1995) 7(2) *Pacifica Review* 129, 132. See generally Sarah Martin, 'Must Boys Be Boys? Ending Sexual Exploitation and Abuse in UN Peacekeeping Missions' (Report, Refugees International, October 2005).

<sup>29</sup> *Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc ST/SGB/2003/13 (9 October 2003) ('*Bulletin*') s 3.1.

<sup>30</sup> Rodriguez and Kinne have identified institutional, societal and military norms as contributing factors to peacekeeper behaviour: Marisella Rodriguez and Brandon J Kinne, 'Blue Helmets, Red Flags: Institutional, Societal, and Military Determinants of Peacekeeping Abuses' (2019) 63(3) *International Studies Quarterly* (advance).

<sup>31</sup> *Special Measures for Protection from Sexual Exploitation and Abuse: A New Approach*, UN Doc A/71/818 (28 February 2017) 5 [9] ('*New Approach*'). See also Mathias (n 3) 148; Edith M Lederer, 'UN: New Sex Abuse Allegation in Central African Republic', *Chicago Tribune* (online, 12 September 2015) <<http://www.chicagotribune.com/news/nationworld/sns-bc-un--united-nationscentralafricanrepublichtml>>.

and re-hatted troops. Gender norms and the role of gender in peacekeeping operations more generally have been authoritatively discussed in a large body of qualitative and quantitative research.<sup>32</sup> It is not my intention to either conduct a literature review or challenge this body of work.

The problem of re-hatted troops provides an interesting point of discussion. Re-hatted troops are personnel from non-UN deployments who are transferred into peacekeeping operations to ensure an immediate start.<sup>33</sup> Allegations of sexual exploitation and abuse from re-hatted troops are wholly disproportionate to their place in a peacekeeping operation. In the Multidimensional Integrated Stabilization Mission in Mali ('MINUSMA') and the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic ('MINUSCA'), over 77% of allegations were against re-hatted troops who only constituted ~50% of mission personnel.<sup>34</sup> Re-hatted troops are used by the UN as a matter of operational convenience and they do not undertake the same training as UN peacekeepers which covers institutional conduct standards in relation to sexual exploitation and abuse.<sup>35</sup>

The Secretary-General flagged the different training standards as problematic in 2014.<sup>36</sup> However, it is significant to revive the discussion as the Secretary-General's 2019 Report explicitly states that the 'unevenness between the standards ... has an impact on the [UN's] ability to fully integrate a victim-centred approach'.<sup>37</sup> The UN's decision to continue to deploy undertrained personnel is made with the knowledge that they are statistically more likely to engage in sexual exploitation and abuse. This

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<sup>32</sup> See, eg, Kathleen M Jennings, 'Conditional Protection? Sex, Gender, and Discourse in UN Peacekeeping' (2019) 63(1) *International Studies Quarterly* 30; Martin (n 28) 7; Cynthia Enloe, 'What if Patriarchy is "The Big Picture"? An Afterword' in Dylan Mazurana, Angela Raven-Roberts and Jane Parpart (eds), *Gender, Conflict and Peacekeeping* (Rowman & Littlefield, 2005) 280; Anna M Agathangelou and L H M Ling, 'Desire Industries: Sex Trafficking, UN Peacekeeping, and the Neo-Liberal World Order' (2003) 10(1) *Brown Journal of World Affairs* 133, 138; Linda Bird Francke, *Ground Zero: The Gender Wars in the Military* (Simon and Schuster, 1997); Kevin Tomkins, 'Bouncers and Occupational Masculinity' (2005) 17(1) *Current Issues in Criminal Justice* 154; Carol Harrington, *Politicization of Sexual Violence: From Abolitionism to Peacekeeping* (Ashgate, 2010) 181; Thanh-Dam Truong, *Sex, Money and Morality: Prostitution and Tourism in South-East Asia* (Zed Books, 1990); Meghan O'Malley, 'All Is Not Fair in Love and War: An Exploration of the Military Masculinity Myth' (2015) 5(1) *DePaul Journal of Women, Gender and the Law* 1, 6; Maya Eichler, 'Militarized Masculinities in International Relations' (2014) 21(1) *Brown Journal of World Affairs* 81; Frederic Megret, 'The Laws of War and the Structure of Masculine Power' (2018) 19(1) *Melbourne Journal of International Law* 200; United Nations, 'Summary of Troop Contributions to UN Peacekeeping Operations by Mission, Post and Gender' (Gender Report No 5, United Nations, 31 July 2018).

<sup>33</sup> See Mathias (n 3) 149.

<sup>34</sup> See Office of Internal Oversight Services, 'Evaluation of re-hatting in the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) and the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA)' (Evaluation Report, Inspection and Evaluation Division, 12 February 2018) 21 ('Evaluation Report'). See also Zachary David Hadley, 'African Spaghetti Bowl: Assessing State Rational in African Peacekeeping Operations 1999–2016' (MLA Thesis, Harvard University, 2018) 89.

<sup>35</sup> *Report of the Secretary-General: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc A/68/756 (14 February 2014) 7 [24]. See generally Sabrina Karim and Kyle Beardsley, 'Explaining Sexual Exploitation and Abuse in Peacekeeping Missions: The Role of Female Peacekeepers and Gender Equality in Contributing Countries' (2016) 53(1) *Journal of Peace Research* 100; Rodriguez and Kinne (n 30) 5–6; Efrat Elron et al, 'Cooperation and Coordination Across Cultures in the Peacekeeping Forces: Individual and Organizational Integrating Mechanisms' in Thomas W Britt and Amy B Adler (eds), *The Psychology of the Peacekeeper* (Praeger, 2003) 261.

<sup>36</sup> 2014 Report (n 35) 7 [24].

<sup>37</sup> *Report of the Secretary-General: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc A/73/744 (14 February 2019) 13 ('2019 Report').

indicates that the benefit of quickly deploying re-hatted troops outweighs the risk they pose to local civilians.<sup>38</sup>

### Lack of Accountability

The insufficient governance of peacekeepers has contributed to the sexual exploitation and abuse crisis in peacekeeping operations. In order to fulfil operational mandates and perform their duties, certain ‘immunities and jurisdictional bars’ protect peacekeepers from host state interference.<sup>39</sup> Similar protections are afforded to diplomats operating in foreign countries, but are offset by bilateral agreements which aim to ensure accountability for potential criminal actions of diplomats.<sup>40</sup> For example, where a sending state does not exercise its jurisdiction to prosecute its diplomatic personnel,<sup>41</sup> the receiving state may declare them *persona non grata* and order for their removal.<sup>42</sup> However, in the context of UN peacekeeping operations, such an offset does not exist.<sup>43</sup> Freedman’s recent article provides a critical examination of accountability measures and I do not seek to summarise or critique her approach in this forum. It suffices to state that in practice, the legal and governance frameworks have developed the very culture of impunity that the Secretary-General now seeks to abolish.<sup>44</sup>

### Institutional Response and the Zero-Tolerance Policy

The institutional response to allegations of sexual exploitation and abuse in peacekeeping operations has been driven by the Secretary-General’s *Special Measures for the Protection from Sexual Exploitation and Sexual Abuse* (‘Bulletin’).<sup>45</sup> The Bulletin was produced in response to a report published by the UN High Commissioner for Refugees (‘UNHCR’) and Save the Children United Kingdom which uncovered ‘chronic and entrenched’ patterns of mission personnel trading humanitarian aid for sexual services.<sup>46</sup> Although the Bulletin is in its late adolescence, it remains operative in modern peacekeeping operations and it is the starting point for the development of the zero-tolerance policy, which remains the UN’s firm institutional approach.<sup>47</sup>

<sup>38</sup> How this cost–benefit analysis is being conducted is an incredibly interesting discussion and I endeavour to research this topic in the future.

<sup>39</sup> Freedman (n 3) 965.

<sup>40</sup> See, eg, Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations* (Oxford University Press, 4<sup>th</sup> ed, 2016); Rosalyn Higgins, ‘The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience’ (1985) 79(3) *American Journal of International Law* 641.

<sup>41</sup> *Vienna Convention on Diplomatic Relations*, signed 18 April 1961, 500 UNTS 95, (entered into force 24 April 1964) art 31(4).

<sup>42</sup> See Higgins (n 40) 5; Freedman (n 3) 966.

<sup>43</sup> Freedman (n 3) 966.

<sup>44</sup> *2019 Report* (n 37) 9–10 [39]. See also Rembert Boom, ‘Criminal Accountability of Military Peacekeepers’ (2015) 19(3–4) *Journal of International Peacekeeping* 287, 288; Melanie O’Brien, ‘Protectors on Trial? Prosecuting Peacekeepers for War Crimes and Crimes Against Humanity in the International Criminal Court’ (2012) 40(3) *International Journal of Law, Crime and Justice* 223.

