

**K 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* 931-960**

'[I]f you want to inspire confidence, give plenty of statistics. It does not matter that they should be accurate, or even intelligible, so long as there is enough of them.'

Lewis Carroll

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*Abstract: The UN Secretariat provides annual statistics on allegations of sexual exploitation and abuse made against peacekeeping personnel, with reduced numbers of allegations leading to claims of success for the UN's 'zero tolerance' policy. This article explores the use of data as 'technologies' of global governance, to examine the function that these annual statistics serve for the UN and the impact that they have on calls for legal reform. Thus far, the statistics have attracted little academic appraisal. Yet, they have been used to establish the UN's authority to resolve the 'problem' of sexual exploitation and abuse, diminishing the space for critique of UN policy and undermining the quest for improved legal arrangements.*

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\* This article draws on a paper presented to the Academic Council on the UN System annual meeting in The Hague in 2015. I am very grateful to the participants there for their helpful comments, to the anonymous reviewers at the *Modern Law Review* for their suggestions and to Professor Matthew Craven, Professor Robert McCorquodale, Professor Maria Lee, Dr Gina Heathcote, Dr Paul O'Connell, Dr Isobel Roele and Dr Matt Fisher for their advice and feedback.

Keywords: United Nations, statistics, legal reform, sexual exploitation and abuse, peacekeeping, global governance

## Introduction

‘Child refugee sex scandal’ was the headline on the BBC News on 26 February 2002.<sup>1</sup> The BBC’s coverage was sparked by the leaking of a report which implicated UN peacekeepers in sexual exploitation and abuse of refugees in Guinea, Liberia and Sierra Leone.<sup>2</sup> The UN was initially dismissive of the report: an investigation by its own Office of Internal Oversight Services found that the allegations against peacekeepers were unsubstantiated.<sup>3</sup> It was, the Office said, ‘misleading and untrue’ to say that sexual exploitation and abuse was widespread since many of allegations against peacekeepers were based on rumour, speculation or myth.<sup>4</sup>

On 15 April 2003, the UN General Assembly considered the Office of Internal Oversight Services’ investigation. In so doing, it requested the Secretary-General ‘to maintain data on investigations into sexual exploitation and related offences, irrespective of age and gender, by

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<sup>1</sup> BBC News, *Child refugee sex scandal*, 26 February 2002, at [news.bbc.co.uk/1/hi/world/africa/1842512.stm](http://news.bbc.co.uk/1/hi/world/africa/1842512.stm) (last accessed 28 June 2016).

<sup>2</sup> UNHCR and Save the Children UK, *Sexual Violence and Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone* (February 2002).

<sup>3</sup> BBC News, *UN rejects refugee sex abuse allegations*, 23 October 2002 at [news.bbc.co.uk/1/hi/world/africa/2351805.stm](http://news.bbc.co.uk/1/hi/world/africa/2351805.stm) (last accessed 28 June 2016); UN Office of Internal Oversight Services, *Report by the Office of Internal Oversight Services on the investigation into sexual exploitation of refugees by aid workers in West Africa*, UN Doc. A/57/465, 11 October 2002, para 17.

<sup>4</sup> *ibid* para 42; para 15(a)-(f).

humanitarian and peacekeeping personnel'.<sup>5</sup> Sexual exploitation in this context has been defined by the UN to mean '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.' Sexual abuse 'means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.'<sup>6</sup>

By the time of the General Assembly resolution, the prevailing political winds at the UN had changed: on 17 March 2003 the United States declared war on Iraq<sup>7</sup> following months of anxious debate at the UN. The world body, the US administration argued, had become a defunct, irrelevant institution. A comment piece appeared in *The Guardian* newspaper entitled 'Thank God for the death of the UN'.<sup>8</sup> The issue of sexual exploitation and abuse, once a drop in the UN ocean, now appeared on the horizon as a looming scandal. By 2004, it had escalated into a full-blown crisis. With the UN also battling allegations of corruption in the Oil for Food programme,<sup>9</sup> more reports alleged that peacekeepers in the mission in the Democratic Republic of Congo 'were involved in the sexual abuse and exploitation of local

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<sup>5</sup> UN General Assembly Res. 57/306 (2003), para 10. This was the first time that such data had been collected centrally: E. Rehn and E. Johnson Sirleaf, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building* (New York: UNIFEM, 2002), 72.

