

**ENDING IMPUNITY:
NEW TOOLS FOR CRIMINAL ACCOUNTABILITY IN UN PEACE OPERATIONS***Issue Brief September 2009*

By William J. Durch and Madeline L. England

On 29 June 2009, the Future of Peace Operations Program at the Stimson Center launched a new publication, *Improving Criminal Accountability in United Nations Peace Operations*, by William J. Durch, Katherine N. Andrews, and Madeline L. England, with Matthew C. Weed. This issue brief presents the report's findings and recommendations, summarizes the proceedings and recommendations of the workshop, and suggests next steps for moving forward to improve criminal accountability.

Criminal Accountability in UN Peace Operations: Problems and Proposals

One of the most challenging problems for building the rule of law in post-conflict states has been establishing effective criminal accountability for personnel serving in UN peace operations. While military personnel are covered by national military codes of justice and memoranda of understanding between the UN and troop contributing countries, non-military personnel (UN

civilian staff and police) accused of serious crimes in the field may face a penalty no more severe than repatriation. Such lack of criminal accountability poses a problem—of equity, morality, hypocrisy, injustice, or just bad example—but disagreement remains regarding whose responsibility it should be to remedy the situation. Stimson Senior Associate William Durch began the event with an introduction of the report's findings and recommendations.

Panelists

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William O'Neill, Program Director, Conflict Prevention and Peace Forum, Social Science Research Council

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Problems of Misconduct and Administrative Remedies in UN Peace Operations

To its credit, the UN has taken steps to address discipline problems among its personnel, beginning with the appointment of H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein, then the Permanent Representative of Jordan to the United Nations and a former civilian peacekeeper, as adviser to the Secretary-General on the SEA problem. Prince Zeid's subsequent investigations would result in a landmark report in March 2005 and a new DPKO strategy for prevention of misconduct, enforcement of DPKO standards, and remedial action to be taken in response to allegations of misconduct (Box 1). These were accompanied by longer-term initiatives to

restructure the UN's internal administrative justice system and explore options for criminal accountability.

UN efforts to date have been largely administrative or emphasize the responsibility of states of nationality of UN personnel to prosecute serious misconduct. Dr. Durch acknowledged that these are useful initial steps but stressed that they are not sufficient, particularly given the poor record of states of nationality in stepping up to their responsibilities to prosecute their nationals.

Box 1 Improving Criminal Accountability: UN's efforts to date

DPKO strategy for remedial action:

- Creation of conduct and discipline units at headquarters and in each mission
- Training on zero-tolerance and non-fraternization policies
- Investment in troop and staff welfare intended to improve morale and reduce instances of misconduct
- Improved reporting procedures for misconduct allegations.

Internal system of administrative justice:

- Following the General Assembly's full endorsement in February 2007, the UN also began to restructure its internal system of administrative justice for the first time since its creation in 1946, the results of which went into effect on 1 July 2009.

Groups of legal experts to explore options for criminal accountability:

- The first group favored host state jurisdiction and argued for an international convention requiring states to exercise extraterritorial jurisdiction over nationals who participate in UN missions.
- The second group supported the establishment of legally binding standards to govern the conduct of all categories of personnel in UN peace operations.

Proposals for Establishing Criminal Accountability in UN Peace Operations

As is evident from the recommendations of the groups of legal experts, the debate about accountability centers on the complex question of who has the legal authority to impose criminal penalties on United Nations personnel. Another issue, often publicly unacknowledged but implicitly linked, is whether the UN itself can wield such authority and if it does, using what legal code. A precedent for criminal jurisdiction was established in UN executive missions in Kosovo and East Timor.¹ The confusion in those missions over what qualified as applicable law led to a recommendation by the Panel on United Nations Peace Operations (the panel that produced the Brahimi report²) that an "interim legal code" be developed for use in such situations.³ Over a period of years, the United States Institute of Peace and the Irish Centre for Human Rights, in collaboration with the UN Office of the High Commission for Human Rights and the UN Office on Drugs and Crime, developed the Model Codes for Post-Conflict Criminal Justice Project ("model codes project").⁴ The model codes are designed as a "useful example" to support a range of reform tasks in post-conflict states, including criminal law enforcement and justice, and the project team made a concerted effort to avoid imposing one set of rules or values on others,

¹ Uncertainty in both missions over applicable law eventually led to both Heads of Mission issuing binding resolutions based on their mandates.