<sup>45</sup> *Secretary-General’s Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc ST/SGB/2003/13 (9 October 2003) (‘Bulletin’).

<sup>46</sup> United Nations High Commissioner for Refugees and Save the Children United Kingdom, ‘Sexual Violence and Exploitation: The Experience of Refugee Children in Liberia, Guinea and Sierra Leone’ (Initial Findings and Recommendations, UNHCR and Save the Children-UK, February 2002) 18 (‘*UNHCR Report*’). See also *Investigation Into Sexual Exploitation of Refugees by Aid Workers in West Africa*, UN Doc A/57/465 (‘*OIOS Response*’); Jena McGill, ‘Survival Sex in Peacekeeping Economies: Re-Reading the Zero Tolerance Approach to Sexual Exploitation and Sexual Abuse in United Nations Support Operations’ (2014) 18(1–2) *Journal of International Peacekeeping* 1, 10–11.

<sup>47</sup> See *Bulletin* (n 29). See also *2019 Report* (n 37); *Letter Dated 9 February 2005 from the Secretary-General Addressed to the President of the Security Council*, UN SCOR, UN Doc S/2005/79 (9 February 2005) 1; Bruce Oswald, Helen Durham and Adrian Bates, *Documents*

## Zero-Tolerance Policy

Since the Secretary-General published the Bulletin in 2003, there have been annual reports from the Secretariat and resolutions adopted by the General Assembly and Security Council; a commitment to the zero-tolerance policy is either explicitly or implicitly embedded in all such responses.<sup>48</sup> I note that the policy may be implicitly embedded because, contrary to conventional wisdom,<sup>49</sup> the Bulletin did not explicitly discuss a policy of zero-tolerance.<sup>50</sup> Regardless of nomenclature, the principles and prohibitions set out in the Bulletin are those which are aptly described as the zero-tolerance policy. The zero-tolerance policy establishes a per se proscription on sexual exploitation and abuse in peacekeeping operations, which the Bulletin states violate ‘universally recognised international legal norms and standards’.<sup>51</sup>

## Definitional Issues

In this article, I argue that the broad definition of sexual exploitation and the scope of the zero-tolerance policy is problematic and can hinder the agency and autonomy of local women. The zero-tolerance policy seeks to prohibit all forms of sexual exploitation and abuse being committed by peacekeepers against local women and children. The definition of sexual abuse is a reflection of ‘international norms and standards’,<sup>52</sup> and refers to ‘actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions’.<sup>53</sup> This definition sets clear thresholds and is demonstrably unproblematic.

The challenging definition is sexual exploitation, which encompasses ‘any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another’.<sup>54</sup> This creates a presumption that sex between peacekeepers and local women is harmful and coercive, disregarding the context of the peacekeeping economy, the agency of women and the scope for legitimate relationships. An exception to the zero-tolerance policy demonstrate its problematic abstraction and its failure to account for reality. The Bulletin prohibits sexual activity with ‘persons under the age of 18’,<sup>55</sup> but creates an exception in cases where the peacekeeper is legally married to the person under the age of 18 ‘but over the age of majority or consent in their country of citizenship’.<sup>56</sup> It is difficult to conceive of a scenario where a peacekeeper legally marries a girl under the age of 18 without either having already engaged in sexual activity with her, or exploiting their position in an exchange — both of which are prohibited.<sup>57</sup>

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on the Law of Peace Operations (Oxford University Press, 2010) 432, cited in Oswald (n 3) 147 n 17.

<sup>48</sup> See, eg, *Security Council Resolution 2272*, UN SCOR, UN Doc S/RES/2272 (11 March 2016) preamble [4]; *2019 Report* (n 37); *New Approach* (n 31).

<sup>49</sup> See, eg, Simić, ‘Wrongs of Zero Tolerance’ (n 18) 2; Dianne Otto, ‘Making Sense of Zero Tolerance Policies in Peacekeeping Sexual Economies’ in Vanessa Munro and Carl F Stychin (eds), *Sexuality and the Law: Feminist Engagements* (Routledge-Cavendish, 2007) 259, 267–74.

<sup>50</sup> See Oswald (n 3) 159.

<sup>51</sup> *Bulletin* (n 29) s 3.1

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid* s 1.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid* s 3.2(b).

<sup>56</sup> *Ibid* s 4.4.

<sup>57</sup> *Ibid* s 3.2(b)–(c).

## Prohibition on Transactional Sex

A primary focus of this article is the role of transactional sex in the peacekeeping economy. Transactional sex is explicitly prohibited by the Bulletin; the language used in the prohibition is particularly intriguing:

In order to further protect the most vulnerable populations, especially women and children ... [e]xchange of money, employment, goods or services for sex, including sexual favours or *other forms of humiliating, degrading or exploitative behaviour*, is prohibited. This includes any exchange of assistance that is due to beneficiaries of assistance.<sup>58</sup>

The inclusion of the emphasised selection creates an implication that where a ‘transactional exchange is involved’, sex is itself humiliating, degrading or exploitative.<sup>59</sup> The lack of distinction between non-consensual sexual exploitation and consensual sexual interactions is perhaps its fatal failure.<sup>60</sup> As will be discussed in Part VII, this is an example of how the zero-tolerance policy invalidates consent and removes the ability for women to act as rational economic agents.<sup>61</sup>

## Impact of Zero-Tolerance

Ban Ki-moon, the former Secretary-General, portrayed sexual exploitation and abuse as a ‘cancer in the [the UN] system’.<sup>62</sup> Critics of the zero-tolerance policy contend that while the ostensible aim of protecting women from grave harm is laudable, the ulterior motive is to instead protect and restore the UN’s institutional reputation.<sup>63</sup> The President of the Security Council in 2005 made a statement condemning sexual exploitation and abuse.<sup>64</sup> The statement appears not to have been scrutinised by academic commentators. However, its language and content are problematic. It reports that the UN’s ‘distinguished and honourable record’ is being ‘tarnished by the acts of a few individuals’, that conduct and discipline is ‘primarily the responsibility of Troop Contributing Countries’ and that fostering an environment of zero-tolerance is ‘primarily the responsibility of managers and commanders’.<sup>65</sup> Moreover, the statement does not make any mention of the victims of exploitation. The net effect of the response is to shift the attention away from an entrenched institutional problem, to an issue of ‘delinquent individuals’.<sup>66</sup> The statement blames peacekeepers for tarnishing the UN’s reputation, Member States for not holding them accountable and managers for not promoting the policy. While these are all justified denunciations, it is incumbent on the UN to take responsibility for the actions of its representatives.

<sup>58</sup> Ibid s 3.2(c) (emphasis added).

<sup>59</sup> Carmichael (n 25) 29, cited in Simić, ‘Wrongs of Zero Tolerance’ (n 18) 2.

<sup>60</sup> See Simić, ‘Wrongs of Zero Tolerance’ (n 18) 2; Grady (n 12) 953.

<sup>61</sup> See below Part VI(A).

<sup>62</sup> Ban Ki-moon, ‘Secretary-General’s Remarks to Security Council Consultations on the Situation in the Central African Republic’ (Speech, United Nations Security Council, New York, 13 August 2015) <<https://www.un.org/sg/en/content/sg/statement/2015-08-13/secretary-generals-remarks-security-council-consultations-situation>>.

<sup>63</sup> See, eg, *A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations*, UN Doc A/59/710 (24 March 2005) 9 [10] (‘Zeid Report’); McGill (n 46) 3–4; Machiko Kanetake, ‘The UN Zero Tolerance Policy’s Whereabouts: On the Discordance Between Politics and Law on the Internal-External Divide’ [2012] (Fall) *Amsterdam Law Forum* 52; Kathleen M Jennings, *Protecting Whom? Approaches to Sexual Exploitation and Abuse in un Peacekeeping Operations* (Fafu Report No 36, 2008) 35; Suk Chun, ‘Sexual Exploitation and Abuse by UN Peacekeepers’ (Policy Brief No 10/2009, International Peace Research Institute, Oslo, 2009).

<sup>64</sup> *Statement by the President of the Security Council*, UN SCOR, UN Doc S/PRST/2005/21.

<sup>65</sup> Ibid.

<sup>66</sup> Kathleen M Jennings and Vesna Nikolić-Ristanović, ‘UN Peacekeeping Economies and Local Sex Industries: Connections and Implications’ (Research Working Paper No 17, Institute of Development Studies, September 2009) 21.

Otto rejects even the ostensible goals of protecting women, arguing that the Bulletin and its zero-tolerance policy serve a 'sexually conservative agenda' which restricts the progressive appeal for realising fundamental human rights for women.<sup>67</sup> In seeking to protect the UN's institutional reputation and ostensibly protect and rescue women from the inherent danger of sexual interactions, the zero-tolerance policy fails to address underlying factors causing inequality.<sup>68</sup>

## Conclusion

In the next section, I will explore the concept of the peacekeeping economy. This serves two purposes: it will demonstrate the impact that a peacekeeping operation can have on a post-conflict society; and it sets the foundation for the remaining substantive discussion which focuses on the impact of the zero-tolerance policy on women and the market for transactional sex.