<sup>6</sup> UN Secretary-General, *Secretary-General's Bulletin ST/SGB/2003/13*, 9 October 2003, s.1.

<sup>7</sup> S. Meisler, *Kofi Annan: A Man of Peace in a World of War* (Hoboken, New Jersey: Wiley and Sons, 2007), 251.

<sup>8</sup> *ibid* at 255.

<sup>9</sup> *ibid* chapter 15.

Congolese girls.’<sup>10</sup> ‘DR Congo’s shameful sex secret’ cried the BBC,<sup>11</sup> followed in short succession by, ‘[Kofi] Annan admits UN DR Congo abuses’<sup>12</sup> and, to finish the year, ‘New sex misconduct claims hit UN’,<sup>13</sup> this time in the peacekeeping operation in Burundi. In early 2005, the Office of Internal Oversight Services accepted that there was a ‘pattern’ of behaviour in the mission in the Democratic Republic of Congo which included regular sexual contact between peacekeepers and local women and girls, often in exchange for food or small amounts of cash.<sup>14</sup> These allegations, some have said, were the ‘turning point’ for the UN.<sup>15</sup>

Since the General Assembly made that request for data in 2003 the UN Secretariat has been reporting annually statistics about allegations of sexual exploitation and abuse said to have been committed by UN peacekeeping personnel. The purpose of this article is to examine the manner in which the UN has collated and presented that data. It is argued that the presentation and interpretation of these statistics has resulted in reduced impetus to undertake legal reforms designed to address sexual exploitation and abuse, and contributes to the

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<sup>10</sup> UN Office of Internal Oversight Services, *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, para 1.

<sup>11</sup> BBC News, *DR Congo’s shameful sex secret*, 3 June 2004, at [news.bbc.co.uk/1/hi/world/africa/3769469.stm](http://news.bbc.co.uk/1/hi/world/africa/3769469.stm) (last accessed 28 June 2016).

<sup>12</sup> BBC News, *Annan admits UN DR Congo abuses*, 19 November 2004 at [news.bbc.co.uk/1/hi/world/africa/4027319.stm](http://news.bbc.co.uk/1/hi/world/africa/4027319.stm) (last accessed 28 June 2016).

<sup>13</sup> BBC News, *New sex misconduct claims hit UN*, 17 December 2004 at [news.bbc.co.uk/1/hi/world/africa/4106515.stm](http://news.bbc.co.uk/1/hi/world/africa/4106515.stm) (last accessed 28 June 2016).

<sup>14</sup> UN Office of Internal Oversight Services (n 10 above), 1-2.

<sup>15</sup> A. Shotton, ‘A Strategy to Address Sexual Exploitation and Abuse by United Nations Peacekeeping Personnel’ (2006) 39 *Cornell ILJ* 97, 97.

stagnation of efforts to secure accountability. Allegations about the sexual misconduct of peacekeepers may reach the UN via a variety of different routes. UN peacekeepers themselves, whether civilian, police or military, have an obligation to report suspicions of sexual exploitation and abuse.<sup>16</sup> For those outside the UN system, the organisation has established mechanisms to notify local communities of the reporting channels available to them. These include the provision of posters for display in public areas,<sup>17</sup> the establishment of websites, telephone and email hotlines,<sup>18</sup> and most recently a ‘community-based complaint reception mechanism’.<sup>19</sup> A specific person or body is supposed to be appointed in each mission with explicit responsibility for dealing with allegations of sexual exploitation and abuse. In some peacekeeping operations, the Head of mission ‘appoint[s] an official, at a sufficiently high level, to serve as a focal point for receiving reports on cases’.<sup>20</sup> In other missions, there is a conduct and discipline team to which allegations should be reported.<sup>21</sup> In

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<sup>16</sup> UN Secretary-General (n 6 above), s.3.1(e) and UN General Assembly, *Annex: Revised draft model memorandum of understanding*, UN Doc. A/61/19 (Part III), 12 June 2007, Art 7bis and Annex H.