² The informal name refers to the Chair of the panel, UN Under-Secretary-General Lakhdar Brahimi. United Nations, *Report of the Panel on United Nations Peace Operations*, A/55/305-S/2000/809, 21 August 2000.

³ A/55/305-S/2000/809, 21 August 2000, para. 83.

⁴ Vivienne O'Connor and Colette Rausch, eds., with Hans-Joerg Albrecht and Goran Klemencic, *Model Codes for Post-Conflict Criminal Justice, Volume 1: Model Criminal Code* (Washington, DC: United States Institute of Peace Press, 2007).

indifferent to cultural variances.⁵ Stimson’s accountability study uses the model codes as a recommended point of departure for building UN-host state partnerships in criminal justice where UN peace operations deploy. But before this point can be reached, three barriers to effective criminal accountability in UN operations must be overcome. The barriers and the report’s proposed two-step solution for surmounting them are summarized in Box 2.

Box 2 Improving Criminal Accountability: Summarizing the Recommendations

Overcoming barriers:

- State-related barriers: weak justice systems, public mistrust, and reluctance to report crimes
- Barriers arising from the operational environments in which UN missions are typically deployed: inadequate welfare and hostile environments lead to low morale among UN personnel
- Barriers related to UN policy and practice: ambiguous UN mandate language, for example the authority to use “all necessary means”, can lead to untoward interpretations of appropriate use of force; UN deferral to states of nationality for discipline of police personnel (more than 10,000 are deployed) leaves the UN essentially unable to impose rule of law on the largest cadre of mission personnel with responsibility to support rule of law.

Proposed Collaborative Justice System: A Two-Step Solution

- Step one would give an accused individual’s state of nationality the opportunity to prosecute, if its laws have extraterritorial reach, its criminal justice system meets international human rights standards, and it has agreed in writing to prosecute well-founded allegations of criminal behavior. Precedents and templates exist for evaluating states in these ways, including mandatory evaluations by the UN Human Rights Council that allow for both government and NGO reporting.
- If the state of nationality fails to meet these criteria, step two would shift responsibility to the mission host state, working in close collaboration with the United Nations to bring its criminal justice system up to international standards for the purpose of dealing with UN personnel. This collaborative arrangement should be stipulated in the mission mandate and reinforced by the UN’s Status of Mission Agreement with the host state. The UN would need to be prepared to function as lead partner in the administration of criminal justice for mission personnel.

A new UN Headquarters support structure would be needed to facilitate the second step of collaborative justice. Components of this structure would be devoted to assessing the criminal justice needs of the host state, through visits to the country to determine how best to bring host state criminal justice into compliance with international human rights law and the recommendations of the model codes of law and criminal procedure. The Headquarters elements could be housed in part within the newly-created UN Office of Administration of Justice but would also entail the creation of a new, independent oversight body analogous to the panel that oversees the UN Secretariat’s “general inspectorate,” the Office of Internal Oversight Services (OIOS).⁶ In the field, the new criminal justice support structure would be led by a proposed new “civil provost” (analogous to the concept of a military provost, or chief justice officer).⁷

Initial allegations of misconduct would be made, as at present, to a mission Ombudsman or Conduct and Discipline Unit, but the civil provost would review allegations of misconduct by non-military mission personnel and have the authority to order further OIOS investigation of allegations of serious (“Category I”) criminal misconduct (Figure 1). The civil provost would,

⁵ Ibid., p. 9.

⁶ OIOS presently has responsibility for investigating allegations of misconduct in UN missions.