## Peacekeeping Economies

The 'peacekeeping economy' refers to economic activity that would not occur, or would occur at a much smaller scale, without the presence of a peacekeeping operation.<sup>69</sup> Although peacekeepers live in the same area as locals, Jennings and Bøås pose that they do not live in the same world.<sup>70</sup> The term 'peacekeeping economy' was first used to describe the service-based businesses which were established upon the arrival of peacekeeping operations.<sup>71</sup> It has developed since 2002 and was the topic of focus in a 2015 symposium of the *Journal of Intervention and Statebuilding*, where Jennings and Bøås authoritatively defined the term.<sup>72</sup> The agreed working definition is loosely as follows: the peacekeeping economy encompasses the unskilled and informal work that locals do for international individuals; the jobs available to staff in UN offices; jobs in establishments catered towards internationals; and participation in the sex industry.<sup>73</sup> Moreover, it is uncontroversial to assert that the peacekeeping economy impacts:

labour markets; the building or rehabilitation of infrastructure, including housing and office stock, airports and ports, and accommodation and leisure facilities; the cost-of-living, primarily in terms of housing, leisure activities, and certain goods and services; the built environment; and the way space is configured or controlled.<sup>74</sup>

As such, it is evident that the peacekeeping economy has a holistic impact on the host country. The recent statistical analysis from Beber et al determined that a majority of

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<sup>67</sup> Otto (n 49) 267. See also Alastair Taylor, David Cox and JL Granatstein, *Peacekeeping: International Challenge and Canadian Response* (Canadian Institute of Public Affairs, 1968) 80–1.

<sup>68</sup> Otto (n 49) 270–1.

<sup>69</sup> Jennings and Bøås (n 9) 281. See also Jennings and Nikolić-Ristanović (n 66) 5; Beber et al, 'The Promise and Perils of Peacekeeping Economies' (n 2); Beber et al, 'Transactional Sex in Monrovia' (n 4); Bernd Beber et al, 'Challenges and Pitfalls of Peacekeeping Economies' (Research Paper, New York University, July 2016) 1. It is of note that the sources I have referenced for this section are all secondary. While the UN have identified sexual exploitation and abuse as an issue which must be addressed, no organ of the UN makes mention of peacekeeping economies.

<sup>70</sup> Jennings and Bøås (n 9) 282. See also Séverine Autesserre, *Peaceland: Conflict Resolution and the Everyday Politics of International Intervention* (Cambridge University Press, 2014).

<sup>71</sup> Elisabeth Rehn and Ellen Johnson Sirleaf, 'Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peacebuilding' (Expert Report, United Nations Development Fund for Women, October 2002) 62.

<sup>72</sup> Jennings and Bøås (n 9). See also Symposium, 'Service, Sex, and Security: Everyday Life in the Peacekeeping Economy' (2015) 9(3) *Journal of Intervention and Statebuilding* 281.

<sup>73</sup> Jennings and Bøås (n 9) 282–3.

<sup>74</sup> Kathleen M Jennings, 'WPS and Peacekeeping Economies' in Sara E Davies and Jacqui True (eds), *The Oxford Handbook of Women, Peace, and Security* (Oxford University Press, 2019) 237, 239.

economic activity catered to internationals is concentrated in the low-skill service sector.<sup>75</sup> As will be discussed, this creates only transient economic benefits and opportunities for locals — the long-term effect of such a sudden low-skill employment boom can be deleterious.

The following part of this article examines the operation and components of the peacekeeping economy. I assert that but for the existence of the peacekeeping economy, local women would not have the ample employment opportunities that equip them with economic agency and autonomy. In doing so, I am cognisant that such opportunities are fleeting and cannot be the foundation for consistent economic development.

### Impact on the Local Economy

I have posited that peacekeeping operations necessarily lead to the development of peacekeeping economies. It is now pertinent to examine the impact of the peacekeeping economy on the economic development of host countries. Like many issues in economic discourse, this topic has been discussed at length with little consensus.<sup>76</sup>

A starting point is Rolandsen's normative claim that peacekeeping operations should not be the sole implementation vehicle for programmes of social and economic change — they should instead create the space where such developments can thrive.<sup>77</sup> I agree with this approach as it seeks to foster collaboration between the actors in the local economy and the peacekeeping operation. As will be discussed, putting the onus solely on the peacekeeping operation could lead to a dependency and sense of content. Bove and Elia contend that the peacekeepers' role in economic development is merely facilitative; peacekeeping operations should merely seek to bolster the safety and security of the social environment, which thus results in a fertile ground for economic development.<sup>78</sup> This argument is convincing as foreign investors are unlikely to invest resources into an unstable political atmosphere. However, Bove and Elia seemingly ignore the statistical evidence which suggests that peacekeeping operations are 'large-scale economic interventions'.<sup>79</sup>

The peacekeeping economy creates an economic bubble fuelled by demand for non-traded products; in most circumstances, these non-traded products are low-skilled services.<sup>80</sup> While windfall gains resulting from foreign aid are often minimal in similar circumstances due to the prevalence of corruption,<sup>81</sup> the money flowing in a peacekeeping economy directly fosters economic growth through job and infrastructure creation.<sup>82</sup> The impact of the peacekeeping economy on the host economy is demonstrated by the United Nations Mission in Liberia ('UNMIL'). There,

<sup>75</sup> Beber et al, 'Transactional Sex in Monrovia' (n 4).

<sup>76</sup> See, eg, Beber et al, 'The Promise and Perils of Peacekeeping Economies' (n 2); Vincenzo Bove and Leandro Elia, 'Economic Development in Peacekeeping Host Countries' (2018) 64(4) *CESifo Economic Studies* 712; Michael Carnahan, William Durch and Scott Gilmore, 'Economic Impact of Peacekeeping' (Final Report, Peace Dividend Trust, March 2006).

<sup>77</sup> Øystein H Rolandsen, 'Small and Far Between: Peacekeeping Economies in South Sudan' (2015) 9(3) *Journal of Intervention and Statebuilding* 353, 353.

<sup>78</sup> Bove and Elia (n 76) 714–17.

<sup>79</sup> Beber et al, 'The Promise and Perils of Peacekeeping Economies' (n 2) 364; Beber et al, 'Challenges and Pitfalls of Peacekeeping Economies' (n 69) 7. See also Jennings and Nikolić-Ristanović (n 66) 2.

<sup>80</sup> Beber et al, 'The Promise and Perils of Peacekeeping Economies' (n 2) 364.

<sup>81</sup> See, eg, Peter Boone, 'Politics and the Effectiveness of Foreign Aid' (1996) 40(2) *European Economic Review* 40(2) 289; William Easterly, 'Can Foreign Aid Buy Growth?' (2003) 17(3) *Journal of Economic Perspectives* 23; Beber et al, 'The Promise and Perils of Peacekeeping Economies' (n 2) 365; Beber et al, 'Challenges and Pitfalls of Peacekeeping Economies' (n 69) 4–5.

<sup>82</sup> Beber et al, 'Challenges and Pitfalls of Peacekeeping Economies' (n 69) 6.

the peacekeeping economy amounted to 6% of Liberia's 2004 Gross Domestic Product.<sup>83</sup> The financial stimuli provided in the aftermath of the Global Financial Crisis provide the context which illustrate the remarkable nature of UNMIL's impact in Liberia. The American Recovery and Reinvestment Act of 2009 amounted to a one-off 5.5% stimulus to the United States and the first Rudd Government's \$42b injection was a 4.53% stimulus to the Australian economy during the Global Financial Crisis.<sup>84</sup> Beber et al concede that although the nominal size of the interventions of peacekeeping economies are minimal, the state of the host economy is in such dilapidation that the real impact is outstanding.<sup>85</sup>

### Withdrawal and Collapse

Peacekeeping economies lead to the 'regeneration of a certain degree of infrastructure'.<sup>86</sup> However, they are inherently transitory – the peacekeeping economy lasts only as long as the peacekeeping operation. Upon withdrawal of the peacekeeping operation, Jennings and Nikolić-Ristanović stress that the temporary nature of peacekeeping economies is problematic as the newly established infrastructure and services will be left without any suitors, leaving many women and men unemployed and in a similar financial position as before the peacekeeping operation.<sup>87</sup>

The key to understanding the problematic nature of the peacekeeping economy is that the jobs and infrastructure it creates are primarily based around non-tradeable, low-skill services.<sup>88</sup> Attractive wages in the non-traded sector can 'crowd out' manufacturing and contract the traded sector throughout the life of a peacekeeping economy.<sup>89</sup> This apparent causal relationship is known as 'Dutch Disease' and is traditionally observed where the inflow of foreign exchange for a natural resource results in net decline in tradeable goods.<sup>90</sup> Here, the foreign investment resulting from the peacekeeping operation leads to a neglect for local manufacturing and tradeable goods.<sup>91</sup>

Upon withdrawal of the peacekeeping operation, the demand-side of the peacekeeping economy no longer exists as this is purely comprised of peacekeepers and other

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<sup>83</sup> Ibid 8.