<sup>17</sup> Posters can be viewed on the Conduct and Discipline Unit website at [cdu.unlb.org/AboutCDU.aspx](http://cdu.unlb.org/AboutCDU.aspx) (last accessed 28 June 2016).

<sup>18</sup> UN Department of Peacekeeping Operations, *Presentation by Jean-Marie Guéhenno Under-Secretary-General for Peacekeeping Operations to the Special Committee on Peacekeeping Operations*, 4 April 2005, at [www.un.org/en/peacekeeping/articles/article040405.htm](http://www.un.org/en/peacekeeping/articles/article040405.htm) (last accessed 28 June 2016); N. Dahrendorf, *Sexual Exploitation and Abuse: Lessons Learned Study* (New York: Department of Peacekeeping Operations, 2006), para 6.

<sup>19</sup> UN Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, UN Doc. A/70/729, 16 February 2016, para 47 (hereinafter ‘Secretary-General’s 2016 Report’).

<sup>20</sup> UN Secretary-General (n 6 above), s.4.3.

<sup>21</sup> See UN Conduct and Discipline Unit, *Conduct and Discipline Teams*, at <https://cdu.unlb.org/AboutCDU/ConductandDisciplineTeams.aspx> (last accessed 28 June 2016); UN

2005, a central Conduct and Discipline Unit was established at UN headquarters in New York to provide ‘overall direction for conduct and discipline issues in peacekeeping operations and special political missions, including incidents of sexual exploitation and abuse.’<sup>22</sup> Despite the aim of centralising receipt of allegations, in practice, incidents of sexual exploitation and abuse are reported not only to the focal point and conduct and discipline teams, but also directly to military contingents, to the Field Staff Unit, to the Office of Internal Oversight Services, to the United Nations Staff Association, to the Special Representative of the Secretary General and to staff supervisors.<sup>23</sup>

Legal responsibility for addressing the allegations that reach the UN differs depending on the identity of the alleged perpetrator. Civilian police and military observers amount to ‘experts on mission’ whilst UN staff and volunteers are generally deemed to be UN ‘officials’.<sup>24</sup> Under the Convention on the Privileges and Immunities of the United Nations 1946 both experts on mission and UN officials have functional immunity from national legal processes

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Department of Peacekeeping Operations, *Standard Operating Procedure: Public Information Activities on Sexual Exploitation and Abuse*, 3 April 2006, Annex C, para. 3.1.

<sup>22</sup> UN Conduct and Discipline Unit, at <https://cdu.unlb.org/> (last accessed 28 June 2016).

<sup>23</sup> T. Awori, C. Lutz and P.J. Thapa, *Final Report: Expert Mission to Evaluate Risks to SEA Prevention Efforts in MINUSTAH, UNMIL, MONUSCO, and UNMISS*, 3 November 2013, at

<http://www.aidsfreeworld.org/Newsroom/Press-Releases/2015/~media/Files/Peacekeeping/2013%20Expert%20Team%20Report%20FINAL.pdf> (last accessed 28 June 2016), 11 and 14.