⁷ The UN Headquarters support and field mission structures are explained in detail with diagrams in the report.

under terms of the mission mandate and Status of Mission Agreement with the host state, have authority to detain the suspect if flight risk warrants it, and to invite participation of investigators either from states of nationality that meet the criteria outlined in Box 2, or from the host state.

Implementation of the report's recommendations would mean a revolution in how the UN pursues justice. Power to interpret the extent of functional immunity is vested by treaty in the Secretary-General, who has the "right and the duty" to waive the immunity of any UN official "in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations."⁸ Suitable for an Organization with a handful of field staff serving quasi-diplomatic functions, this arrangement is less so for an Organization with tens of thousands of personnel in the field, a significant fraction of whom bear arms. It presents the appearance of conflict of interest arising from a lack of separation of powers at the top, where the chief administrative officer makes decisions that, in a national government, would tend to be the prerogative of an independent prosecutor, investigating judge, or District Attorney. The present arrangement weighs "policy considerations, as well as those of a legal nature" in deciding whether to refer misconduct cases to states. The proposed new approach would reach decisions to refer and/or prosecute based on case facts, quality of evidence, and applicable law. It would place predominant emphasis on not impeding the course of justice, on the assumption that furthering justice also furthers the interests of the United Nations. Thus it assumes that, where serious misconduct is substantiated, functional immunity, if applicable, would be waived.

Prevention of Misconduct and Realities of Working in Field Missions

Several workshop participants had substantial experience working in field missions and offered illustrations of how the present mission working environment is conducive to misconduct (see Box 3). They emphasized prevention and accountability as keys to deterring criminal misconduct.

Potentially preventive measures include the conditions of deployment and welfare of peacekeepers. These measures are often discussed but rarely provided in sufficient quantities or seriously considered as a means of improving performance. The advent of the internet has made feeling connected to home much easier through regular access to email and other internet tools. Recreation time and facilities can also greatly serve as a source of stress relief and should be available to all UN personnel, as recognized by a detailed 2008 report on the subject.⁹

⁸ United Nations, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, Article V, Sections 18 and 19.

⁹ United Nations, *Comprehensive review of the welfare and recreation needs of all categories of peacekeeping personnel*, A/62/663, 24 January 2008.

Box 3**Case Example: Kosovo**

In addition to prevention, the lack of accountability for field personnel is conducive to a culture of impunity, as was evident from several participants' involvement in the early days of the UN Interim Administration Mission in Kosovo (UNMIK). Although initially welcomed with great enthusiasm by local people, peacekeepers' behavior quickly began to disappoint local communities as they committed serious crimes, including rape, murder, theft, and even torture, with impunity. Following one incident of misconduct involving a UN police officer, people began directly questioning UN personnel on the UN's legacy in the country. The local perception was one of UN staff "driving big cars and making big money" but not holding themselves accountable.

The lack of professionalism was evident not only in their behavior and unwillingness to answer to legal authorities but also in how they performed their mandated tasks, at every level. An ombudsperson sent from New York to investigate rule of law issues, for example, met with tremendous resistance among mission personnel. In February 2007, a Romanian formed police unit—using over-age rubber bullets—killed two civilians during a demonstration. UNMIK was unable to identify the perpetrators within the 120-member unit before they ended their tour and returned home, an example that highlights the UN's loss of control over an investigation if the alleged perpetrators leave the mission area. Bernard Kouchner, the Special Representative of the Secretary-General for UNMIK from 1999 to 2001, was recalled as saying "je suis le roi" (I am king).

In contrast with previous situations where the UN had virtually no power to address these crimes, the Secretary-General could and did waive immunity for UNMIK staff in certain cases and despite substantial political pressure to uphold immunity. Criminal accountability through the national justice system was possible since international judicial standards would be upheld, largely as a result of the presence of UN civilian police and international prosecutors. Although Kosovo offers a different example of accountability than recommended in Stimson's report (since executive missions are not the norm), it should be highlighted nonetheless as an important example in which the UN did hold peacekeepers accountable despite resistance from member states.