<sup>84</sup> See, eg, Alister Bull, 'How U.S. Stimulus Plan Ranks Against Other Programs', *Reuters Politics* (Web Page, 14 February 2009); Anthony J Makin, 'Did Australia's Fiscal Stimulus Counter Recession?: Evidence from the National Accounts' (2010) 17(2) *Agenda: A Journal of Policy Analysis and Reform* 5; Kevin Rudd, 'The Global Financial Crisis' (February 2009) *The Monthly*; Beber et al, 'The Promise and Perils of Peacekeeping Economies' (n 2) 366.

<sup>85</sup> Beber et al, 'Challenges and Pitfalls of Peacekeeping Economies' (n 69) 9.

<sup>86</sup> Jennings and Nikolić-Ristanović (n 66) 5.

<sup>87</sup> Ibid.

<sup>88</sup> See, eg, Beber et al, 'Challenges and Pitfalls of Peacekeeping Economies' (n 69) 5–6; Beber et al, 'The Promise and Perils of Peacekeeping Economies' (n 2) 366; Jennings, 'WPS and Peacekeeping Economies' (n 74) 239

<sup>89</sup> Beber et al, 'The Promise and Perils of Peacekeeping Economies' (n 2) 366; William Durch, 'The Economic Impact of Peacekeeping: An Update' in Walter Feichtinger, Markus Gauster and Fred Tanner (eds), *Economic Impacts of Crisis Response Operations: An Underestimated Factor in External Engagement* (Bundesministerium für Landesverteidigung und Sport [Austrian Federal Ministry of Defence], 2010) 157.

<sup>90</sup> See Max W Corden and J Peter Neary, 'Booming Sector and De-Industrialisation in a Small Open Economy' (1982) 92(368) *Economic Journal* 825; Michael Michaely 'Foreign Aid, Economic Structure and Dependence' (1981) 9(3) *Journal of Development Economics* 313. See also Mwanza Nkusu, 'Aid and the Dutch Disease in Low-Income Countries: Informed Diagnoses for Prudent Prognoses' (Working Paper No 04/49, International Monetary Fund, March 2004).

<sup>91</sup> Beber et al, 'The Promise and Perils of Peacekeeping Economies' (n 2) 365. See also Michael Carnahan, Scott Gilmore and Monika Rahman, 'Economic Impact of Peacekeeping' (Interim Report Phase I, Peace Dividend Trust, April 2005) 8; Beber et al, 'Challenges and Pitfalls of Peacekeeping Economies' (n 69) 6.

international personnel.<sup>92</sup> Moreover, the decline in non-peacekeeping enterprises during the operation means that the economy is unable to absorb the low-skilled service workers who find themselves suddenly unemployed. Excess capital inhibits the growth of a developing economy and the excess supply of labour can lead to economic downturn.<sup>93</sup>

### **Selfish Investment**

The observation that the local economy is unable to sustain the levels of employment and business that existed in the peacekeeping economy demonstrates a greater problem. The services and infrastructure generated by the peacekeeping operation are truly only created to meet the specifications and demand of peacekeepers.<sup>94</sup> The growth of infrastructure and industry associated with the peacekeeping economy occurs ‘instead of, rather than in addition to’ the developments in the local economy; there is little thought given to the long-term local effect of the stimulus.<sup>95</sup>

It is troubling that the economic stimulus of the peacekeeping economy is not invested with the goal of facilitating sustainable economic development. However, it also reinforces damaging ideas of women who are unknowing victims, where many locals are pragmatic and understand that the economic stimulus resulting from peacekeeping operations is not perpetual.<sup>96</sup> The transience of the economic boost is outweighed by the benefits provided to locals throughout the life of an operation — locals are both able to take advantage of the opportunities available to them and prepare for withdrawal.<sup>97</sup>

### **Entertainment Infrastructure and Transactional Sex**

The previous section focused on the observed phenomenon of the ‘peacekeeping economy’ and the impact that peacekeeping operations can have on the local economy. I noted that the basic infrastructure established within the peacekeeping economy is service-based. This section continues the discussion by examining the ‘entertainment infrastructure’ as a sector of the peacekeeping economy, within which the market for transactional sex exists.

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<sup>92</sup> Beber et al, ‘Challenges and Pitfalls of Peacekeeping Economies’ (n 69) 5–6. See generally Kiminori Matsuyama, ‘Agricultural Productivity, Comparative Advantage, and Economic Growth’ (1992) 58(2) *Journal of Economic Theory* 317; Jeffrey D Sachs and Andrew M Warner, ‘Natural Resource Abundance and Economic Growth’ (Working Paper No 5398, National Bureau of Economic Research, 1995).

<sup>93</sup> Roy F Harrod, ‘An Essay in Dynamic Theory’ (1939) 49(193) *Economic Journal* 14; Evsey Domar, ‘Capital Expansion, Rate of Growth, and Employment’ (1946) 14(2) *Econometrica* 137. An analogous situation was observed in the post-war economy following the United States’ withdrawal from Afghanistan: see, eg, Beber et al, ‘Challenges and Pitfalls of Peacekeeping Economies’ (n 69) 6; Vincenzo Bove and Evelina Gavrilova, ‘Income and Livelihoods in the War in Afghanistan’ (2014) 60 *World Development* 113; Lynne O’Donnell, ‘The Afghan War Economy Collapses’, *Foreign Policy* (Web Page, 9 June 2014) <<https://foreignpolicy.com/2014/06/09/the-afghan-war-economy-collapses/>>.

<sup>94</sup> See, eg, Jennings, ‘WPS and Peacekeeping Economies’ (n 74) 239, 241; Beber et al, ‘The Promise and Perils of Peacekeeping Economies’ (n 2) 365.

<sup>95</sup> Jennings, ‘WPS and Peacekeeping Economies’ (n 74) 239–40; Beber et al, ‘The Promise and Perils of Peacekeeping Economies’ (n 2) 367–8.

<sup>96</sup> See McGill (n 46) 22; Jennings and Bøås (n 9) 290; Béatrice Pouligny, *Peace Operations Seen From Below: UN Missions and Local People* (Kumarian Press, 2006), cited in Jennings and Nikolić-Ristanović (n 66) 5.

<sup>97</sup> Jennings and Nikolić-Ristanović (n 66) 5.

## Entertainment Infrastructure

‘Entertainment infrastructure’ refers to the central zone in which social interactions and economic transactions take place between locals and peacekeepers.<sup>98</sup> Jennings describes this as the ‘most visible manifestation of peacekeeping as enterprise’,<sup>99</sup> meaning that it acts as a symbol of the intervention that the peacekeeping operation has on the local economy.<sup>100</sup> The infrastructure, consisting of businesses such as bars, hotels and restaurants, exemplify the service-based nature of the peacekeeping economy. Transactional sex as a specific product of the entertainment infrastructure in peacekeeping economies has been likened to the growth of sex tourism in South East Asian countries such as Thailand and Vietnam.<sup>101</sup> Carter and Clift describe the emergence of sex-related entertainment in Thailand as an ‘articulation of a series of unequal social relations’.<sup>102</sup>

While the observations of peacekeeping economies are in their relative infancy, we can look to the entertainment infrastructure of the wartime economy for guidance. For example, during the Vietnam War, Thailand was used as a ‘rest and relaxation area’ for American servicemen.<sup>103</sup> Those military personnel dramatically drove up the demand for entertainment and sexual services — almost half a century later and Thailand is still regarded as the epicentre for global sex tourism.<sup>104</sup> In a similar vein, True argues that the effects of the peacekeeping economy outlast the peacekeeping operation and continue to shape ‘gendered economic and social power relations’.<sup>105</sup>

## Gendered Structure of the Peacekeeping Economy

Although the peacekeeping economy stimulates the economy and is a catalyst for job creation, the services and infrastructure do not immediately benefit the local population.<sup>106</sup> The majority of consumers and beneficiaries in a peacekeeping economy are peacekeepers and peacekeeping staff.<sup>107</sup> Although there is an institutional drive to deploy more female peacekeepers, males still comprise a majority of peacekeepers on

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<sup>98</sup> Ibid. See also Kathleen M Jennings, ‘Unintended Consequences of Intimacy: Political Economies of Peacekeeping and Sex Tourism’ (2010) 17(2) *International Peacekeeping* 229, 231 (‘Unintended Consequences of Intimacy’); Jennings, ‘WPS and Peacekeeping Economies’ (n 74) 241–2; Jennings, ‘Peacekeeping as Enterprise’ (n 2) 251–3. See generally Simon Carter and Stephen Clift, ‘Tourism, International Travel and Sex: Themes and Research’ in Stephen Clift and Simon Carter (eds), *Tourism and Sex: Culture, Commerce and Coercion* (Pinter, 2000) 1, 11.