<sup>24</sup> A.J. Miller, ‘United Nations Experts on Mission and their Privileges and Immunities’ (2007) IOLR 11, 31;

A.J. Miller, ‘Legal Aspects of Stopping Sexual Exploitation and Abuse in U.N. Peacekeeping Operations’ (2006)

39 Cornell ILJ 71, 75, 77 and 79.

in respect of their official conduct.<sup>25</sup> But, since sexual exploitation and abuse are unlikely to amount to official conduct, experts on mission and UN officials could be subject to prosecution in the courts of the host State or their State of nationality<sup>26</sup> (provided, of course, that the allegation amounts to a crime in the law of that State). Such individuals could also be subject to disciplinary proceedings by the UN since compliance with the Secretary-General's Bulletin on sexual exploitation and abuse is included in their contractual arrangements.<sup>27</sup> For UN military contingents, the troop-contributor has 'primary responsibility' for investigating misconduct and holds exclusive prosecutorial jurisdiction.<sup>28</sup> Such individuals are therefore subject to the military justice system of their sending State. In providing forces, troop contributors agree to 'ensure that all members of the ... national contingent are required to comply with the United Nations standards of conduct', including the prohibition on sexual exploitation and abuse.<sup>29</sup> The troop-contributor also 'assures the United Nations that it shall exercise' criminal and/or disciplinary jurisdiction with respect to any crimes, offences or other misconduct,<sup>30</sup> although whether troop-contributors abide by this assurance remains a moot point.<sup>31</sup>

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<sup>25</sup> This immunity is, however, subject to waiver by the Secretary-General: Convention on the Privileges and Immunities of the United Nations 1946, sections 18(a), 20, 22(b) and 23; A.J. Miller, 'Legal Aspects of Stopping Sexual Exploitation and Abuse in U.N. Peacekeeping Operations' (2006) 39 *Cornell ILJ* 71, 91-92.

<sup>26</sup> Miller, *ibid* at 92.

<sup>27</sup> Miller, *ibid* at 76 and 79; B. Oswald, H. Durham and A. Bates, *Documents on the Law of UN Peace Operations* (Oxford: Oxford University Press, 2010), 432.

<sup>28</sup> UN General Assembly (n 16 above), Art 7 quarter; 7 quinquies.

<sup>29</sup> *ibid* Art 7 bis.

<sup>30</sup> *ibid* Art 7 quinquies. See also Art 7 sexiens.

<sup>31</sup> For the position in respect of international peacekeepers not under UN command, see M. Deschamps, H.B.

Jallow and Y. Sooka, *Taking Action on Sexual Exploitation and Abuse by Peacekeepers: Report of an*

Whatever the legal status of the perpetrator, statistics on allegations are required to be reported annually to the General Assembly, and are presented as the measure of the success of the UN's policy of 'zero tolerance'. The purpose of this article is first to examine that data on its own merits, offering comment upon the quality of its collection and dissemination, and second to consider the implications it holds for the UN's ability to undertake legal reform to address sexual exploitation and abuse. The lens through which these issues are examined is the literature developed by Davis et al, amongst others, on indicators as a technology of global governance. These authors have argued that the use of indicators 'has the potential to alter the forms, the exercise, and perhaps even the distributions of power in certain spheres of global governance.'<sup>32</sup> This analysis yields valuable insights into the legal and political significance of the UN statistics examined here.<sup>33</sup> We explore the manner in which the UN's statistics label the concept of sexual exploitation and abuse, to the exclusion of other forms of misconduct, and simplify it, losing ambiguity and nuance along the way. The consequence of the UN's presentation of the data is to diminish the space available for evaluation and critique of UN policy and implicitly assign the power to 'solve' the 'problem' to UN 'experts'. This

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*Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic*, 17 December 2015, at <http://www.un.org/News/dh/infocus/cenafrepublic/Independent-Review-Report.pdf>, 22.

<sup>32</sup> K.E. Davis, A. Fisher, B. Kingsbury and S.E. Merry, 'Introduction: Global Governance by Indicators' in K.E. Davis, A. Fisher, B. Kingsbury and S.E. Merry, *Governance by Indicators* (Oxford: Oxford University Press, 2012), 4.

<sup>33</sup> The data does not necessarily meet the strict definition of an indicator established by Davis et al, but the analysis nevertheless applies: *ibid* at 6.



also shifts attention away from the structural legal challenges relevant to sexual exploitation and abuse and accountability for it.