While conditions of deployment may be one of the many challenges beyond the control of individual peacekeepers, their professional comportment is not. Participants therefore stressed the need for more professionalism, a need especially pronounced for non-military personnel on missions given their substantial and relatively recent increase in numbers. Most UN police are not deployed in units but as individuals with varied backgrounds and training. Training and logistics for UN personnel have improved to some extent, but the UN still lacks oversight and accountability capacity. One participant stated that while there "will soon be a revolution in New York" on issues of training and professionalism, creating comparable change in the field will be difficult. Civilian peacekeepers did not want to be answerable to anyone while on mission, and criminal acts committed by UN personnel on mission are often associated with "Las Vegas"-style behavior, that is, the act does not represent how an individual would normally behave.

Evaluating the Proposed Criminal Justice System

Workshop participants discussed the report's proposed two-step solution for criminal accountability, both potential benefits and challenges, in some depth.

The Opportunity to Model Criminal Justice

One participant's work with the UN on the compilation of principles that the Organization uses to advise states on combating impunity highlighted the significant and inexcusable disconnect between those principles and the Organization's own behavior and response to misconduct. Promoting rule of law and espousing principles of accountability is hypocritical and almost impossible when UN personnel are not held accountable, decreasing the legitimacy of the

mission. The Secretary-General is clear on this: rule of law means clear laws to which all people are held equally accountable. This principle must be applied at the level of the mission.

Participants emphasized the gravity of peacekeeper misconduct that goes far beyond the violation inherent to the crime. When peacekeepers mandated to protect instead commit rape, trafficking, and other crimes, the betrayal of public trust assumes a whole different magnitude. Not only are these crimes devastating for victims, as any criminal violation would be, but irreparable harm is done to the UN's reputation and ability to carry out its broader mission of ensuring safety and security. When the UN fails to reconcile these abuses, it is acting in a manner flagrantly inconsistent with the Organization's goals.

One participant drew an analogy between what the Stimson report is seeking to do and what the UN did ten years ago with human rights. At the time, a substantial and problematic disconnect existed between UN human rights bodies and the positions and compromises accepted by UN negotiators in attempts to end armed conflicts (e.g., amnesty for serious human rights atrocities). Noting this discrepancy, Kofi Annan promulgated guidelines for UN peace negotiators to ensure that they acted in accordance with human rights principles espoused by other components of the UN. Although compliance with these guidelines has been imperfect, their creation was a significant turning point that resulted in noticeable changes in the nature of peace accords seeking to end armed conflict. Moreover, this example demonstrates how different UN bodies overcame political differences and collaborated to ensure consistency in the execution of the Organization's goals. The stakeholders recognized that the Organization was not only peace negotiator, but that it plays a "normative role" and has real influence over how states and other actors behave.

If the second step of the proposal is used to collaborate with the host state to provide criminal justice, the justice system in question will likely be in "horrific" condition. This condition is often related to the need for peacekeepers in the first place, of course, and would therefore be a good reason for the UN to be principal partner and use the opportunity to build and to model the rule of law. Indeed, some of the significant and most difficult tasks in state-building are related to the rule of law, including the constitution of a police force that respects human rights, a humane prison system, and an equitable and transparent judicial system.

One participant recommended consulting mission mandates, rules of engagement, and good practices for missions with robust mandates for UN policing (e.g., Haiti) and missions with executive authority (Kosovo and East Timor). The language and good practices may provide utility in further developing the law enforcement aspect of accountability for UN personnel. UN mandates for justice and judicial systems have been less robust for a number of reasons, including sovereignty concerns and scarce resources. Still, most people would concede the need for the UN to administer, or provide significant support for, host state justice systems given their poor condition and reputations in post-conflict states. More robust UN engagement in the justice sector could help rebuild these states' judicial systems and impart expertise to local practitioners, especially by modeling key judicial functions—investigations, victim and witness protection, and appeals of verdicts. The legacy of collaborating can't just be building a court but must focus on the transfer of expertise to local practitioners.