<sup>99</sup> Jennings, ‘Peacekeeping as Enterprise’ (n 2) 251.

<sup>100</sup> See Jennings, ‘Encounters with the Peacekeeping Economy’ (n 2) 305–6.

<sup>101</sup> Jennings and Nikolić-Ristanović (n 66) 18–19.

<sup>102</sup> Carter and Clift (n 98) 10. See also TD Truong, *Sex, Money and Morality: Prostitution and Tourism in Southeast Asia* (Zed Books, 1990) 129; *Full Metal Jacket* (Warner Brothers Pictures, 1987).

<sup>103</sup> Carter and Clift (n 98) 11.

<sup>104</sup> See, eg, Krittinee Nuttavuthisit, ‘Branding Thailand: Correcting the Negative Image of Sex Tourism’ (2007) 3(1) *Place Branding and Public Diplomacy* 21; Jennings, ‘Unintended Consequences of Intimacy’ (n 98) 235; Matthew Clayfield, ‘Sex Tourism: Thai Trade Boosted by “Repressed” Tourists in Pattaya’, *ABC News* (Web Page, 15 May 2016) <<https://www.abc.net.au/news/2016-05-15/thai-sex-trade-propped-up-by-sexually-repressed-tourists/7413762>>.

<sup>105</sup> Jacqui True, *The Political Economy of Violence Against Women* (Oxford University Press, 2012) 141. See also Jasmine-Kim Westendorf and Louise Searle, ‘Sexual Exploitation and Abuse in Peace Operations: Trends, Policy Responses and Future Directions’ (2017) 93(2) *International Affairs* 365, 374.

<sup>106</sup> Jennings, ‘Encounters with the Peacekeeping Economy’ (n 2) 307. See also Beber et al, ‘Challenges and Pitfalls of Peacekeeping Economies’ (n 69) 1–3.

<sup>107</sup> Jennings, ‘Peacekeeping as Enterprise’ (n 2) 244.

missions.<sup>108</sup> As such, the services and industries that flourish are targeted towards the male client.<sup>109</sup> It is generally agreed that as a result, any of the employment opportunities made available in the peacekeeping economy are service-based and considered ‘women’s work’.<sup>110</sup> Jennings cites the combination of the scarcity of paid care work and the growth of the sex industry as factors which make the peacekeeping economy ‘not just gendered, but also heavily sexualised’.<sup>111</sup> Aning and Edu-Afful note that the occurrence of women being employed in hospitality and the transactional sex industry has the effect of propagating the understanding of what jobs are ‘appropriate’ for women.<sup>112</sup> This gender-stratification is not an intended outcome of peacekeeping operations; rather, it becomes normalised by the behaviour of peacekeepers and their economic interactions with locals.<sup>113</sup> The most evident illustration of the gendered economy is the market for transactional sex.

### Transactional Sex

A Congolese professional offered that ‘[t]he only impact of MONUSCO has been in the night’.<sup>114</sup> This anecdotal account demonstrates the not-insignificant role that transactional sex has in the service-driven peacekeeping economy. Within the entertainment infrastructure of peacekeeping economies is the market for transactional sex. As discussed, the zero-tolerance policy explicitly prohibits such interactions between peacekeepers and locals.<sup>115</sup> The abhorrent extremes of the industry, survival sex and trafficking, are well-documented but are not the focus of this article. While there is ‘no single paradigm for transactional sex in peacekeeping economies’,<sup>116</sup> the ‘dominant dynamic’ in peacekeeping economies is the transactional relationship between local women and male peacekeeper clientele.<sup>117</sup>

### The Role of Women

The Liberian Nationals AIDS Commission found that in the peacekeeping economy of UNMIL, there were three groups of local women engaging in transactional sex.<sup>118</sup> Women who consider themselves professional sex workers and cite money from transactional sex as a primary source of income.<sup>119</sup> Women who intermittently sell sex as income supplement.<sup>120</sup> The final grouping are women who seek transactional sex

<sup>108</sup> United Nations Peacekeeping, ‘Summary of Troop Contributions to UN Peacekeeping Operations by Mission, Post and Gender’ (Gender Statistics Report No 5, United Nations, 31 May 2019); ‘Our Peacekeepers’, *United Nations Peacekeeping* (Web Page) <<https://peacekeeping.un.org/en/our-peacekeepers>>. See also Lesley J Pruitt, *The Women in Blue Helmets: Gender, Policing, and the UN’s First All-Female Peacekeeping Unit* (University of California Press, 2016), cited in Jennings, ‘Conditional Protection? Sex, Gender, and Discourse in UN Peacekeeping’ (n 32).

<sup>109</sup> Jennings, ‘WPS and Peacekeeping Economies’ (n 74) 240; Edu-Afful and Aning (n 4) 402.

<sup>110</sup> See Jennings and Bøås (n 9) 290; Jennings and Nikolić-Ristanović (n 66) 6.

<sup>111</sup> Jennings, ‘WPS and Peacekeeping Economies’ (n 74) 241.

<sup>112</sup> *Ibid* 240, citing Kwesi Emmanuel Aning and Fiifi Edu-Afful, ‘Unintended Impacts and the Gendered Consequences of Peacekeeping Economies in Liberia’ (2013) 20(1) *International Peacekeeping* 17.

<sup>113</sup> Jennings and Nikolić-Ristanović (n 66) 15. See generally Alasdair MacIntyre, ‘Social Structures and Their Threats to Moral Agency’ (1999) 74(289) *Philosophy* 311, 314.

<sup>114</sup> Interview with Congolese Professional (Kathleen M Jennings, Kinshasa, 22 July 2002), quoted in Jennings, ‘Encounters with the Peacekeeping Economy’ (n 2) 305.

<sup>115</sup> *Bulletin* (n 29) s 3.2(e).

<sup>116</sup> Jennings and Nikolić-Ristanović (n 66) 9. See Chris Ryan, ‘Sex Tourism: Paradigms of Confusion’ in Stephen Clift and Simon Carter (eds), *Tourism and Sex: Culture, Commerce and Coercion* (Pinter, 2000) 23, 24.

<sup>117</sup> Jennings, ‘Service, Sex, and Security’ (n 17) 319.

<sup>118</sup> National AIDS Commission, ‘National HIV/AIDS Strategic Framework II’ (Republic of Liberia, 2009).

<sup>119</sup> *Ibid* 22.

<sup>120</sup> *Ibid*.

and relationships with internationals in order to ‘maintain or improve their standard of living’.<sup>121</sup> Jennings compares the nature of the transaction in this final grouping to the ‘open-ended exchange’ observed in sex tourism.<sup>122</sup>

While Jennings preferred to discuss the differences between the three groups, I argue that it is useful to look for the overarching similarity. Transactional sex is ‘underpinned by the logic of market exchange’.<sup>123</sup> Women engaging in transactional sex are rational actors who are cognisant, and able to take advantage, of the demand created by the peacekeeping economy. Beber et al conducted the ‘first systematic quantitative study of the association between a UN peacekeeping operation and transactional sex’,<sup>124</sup> finding that more than 50% of women in Monrovia have engaged in transactional sex, more than 75% of them have done so with UN personnel.<sup>125</sup> These findings, along with Simić’s research, express the view that voluntary transactional sex is not inherently exploitative and is a legitimate opportunity for women to engage in the peacekeeping economy.<sup>126</sup>

### Cause and Effect

An important question is whether peacekeeping operations increase the incidence of transactional sex, or whether the supply would otherwise be met with non-UN demand. Where prostitution was scarce prior to international intervention in Bosnia, international personnel accounted for ‘70% of profits made from prostitution’.<sup>127</sup> Limanowska observed a similar phenomenon in Kosovo, where peacekeepers comprised an estimated ‘40% of the clientele of brothels’.<sup>128</sup> Moreover, Beber et al noted that close to 3% of UNMIL’s contribution to the Liberian economy was through UN staff engaging in transactional sex.<sup>129</sup>

Beber et al conclude that the arrival of UNMIL ‘led to an increase in the volume of transactional sex’ rather than peacekeepers ‘merely displacing non-UN buyers from an otherwise stable transactional sex market’.<sup>130</sup> This aligns with my earlier discussion regarding the impact of the peacekeeping economy, where I noted that the establishment of infrastructure occurs ‘instead of, rather than in addition to’ local economic development.<sup>131</sup> The market for transactional sex thrives in the peacekeeping economy and is a vehicle for local women to find financial stability and personal autonomy. I argue that the blanket prohibition on transactional sex imposed by the zero-tolerance policy unnecessarily inhibits the ability of local women to engage in the peacekeeping economy.