### **The annual reports to the General Assembly**

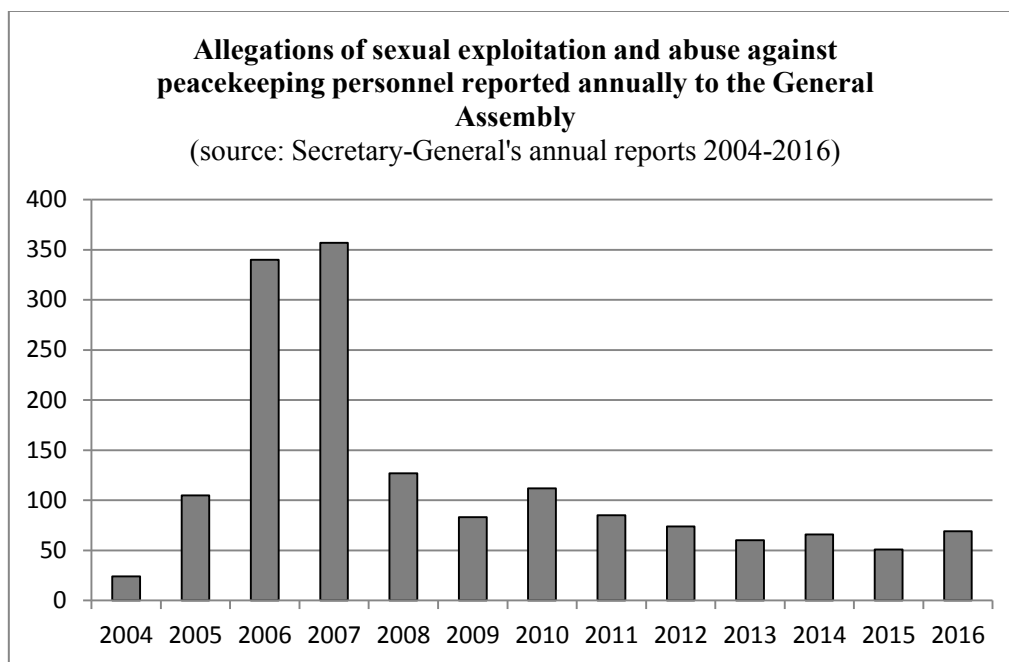
The UN Secretary-General's annual reports to the General Assembly have few consistent features. From a mere five pages of prose in 2004,<sup>34</sup> to 41 pages including five annexes of tables and six graphs in 2016,<sup>35</sup> these reports have grown longer and more elaborate with each successive year. If the total number of allegations reported annually to the General Assembly is shown in a graph, it looks like the one below.<sup>36</sup> As will be apparent, later years show a general decrease in allegations from a peak of over 350 in 2007.

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<sup>34</sup> UN Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, UN Doc. A/58/777, 23 April 2004 (hereinafter 'Secretary-General's 2004 Report').

<sup>35</sup> Secretary-General's 2016 Report (n 19 above).

<sup>36</sup> Data is recorded here for the year the report was issued although it reflects allegations received within the previous calendar year. On commensuration see W.N. Espeland and M.L. Stevens, 'A Sociology of Quantification' (2008) 49(3) *EJ of Sociology* 401, 408; W.N. Espeland and M. Sauder, 'The Dynamism of Indicators', in Davis et al (n 32 above), 91-95.



Yet the manner in which this data has been collated, presented and explained raises a number of questions as to the reliability of these statistics. The first report, in 2004, provides statistics on what are described as ‘cases’, although there is no explanation as to what a ‘case’ might be.<sup>37</sup> In 2005 and 2006, the reports use the phrases ‘allegations’ and ‘cases’, again without explanation as to what might count as an ‘allegation’ or a ‘case’.<sup>38</sup> In 2007, we are offered, for the first time, an insight into what might underpin these terms. A footnote in the report explains: ‘it should be noted that these numbers do not reflect the number of alleged perpetrators nor victims, as multiple allegations could correspond to one alleged perpetrator’<sup>39</sup> and ‘conversely, a single allegation may be made in respect of more than one

<sup>37</sup> Secretary-General’s 2004 Report (n 34 above), paras 2 and 3.