The Model Codes project was also suggested in discussion and referenced in the Stimson report as potentially useful for revising laws or reforming a justice system. Indeed, the Model Codes project was created specifically as a reference point for countries looking to revise their own laws, thereby promoting compliance of countries' legal systems with international standards.

Evaluating States' Criminal Justice Systems

One potential challenge is the proposed system to evaluate states to determine their ability and willingness to administer justice fairly for accused perpetrators. Although evaluation mechanisms were addressed clearly and thoroughly in the report, one participant suggested incorporating more indices and ranking systems such as Transparency International's Corruption Index to further bolster the credibility of the evaluation.¹⁰

Another participant noted that much of the report focuses on the evaluation of sending state justice systems and recommended that such evaluation be accompanied by the provision of judicial support, similar to the report's recommendations for host states. Such support could increase sending states' interest in prosecuting their own people, and providing such assistance to sending states is feasible: countries like the United States often deploy law enforcement assistance abroad, as does the UN Office on Drugs and Crime, on a smaller scale, both at the invitation of the assisted governments.

Allowing the possibility of bolstering the judicial capacity of sending states would overcome a key hurdle of the evaluation system, namely, the legality and political feasibility of the UN refusing to repatriate personnel to the sending state on the grounds that its criminal justice system is unfair or otherwise inadequate. UN refusal may be more acceptable (at least to the wider international community) the more severe the dysfunction involved (such as high likelihood of torture).

In response to a question on the political difficulties of sending states admitting that their justice systems "may not be up to snuff," Dr. Durch pointed out that many states request assessments of their judicial systems and of other governmental capacities, sometimes in order to meet the requirements of UN Security Council resolutions or human rights treaties. And the UN Human Rights Council has begun to evaluate the human rights performance of all UN member states on a 4-year cycle in which "universal periodic review" includes reports not just from governments themselves, but from UN Rapporteurs, civil society, and NGOs, making it more difficult for governments to gloss over serious flaws.¹¹ Other, voluntary justice system assessments have been undertaken by the American Bar Association's Rule of Law Initiative and World Justice Project, and by the UN Office on Drugs and Crime.¹²

¹⁰ The report authors found, in comparing the Transparency International index and other indices to the World Bank Governance Indicators and Freedom House indices selected for use in the report, that results overlapped considerably. The Governance Indicators are, moreover, themselves an index of several dozen measures of good governance from a variety of sources.

¹¹ United Nations Office of the High Commissioner for Human Rights, "Universal Periodic Review," www.ohchr.org/EN/HRBODIES/UPR/Pages/UPRMain.aspx.

¹² American Bar Association, Rule of Law Initiative, "Publications and Assessments," www.abanet.org/rol/publications.shtml; and UN Office on Drugs and Crime, "Criminal Justice Assessment Toolkit," www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html.

Sending State vs. Host State Jurisdiction

Participants debated the relative difficulty of implementing host state jurisdiction versus sending state jurisdiction. One question addressed the likelihood of getting political actors in the UN to agree to the two-step solution and asked whether providing further support to sending states might act as an incentive to get countries to support the system.

Panelists responded that precedent for supporting the reform of sending states' justice systems is strong. Numerous NGOs and governments have supported in criminal justice reform to ensure states' ability to prosecute exemplary cases, even if not for "garden variety crimes." Moreover, with the advent of international tribunals and universal jurisdiction, countries have an interest in boosting their own systems to avoid having their nationals prosecuted elsewhere. The new, mandatory universal periodic reviews being undertaken by the UN Human Rights Council could be a useful test case. If governments react well to the Council's requests and findings, focusing more on sending states might become truly feasible.