### Conclusion

There are demonstrable problems with the peacekeeping economy; the entertainment infrastructure is an exemplar of the issues surrounding low-skill services, gender

<sup>121</sup> Ibid. See also Jennings, ‘Service, Sex, and Security’ (n 17) 319; Jennings, ‘Unintended Consequences of Intimacy’ (n 98) 233.

<sup>122</sup> Jennings and Nikolić-Ristanović (n 66) 8. See also Julia O’Connell Davidson, *Prostitution, Power and Freedom* (Polity Press, 1998) 78; Carol Pateman, *The Sexual Contract* (Blackwell, 1998) 191.

<sup>123</sup> Jennings, ‘Peacekeeping as Enterprise’ (n 2) 252. See also Jennings and Bøås (n 9) 290; Simić, *Regulation of Sexual Conduct* (n 4) 169.

<sup>124</sup> Beber et al, ‘Transactional Sex in Monrovia’ (n 4) 2.

<sup>125</sup> Ibid 3.

<sup>126</sup> See Simić, *Regulation of Sexual Conduct* (n 4) 169.

<sup>127</sup> Westendorf and Searle (n 105) 373.

<sup>128</sup> Barbara Limanowska, ‘Trafficking in Human Beings in Southeastern Europe’ (Report, United Nations Children’s Fund, June 2002) 96.

<sup>129</sup> Beber et al, ‘Challenges and Pitfalls of Peacekeeping Economies’ (n 69) 3 n 2.

<sup>130</sup> Beber et al, ‘Transactional Sex in Monrovia’ (n 4) 3.

<sup>131</sup> Jennings, ‘WPS and Peacekeeping Economies’ (n 74) 239–40. See above Part III(C).

stratification and transience. In the alternative, the market for transactional sex within the peacekeeping economy presents an opportunity for women to participate and act as rational economic agents. The next substantive part of this article uses the foregoing discussion to examine the impact of the zero-tolerance policy on women.

### **The Practical Application of Policy**

As discussed in Parts V and VI, the encounters between peacekeepers and locals in the peacekeeping economy are grounded in individual choice and market forces.<sup>132</sup> The zero-tolerance policy is ostensibly laudable, aiming to prevent sexual exploitation and abuse. However, the policy perpetuates representations of women in need of protection. Such characterisations are ‘inconsistent with the realisation of women’s equality and human rights’.<sup>133</sup> It also fails to address the Dutch Disease caused by the peacekeeping economy which leads to the growth of the market for transactional sex. It is easier to consecrate a broad, wide-reaching policy than it is to spend time understanding the causes of the issue and the nuances involved. Transactional sex involves rational decision-making and a level of agency and negotiation that distinguishes it from abuse and exploitation. Participation in transactional sex is more than a theoretical avenue for women to participate in peacekeeping economies; participation is high and the benefits for the women involved are commensurate.<sup>134</sup> Rigidly enforcing the zero-tolerance policy would deprive women in peacekeeping economies of both their capacity to act as rational economic agents and a major source of income.

### **Women as Economic Agents**

Economic agency describes one’s ability to use resources in an efficient market.<sup>135</sup> Women who participate in the market for transactional sex in a peacekeeping economy are economic agents. They are able to take advantage of international demand and utilise sex as a means to gain ‘significant income and status’ by participating in the market for transactional sex.<sup>136</sup>

### **Sex as Agency**

Sex can present itself as an ‘active attempt to overcome socioeconomic limitations’,<sup>137</sup> and is much more than mere pleasurable experimentation. As previously noted, the informal and unskilled service-based opportunities in the peacekeeping economy are often described as ‘women’s work’.<sup>138</sup> Oldenburg’s analysis of Goma demonstrates that women are able to take advantage of the demand for sex driven by international

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<sup>132</sup> See, eg, Jennings, ‘Service, Sex, and Security’ (n 17) 318, 320; Jennings, ‘Peacekeeping as Enterprise’ (n 2) 252; Jennings and Bøås (n 9) 290; Simić, *Regulation of Sexual Conduct* (n 4) 169.

<sup>133</sup> Otto (n 49) 270. See also Natalie Kaufman Hevener, ‘International Law and the Status of Women: An Analysis of International Legal Instruments Related to the Treatment of Women’ (1978) 1(1) *Harvard Women’s Law Journal* 131; UN Women, ‘Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development’ (Report, 2018).

<sup>134</sup> Beber et al, ‘Transactional Sex in Monrovia’ (n 4) 10–13.

<sup>135</sup> See, eg, Joseph E Stiglitz, ‘Principal and Agent II’ in Steven N Durlauf and Lawrence E Blume (eds), *The New Palgrave: A Dictionary of Economics* (Palgrave Macmillan, 2018) 5149. See also Rhéa Jean, ‘Prostitution and the Concept of Agency’ in Heather Widdows and Herjeet Marway (eds), *Women and Violence: The Agency of Victims and Perpetrators* (Palgrave Macmillan, 2015) 52; Joseph Raz, *The Morality of Freedom* (Clarendon Press, 1986) ch 15.

<sup>136</sup> Beber et al, ‘Transactional Sex in Monrovia’ (n 4) 4, citing Katherine A Atwood et al, ‘Transactional Sex Among Youths in Post-Conflict Liberia’ (2011) 29(2) *Journal of Health, Population, and Nutrition* 113.

<sup>137</sup> Jennings and Bøås (n 9) 290.

<sup>138</sup> *Ibid.* See also Jennings and Nikolić-Ristanović (n 66) 6.

personnel in order to ‘achieve resources, connections and mobility’.<sup>139</sup> But for the international presence, many women in post-conflict states would remain either unemployed or unable to realistically search for gainful employment. As such, Edu-Afful and Aning argue that women derive the greatest benefits in the peacekeeping economy.<sup>140</sup> The notion of women as the greatest beneficiaries of the peacekeeping economy stands in contrast to the implications that the zero-tolerance policy imputes onto women. The policy treats beneficiaries of assistance as submissive and vulnerable women lacking the ‘agency to decide whether to be [sexually] involved’ with peacekeepers.<sup>141</sup>

For the women who are rational actors in the peacekeeping economy, the imagery of victimhood evoked by the term ‘survival sex’ is far removed from reality.<sup>142</sup> However, the counterargument is that the nature of the transaction — male peacekeepers procuring sexual services from female workers — fortifies a regressive and ‘traditional’ idea of femininity and gender roles.<sup>143</sup> Such an argument demonstrates the problematic level of abstraction that peacekeeping discourse often conveys. On a theoretical level, I agree that the baseline transaction places the male peacekeeper in the position of power; without him, the female local would be unable to sustain a livelihood. However, I argue that this is ostensibly problematic only on that theoretical level.<sup>144</sup> Jennings uses field-work to express the attitude shared among locals in peacekeeping economies: ‘get while the getting is good’.<sup>145</sup> To impose a zero-tolerance policy with the intention of preventing sexual interactions based on an inherent power imbalance is to suggest to women that they are not ‘smart girls, bandits and adventurers’<sup>146</sup> or ‘tactic agents’,<sup>147</sup> but are instead vulnerable and in need of protection.<sup>148</sup>

### Deprivation of Livelihood

A rigid application of the zero-tolerance policy does more than signal to women that an available avenue for economic autonomy is prohibited, it has the real effect of depriving women of their livelihood.<sup>149</sup> The act of local women engaging in a sexual transaction with peacekeepers is often referred to as ‘survival sex’.<sup>150</sup> This connotes ideas of desperate, Fantine-esque women who are willing to sell their bodies for a few dollars.<sup>151</sup>

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<sup>139</sup> Silke Oldenburg, ‘The Politics of Love and Intimacy in Goma, Eastern DR Congo: Perspectives on the Market of Intervention as Contact Zone’ (2015) 9(3) *Journal of Intervention and Statebuilding* 316, 324.

<sup>140</sup> Edu-Afful and Aning (n 4) 400, cited in Jennings and Bøås (n 9) 290. This contention does not eliminate the role of men in the transactional sex industry of the peacekeeping economy; while women tend to comprise a greater part of the industry, positions of power in the transactional sex industry are often occupied by men. This is particularly the case in Bosnia and Kosovo, where the transactional sex industry controlled organised crime is led by men: Jennings and Nikolić-Ristanović (n 66) 6.

<sup>141</sup> Simić, ‘Wrongs of Zero Tolerance’ (n 18) 2.

<sup>142</sup> Oldenburg (n 139) 327, citing Suzanne Leclerc-Madlala, ‘Transactional Sex and the Pursuit of Modernity’ (2008) 29(2) *Social Dynamics: A Journal of African Studies* 213. Cf *Zeid Report* (n 63) 9 [10].

<sup>143</sup> Jennings, ‘WPS and Peacekeeping Economies’ (n 74) 242; Jennings and Nikolić-Ristanović (n 66) 17.