Dr. Durch pointed out that it would be much easier for the UN to assess and assist in reforming the justice system in one state (i.e., the host state) than in 117 personnel-contributing countries. Panelists agreed that the UN must have an alternative to simply informing the sending state that the accused will not be repatriated if that state does not meet international standards and the second step of Stimson's proposal provides a viable alternative to sending state primary jurisdiction. Host state jurisdiction was suggested to be the more plausible scenario, at least in terms of investigation and logistics, relative to sending state jurisdiction. The extremely poor condition of many host states' judicial systems would preclude their being a venue of choice for the UN without the proposed collaborative justice system.

A fundamental concern with prosecution in the host state, noted one panelist, is the need to install necessary infrastructure and build a criminal justice system before using it—a process that takes years. Doing otherwise is like "trying to build a ship while you're on it." Serious allegations of sexual abuse by UN employees require rapid responses to secure evidence and protect victims, which may not happen in states with weak justice systems. The slow response is likely to occur in spite of significant UN support or even because the UN must spend so much time building the institutions that it exhausts resources available to administer justice. Attention was drawn to the UN's experience in creating hybrid courts, where the UN partners with local court systems lacked adequate capacity to provide transitional justice for war crimes, for example. While these experiences have demonstrated how challenging it is for the UN to remove itself if the host government proves to be an unreliable partner, some have confronted challenges and resulted in successful partnerships.

Political Realities and Potential Repercussions

Participants discussed the political feasibility of sending states accepting a host state's jurisdiction, given the likely poor condition of the latter's justice systems, and whether Stimson anticipated any political repercussions or drawbacks to instituting criminal accountability.

Proposed Collaborative Justice System vs. the International Criminal Court

Several participants considered similarities of the proposed system to the International Criminal Court (ICC). One participant asked whether a case passing through this collaborative system

could potentially be transferred to the ICC. Given the objections raised by the US government to the ICC, participants wondered whether Stimson's proposals could encounter similar political roadblocks.

Responding to the first question about the ICC, Dr. Durch noted that the proposed system is designed to apply to ordinary crimes rather than universal crimes (e.g., war crimes, or crimes against humanity) that are the province of the ICC. A peacekeeper would need to commit, or be held responsible for the commission of, severe atrocities for accountability to rise to the level of the ICC. If such atrocities did occur, hopefully there would be the political will to respond appropriately. Another panelist responded that having cases against peacekeepers referred to the ICC was a very remote possibility. This did not happen with the Special Court for Sierra Leone. Moreover, the ICC has so few resources relative to the number of cases it must adjudicate that peacekeepers would not be a priority. Also, the ICC operates on the principle of complementarity, and Stimson's proposal, in reverting to host state jurisdiction where the sending state is unable or unwilling, does not open a window for ICC jurisdiction.

In response to the second issue, Dr. Durch pointed out that, under the Stimson report's proposed system, the United States would meet the criteria for repatriation to the sending state. The United States at present has only limited extraterritorial criminal jurisdiction (for example, under the Military Extraterritorial Jurisdiction Act, or MEJA), but has used it to prosecute private security contractor personnel and recently one former soldier for crimes committed in Iraq. Dr. Durch suggested that adoption of Stimson's approach might persuade Congress to consider extending US criminal jurisdiction to Americans serving in UN operations.

Scope of Application and Potential Repercussions for Personnel Contributions

Discussion continued on the scope of application for the proposed criminal justice system, for example, its applicability to UN personnel outside DPKO, and the varying legal statuses of UN personnel. One participant wondered if there would be reluctance on the part of troop contributing countries (TCCs) to continue sending forces to UN operations.

In response, Dr. Durch referred to the report's discussion of the different categories of personnel serving in UN peace operations. The report focuses on personnel working in Security Council-mandated missions, and questions remain as to whether the system could be applied to the rest of the UN country team where such a mission is deployed, to personnel working for the UN High Commissioner for Refugees, or to personnel of other UN offices that aren't formally covered by the Security Council's mandate for a given mission. The collaborative UN-host state justice system also was not envisaged to apply to the many other international personnel working in the host state for bilateral aid donors, international NGOs, or private companies.¹³