<sup>144</sup> See also Oldenburg (n 139) 317.

<sup>145</sup> Jennings and Bøås (n 9) 290. See generally Simić, *Regulation of Sexual Conduct* (n 4).

<sup>146</sup> Oldenburg (n 139) 322–8.

<sup>147</sup> Mats Utas, ‘Victimcy, Girlfriending, Soldiering: Tactic Agency in a Young Woman's Social Navigation of the Liberian War Zone’ (2005) 78(2) *Anthropological Quarterly* 403, 405.

<sup>148</sup> See Jennings, ‘Conditional Protection? Sex, Gender, and Discourse in UN Peacekeeping’ (n 32) 36–8.

<sup>149</sup> Simić, *Regulation of Sexual Conduct* (n 4) 169.

<sup>150</sup> See, eg, McGill (n 46); *Zeid Report* (n 63) 9 [10]; Jennings and Nikolić-Ristanović (n 66) 8.

<sup>151</sup> Victor Hugo, *Les Misérables*, tr Norman Denny (Penguin Classics, 1982). See also Kat Banyard, *Pimp State: Sex, Money and the Future of Equality* (Faber & Faber 2016); Melissa

While on a superficial level, this transaction could be construed as a means of survival, there is much more depth involved. Jennings observed that in the Democratic Republic of Congo, many women in the industry are business-savvy and charge more for international peacekeepers than local men, more for Europeans than Africans.<sup>152</sup> These women are able to participate in the peacekeeping economy and truly engage as rational actors in transactional negotiations.

The zero-tolerance policy is reactionary. When faced with allegations of peacekeepers having sex with 13-year-old girls in return for ‘two eggs’,<sup>153</sup> it is a proportionate response to simply prohibit such interactions. However, the policy’s wide reach does not provide for the reality of transactional sex in peacekeeping economies. In Monrovia, Beber et al conclude that close to 93% of women receive money as consideration for sex.<sup>154</sup> Moreover, 76% of all women who engage in transactional sex earn more than double the national average income.<sup>155</sup> The 2016 study is the only one of its kind, so the results may need verification in the future. However, if the statistics are to be taken as factual, then it is demonstrable that strictly prohibiting transactional sex would have a ruinous impact on the livelihood of women.

### Removing Rationality

Rational choice theory finds its foundation in the hypothesis that individual actors make their own decisions, the aggregate of which comprise social interactions.<sup>156</sup> In the context of transactional sex in the peacekeeping economy, female locals and male peacekeepers make their own decisions to engage in transactional sex. The zero-tolerance policy is in direct opposition with this argument; the policy is driven by ‘sexual negativity’ and regards all sexual interactions as harmful to women.<sup>157</sup> Moreover, the policy locates agency in men, implying that only male peacekeepers can make rational decisions to engage in transactional sex.<sup>158</sup>

### Invalidating Consent

Although the circumstances of economic engagement are odious, the decision to enter into the transactional sex industry ‘involves a level of agency and negotiation that distinguishes it from ... rape [and] sexual assault’.<sup>159</sup> Two basic operative elements of rape are the victim’s lack of consent and the perpetrator’s lack of reasonable awareness of consent.<sup>160</sup> The zero-tolerance policy has no regard for whether consent exists in the sexual interaction; the policy ‘blur[s] the distinction’ between consensual and non-

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Farley, ‘Risks of Prostitution: When the Person Is the Product’ (2018) 3(1) *Journal of the Association for Consumer Research* 97. Cf Simić, *Regulation of Sexual Conduct* (n 4) ch 6.

<sup>152</sup> Jennings, ‘Encounters with the Peacekeeping Economy’ (n 2) 304–5.

<sup>153</sup> Investigation by the Office of Internal Oversight Services into Allegations of Sexual Exploitation and Abuse in the United Nations Organization Mission in the Democratic Republic of the Congo, UN Doc A/59/661 (5 January 2005) 5 [12].

<sup>154</sup> Beber et al, ‘Transactional Sex in Monrovia’ (n 4) 13.

<sup>155</sup> Ibid 14. See also United Nations Development Programme, *Human Development Indices and Indicators* (Statistical Update, July 2018) 25.

<sup>156</sup> Lawrence E Blume and David Easley, ‘Rationality’ in Steven N Durlauf and Lawrence E Blume (eds), *The New Palgrave: A Dictionary of Economics* (Palgrave Macmillan, 2018) 5396, 5400–1.

<sup>157</sup> See Simić, *Regulation of Sexual Conduct* (n 4); Otto (n 49) 261; Carmichael (n 25) 29, 65. See also Gayle Rubin, ‘Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality’ in Carole S Vance (ed), *Pleasure and Danger: Exploring Female Sexuality* (Routledge, 1984) 11.

<sup>158</sup> Otto (n 49) 270. See generally Dana P Eyre, David R Segal and Mandy Weschler Segal, ‘The Social Construction of Peacekeeping’ in David R Segal and Mandy Weschler Segal (eds), *Peacekeepers and Their Wives: American Participation in the Multinational Force and Observers* (Greenwood Press, 1993) 42.

<sup>159</sup> Otto (n 49) 260.

<sup>160</sup> See, eg, *Crimes Act 1958* (Vic) ss 38(1)(b)–(c). See also *ibid* 268.

consensual sex.<sup>161</sup> A woman's ability, as a rational agent, to say yes and consent to sex, is stripped by the application of the zero-tolerance policy.<sup>162</sup> The effect of denying women the ability to demarcate the boundaries of their own relationships and imputing a presumption of exploitation is problematic. It frames the decision to participate in transactional sex as irrational and perpetuates the perception that local women are victims.<sup>163</sup> This poses a further problem insofar that the peacekeepers are 'responsible for protecting locals from the threat of sexual harm that he himself presents'.<sup>164</sup>

### Application to Relationships

The Bulletin notes that sexual relationships 'undermine the credibility and integrity' of the UN because they are based on 'inherently unequal power dynamics'.<sup>165</sup> I argue that this default position of a power imbalance and inequality does not reflect the subjective belief of locals. Simić interviewed women involved in relationships with peacekeepers in the United Nations Mission in Bosnia and Herzegovina ('UNMIBH'), where common reasons for entering into such relationships were that the male peacekeepers were a 'combination of ... personality, ... experiences, education and knowledge', 'attraction and friendship' and 'humour'.<sup>166</sup> This is far removed from the inherent power balance suggested by the Bulletin. Moreover, Simić's research revealed that most power differences in the local–peacekeeper relationships were constructed in terms of age or intellect, rather than financial dependency or 'inherent dynamics'.<sup>167</sup>

The rhetoric of power imbalance which underpins the zero-tolerance policy strips woman of their ability to act as rational agents; the policy instead suggests that women who enter such relationships must be acting irrationally as a result of some undue influence. In its application to legitimate relationships, the zero-tolerance policy abrogates the women's fundamental rights of privacy and dignity. This merely imputes and perpetuates 'colonial ideas about girls and women in peacekeeping host countries as "Third World" women who are unknowing victims in need of rescue'.<sup>168</sup>

### Going Underground

Through the zero-tolerance policy's prohibition on transactional sex, there is a real risk that the industry will be driven underground, free from even the appearance of legitimacy and regulation.<sup>169</sup> When this occurs, it becomes difficult to draw the line between legitimate, consensual entry into the sex industry, and forced prostitution.<sup>170</sup> Following reports of sex slavery and human trafficking in Bosnia, the United States House of Representatives Subcommittee on International Operations and Human Rights heard testimony from a former UN Human Rights Investigator who provided the following account:

Virtually all of the prostitutes in Bosnia are foreigners, mostly from Romania, Ukraine, Moldova, and surrounding countries. They are brought into Bosnia to

<sup>161</sup> Otto (n 49) 268.

<sup>162</sup> Simić, 'Wrongs of Zero Tolerance' (n 18) 2.

<sup>163</sup> See generally *Bulletin* (n 29) s 3.2; McGill (n 46) 32; Sarah W Spencer, 'Making Peace: Preventing and Responding to Sexual Exploitation by United Nations Peacekeepers' (2005) 16(1) *Journal of Public and International Affairs* 167, 171; Antony Anghie and BS Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflict' in Steven R Ratner and Anne-Marie Slaughter (eds), *The Methods of International Law* (William S Hein & Co, 2004) 185, 192.

<sup>164</sup> McGill (n 46) 23.

<sup>165</sup> *Bulletin* (n 29) s 3.2(d).

<sup>166</sup> Simić, *Regulation of Sexual Conduct* (n 4) 111.

<sup>167</sup> *Ibid* 114–5.

<sup>168</sup> McGill (n 46) 22. See also Jennings, 'Conditional Protection? Sex, Gender, and Discourse in UN Peacekeeping' (n 32) 37.

<sup>169</sup> Jennings and Nikolić-Ristanović (n 66) 23; Simić, *Regulation of Sexual Conduct* (n 4) 163.

<sup>170</sup> Westendorf and Searle (n 105) 373.

provide services to a paying clientele, a large component of which is foreign workers and peacekeepers. In Bosnia, the trafficking and forced-prostitution trade is not separate from a 'legitimate' prostitution trade; it is all the same operation. Therefore, anyone who is patronizing prostitution in Bosnia is supporting the sex slave trade. This fact is not acknowledged or is disregarded by many UN peacekeepers who involve themselves with prostitution in Bosnia. Others knowingly become deeply involved in the sex slave trade in partnership with organized crime.<sup>171</sup>

Westendorf and Searle assert that similar accounts were produced in Kosovo, where forced prostitution and trafficking for sex 'was [not] a significant issue before the arrival of peacekeepers'.<sup>172</sup> This not only demonstrates the difficulty in separating consensual entry into the sex industry from forced prostitution, but it also serves as a reminder of the obstacle in writing on this topic. It is easy to hypothesise and attempt to apply political, legal and economic theory at a high level; but to truly understand the impact of peacekeeping operations, a hands-on approach is required. Instead of prohibiting transactional sex and turning a blind eye to its persistence, the UN should instead develop a policy in collaboration with local people and decision-makers. Taking into account the lived experience of women will work towards ensuring that transactional sex is conducted in a safe and consensual manner, free from the intense stigma promulgated by the zero-tolerance policy.<sup>173</sup>

## Conclusion

Despite its apparent intentions of protecting women, the zero-tolerance policy has the real effect of stripping local women of their ability to engage and participate in the peacekeeping economy. The market for transactional sex not viewed in a negative light by locals and is considered a realistic aspect of peacekeeping operations.<sup>174</sup> This demonstrates the detachment between the UN's policy and the reality and reflections of those affected by the policy. In the final part, I introduce the discussion surrounding the need for the UN to devise a collaborative approach to redefine the zero-tolerance policy.

## Redefining the Zero-Tolerance Policy

Definitional issues plague the effective implementation and enforcement of the zero-tolerance policy. Its inclusion of transactional sex is but one example of the incongruity between theory and practice. I have expressed that it is difficult to adequately discuss the complex issues associated with transactional sex and peacekeeping economies from a theoretical perspective. However, it appears that the UN's response strives to do just that — despite the ample reporting and fieldwork which has been conducted in peacekeeping economies, the zero-tolerance policy disregards the subsisting experiences of local women who are the intended beneficiaries of the policy.<sup>175</sup> Moreover, the policy is inconsistent with other international approaches, which do not necessarily view transactional sex as inherently exploitative and harmful to women.<sup>176</sup>

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<sup>171</sup> Hearing Before the Subcommittee on International Operations and Human Rights of the House of Representatives, 107<sup>th</sup> Cong 2 (2002) (statement of David Lamb).

<sup>172</sup> Westendorf and Searle (n 105) 374. See also Jennings and Nikolić-Ristanović (n 66) 9; Claire Morris, 'Peacekeeping and the Sexual Exploitation of Women and Girls in Post-Conflict Societies: A Serious Enigma to Establishing the Rule of Law' (2010) 14(1–2) *Journal of International Peacekeeping* 184, 195.

<sup>173</sup> Simić, *Regulation of Sexual Conduct* (n 4) 170. See also McGill (n 46) 28–30; Jennings and Nikolić-Ristanović (n 66) 19; Grady (n 12) 942.

<sup>174</sup> Simić, *Regulation of Sexual Conduct* (n 4) 147–8.

<sup>175</sup> *Ibid* 168.

<sup>176</sup> Committee on the Elimination of All Forms of Discrimination Against Women, 'Violence Against Women' (General Recommendation No 19, 1992) [15]; *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, signed 12 December 2000, 2237 UNTS 319 (entered into force 25 December 2003) art 3. See also Otto (n 49) 269.

The most recent response from the UN Secretary-General builds on the 2017 *Special Measures for Protection from Sexual Exploitation and Abuse: A New Approach* ('New Approach'), which introduced a four-part policy to address and prevent sexual exploitation and abuse in peacekeeping operations.<sup>177</sup> Relevantly, the New Approach introduced a Victims' Rights Advocate to 'give a voice to the victims'<sup>178</sup> and revisited the terms of the trust fund which provides for the financing of support and assistance for victims.<sup>179</sup> While such measures are both necessary and laudable, they demonstrate the reactionary nature of the UN's approach to the issue. I contend that the UN must implement proactive measures to prevent the occurrence of sexual exploitation and abuse, and develop these policies alongside those who are the intended beneficiaries. This is not to say that the UN are not being proactive: the screening process for peacekeepers has recently been bolstered, requiring disclosure of prior misconduct;<sup>180</sup> there has also been an increased emphasis on combating gender-based violence in the UN's internal induction and training programmes.<sup>181</sup>

The 2019 Report states that the Bulletin's guidance and rules for UN personnel are being updated.<sup>182</sup> Moreover, the UN's Joint Inspection Unit is currently undertaking a review which aims to examine the 'ability of investigation functions to address the zero-tolerance approach'.<sup>183</sup> The proactive emphasis of the 2019 Report is on 'risk mitigation and ending impunity';<sup>184</sup> this does not suggest an intention to reconsider the scope of the zero-tolerance policy.

To create an effective policy, the UN must collaborate with locals and reconcile their values and concerns with the UN's institutional goals. The investment of resources into prohibiting transactional sex ostensibly achieves the UN's goal of protecting women. However, as has been discussed, this does more harm than good and strips women of their ability to participate in a market as rational economic agents. Therefore, if the UN are persistent in their desire to reduce the occurrence of transactional sex, policies should be investigated that will help create alternative employment opportunities for women.<sup>185</sup>

## Conclusion

The zero-tolerance policy's prohibition on transactional does not reflect the complexity of what occurs in peacekeeping operations. The market for transactional sex should not be construed as an inherently harmful derivative of the peacekeeping economy. It presents an opportunity for local women to engage and participate in the market and act as rational economic agents. While Beber et al are correct to argue that peacekeeping economies are transient, an attempt to restrict women from engaging in the market under the guise of protection is erroneous. Jennings' observation that local women 'get while the getting is good' is an excellent illustration that they appreciate the transitory nature of the opportunity and can act with autonomy.<sup>186</sup>

The UN's continued promotion of the zero-tolerance policy ignores the real experience of the policy's intended beneficiaries. The UN have little reason to ignore the growing

<sup>177</sup> *New Approach* (n 31).

<sup>178</sup> *Ibid* 9 [27]; *2019 Report* (n 37) 7–9 [22]–[37].

<sup>179</sup> *New Approach* (n 31) 34; *2019 Report* (n 37) 9 [37].

<sup>180</sup> *2019 Report* (n 37) 10 [40]–[42].

<sup>181</sup> *Ibid* 10–11. See also UN Personnel, 'E-Learning Training to Tackle Sexual Exploitation and Abuse', *Conduct in UN Field Missions* (Web Page, 24 January 2017) <<https://conduct.unmissions.org/e-learning-training-tackle-sexual-exploitation-and-abuse>>.

<sup>182</sup> *2019 Report* (n 37) 2 [3].

<sup>183</sup> *Ibid* 11 [49].

<sup>184</sup> *Ibid* 9–13

<sup>185</sup> Simić, *Regulation of Sexual Conduct* (n 4) 168.

<sup>186</sup> Jennings and Bøås (n 9) 290. See generally Simić, *Regulation of Sexual Conduct* (n 4).

body of research examining lived experiences and reflections from women in post-conflict societies. To do so, and to uphold the zero-tolerance policy is to perpetuate ‘conservative and imperial stereotypes about vulnerable women’.<sup>187</sup> I do not contend that many women in post-conflict societies are not victims — but as Simić argues, the UN must acknowledge that they are also survivors whose voices must be taken into account.<sup>188</sup> Relevantly for my discussion, this must include a realisation that consent can exist in transactional sex and that women are able to freely choose to participate in the market for economic gain.

It is incorrect to state that this article is authoritative. I have sought to reconcile the breadth of research into transactional sex, peacekeeping economies and the zero-tolerance policy. There is still progress to be made in this area of research. Importantly, the long-term impact of the peacekeeping economy on local economic structure and development is yet to be determined. The ongoing work of Beber et al is promising; its empirical approach draws upon Grady’s important caution on the use of UN-provided data.<sup>189</sup> Moreover, a comprehensive examination of the causes of sexual exploitation and abuse would be invaluable and allow the UN to direct future policy to those causes.<sup>190</sup>

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<sup>187</sup> Simić, *Regulation of Sexual Conduct* (n 4) 7.

<sup>188</sup> *Ibid* 168–73.

<sup>189</sup> See generally Grady (n 12).

<sup>190</sup> See, eg, Rodriguez and Kinne (n 30).