Dr. Durch also emphasized that this report does not address accountability for military personnel at all, since they are usually covered through their states' military justice systems. The proposed collaborative justice system should therefore not directly affect troop contributions. In

¹³ However, because the collaborative system would rely on the sovereignty and criminal jurisdiction of the host state for its legal authority, the host state could in principle choose to use it in other criminal proceedings. Whether and how United Nations resources could be employed in such proceedings should be subject to careful negotiation in drafting the controlling Status of Mission Agreement.

considering the potential reluctance of states to contribute other mission personnel, Dr. Durch noted that updated agreements between the UN and TCCs emphasizing responsibility to prosecute military personnel while on UN mission through TCC military justice systems have not caused a decline in troop contributions. Another panelist pointed out that we are seeing TCCs reform their military justice systems in order to avoid prosecution of their citizens by other countries, and suggested that the same could happen for civilian personnel.

Conclusion

Numerous workshop participants expressed their appreciation of the specificity of the Stimson report. Unlike many reports that lament problems and talk about broad principles, this report articulated “realistic and practical solutions with inherent utility to policymakers and practitioners,” particularly through the use of organizational flow charts. The report diagnosed a range of problems at every level, including everyday “on-the-ground” challenges, for example, the loss of jurisdiction when UN personnel on six month contracts are free to leave the mission area when their contract expires, regardless of any ongoing criminal investigations.

A common difficulty in creating new structures, especially in large institutions like the UN, is deciding and agreeing upon an institutional structure: what it should look like, how many staff it should have and how much power they should wield. Offering a specific model provides a starting point for the UN on appearance and functionality. One participant referenced the difficulties of developing practical solutions in the Model Codes project. Although many people dismissed the codes by saying that the UN will never utilize them, the reality is often “if you build it, they will come.” The UN as an organization is busy and operational; it lacks the time to navigate through these issues but is willing to adopt existing, workable mechanisms. Many national actors are requesting the codes, and several countries, including Haiti, Liberia, Afghanistan, Iran, and China, are translating them. Using these codes allows countries to build rule of law from within and is not seen as outside imposition.

Dr. Durch observed that the proposed two-step solution would not be easy to implement for reasons already discussed and others not yet raised. Indeed, one question asked during the course of the project was whether it is worth investing in the creation of this system if it can only prosecute 20 to 30 people a year. These would, however, be 20 to 30 people not walking away from often serious felonies while under UN employ. There would also likely be coordination issues associated with keeping the civil provost and other parts of the proposed criminal justice support structures independent from other mission personnel and, indeed, from the UN Secretariat itself, while maintaining their effectiveness and integrity.

Such issues are no justification, however, for allowing impunity for criminal acts to continue. As a participant noted, the decreasing numbers of reported cases of sexual exploitation and abuse since 2005 may be merely a reflection of underreporting and inadequate investigations. Dr. Durch noted that cases of Category I non-SEA misconduct continued to be reported at a steady rate. He estimated that the cost of Stimson’s proposals would be comparable to that of the recently-implemented UN administrative justice system.

Dr. Durch cited the UN Declaration of Human Rights as an example of something that had significant influence on international norms, not necessarily right away, but over time. The

authors hoped the report's recommendations also would be hard to ignore. One panelist emphasized that the UN must undergo an internal paradigm shift away from a mentality of total protection of its staff toward a mentality of accountability. *Improving Criminal Accountability in UN Peace Operations* emphasizes the need for this shift to maintain the UN's integrity and therein lies the report's greatest value.

The Future of Peace Operations program evaluates and helps advance US policy and international capacity for peace operations, and is directed by Stimson senior associate William J. Durch. The program team includes research fellow Alison Giffen, research analyst Alix Boucher, research associate Madeline England, research assistants Guy Hammond and Max Kelly, and Scoville fellow Jessica Anderson. Founded in 1989, the Henry L. Stimson Center is a nonprofit, nonpartisan institution devoted to enhancing international peace and security through rigorous analysis and outreach. For more information, call 202.223.5956 or visit www.stimson.org/fopo.