<sup>38</sup> UN Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, UN Doc. A/59/782, 15 April 2005 (hereinafter ‘Secretary-General’s 2005 Report’); UN Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, UN Doc. A/60/861, 24 May 2006, (hereinafter ‘Secretary-General’s 2006 Report’).

<sup>39</sup> UN Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, UN Doc. A/61/957, 15 June 2007, footnote 1 (hereinafter ‘Secretary-General’s 2007 Report’).

individual.<sup>40</sup> In subsequent years, some reports explain that allegations many involve more than one perpetrator, but make no mention of whether the number of allegations reflects the exact number of victims.<sup>41</sup> In other years, the reports explain that ‘each allegation may involve more than one possible victim’, but do not say whether any allegations cover more than one perpetrator.<sup>42</sup> Reports since 2013 have attempted to identify the number of individual involved, but sometimes, the UN says the number of victims is unknown.<sup>43</sup>

It seems therefore that the number of allegations is a reflection of neither the number of victims nor the number of perpetrators. Instead, the UN is measuring the number of *communications* it receives about incidents of sexual exploitation and abuse. The obvious (although unmentioned) risk is that, since one allegation may represent more than one victim and/or more than one perpetrator, the data under-reports the scale of the phenomenon. For example, in 2015 the Secretary-General explained that ‘one ... allegation reportedly involved

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<sup>40</sup> *ibid* para 14. See also UN Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, UN Doc. A/63/720, 17 February 2009, para 8 (hereinafter ‘Secretary-General’s 2009 Report’).

<sup>41</sup> For example, UN Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, UN Doc. A/64/669, 18 February 2010, para 8 (hereinafter ‘Secretary-General’s 2010 Report’); UN Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, UN Doc. A/66/699, 17 February 2012, footnote 9 (hereinafter ‘Secretary-General’s 2012 Report’).

<sup>42</sup> For example, UN Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, UN Doc. A/67/766, 28 February 2013, para 18 (hereinafter ‘Secretary-General’s 2013 Report’); UN Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, UN Doc. A/69/779, 13 February 2015 (hereinafter ‘Secretary-General’s 2015 Report’), para 9.

<sup>43</sup> See Secretary-General’s 2015 Report (n 42 above), para 9; UN Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, UN Doc. A/68/756, 14 February 2014, para 21 (hereinafter ‘Secretary-General’s 2014 Report’).

two adults and one minor.<sup>44</sup> Therefore, what counts as ‘one’ allegation for the purposes of the report to the General Assembly in fact denotes two alleged peacekeeper perpetrators. As we shall see, under-reporting of allegations of sexual exploitation and abuse – that is to say, incidents that are never reported to the UN – is an on-going concern.<sup>45</sup> Here, there is a different form of under-reporting: allegations are made known to the UN, but the method the UN uses to count those communications means that incidents involving multiple victims or multiple perpetrators are masked since they are treated as only one allegation. By contrast, it is presumably possible that some incidents of sexual exploitation and abuse are reported to UN bodies more than once. The UN does not say whether it is able to identify communications which may refer to the same incident, nor whether the data is adjusted to address potential double-counting.

If the scale of what is being reported is unclear, so also is it unclear whether this constitutes a complete picture. The 2009 report explains that, ‘for the first time, all entities that had been requested to provide information on allegations of sexual exploitation and abuse provided a response’ suggesting that in previous years reporting was less than complete.<sup>46</sup> Yet, the reports of 2005, 2006 and 2007 also claimed that information had been provided to the Secretariat by all the entities asked.<sup>47</sup> In 2008, with no hint of irony, the Secretary-General indicated that he had not received data prior to the preparation of the report from four UN

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<sup>44</sup> Secretary-General’s 2015 Report (n 42 above), para 9.

<sup>45</sup> See below at XX.

<sup>46</sup> Secretary-General’s 2009 Report (n 40 above), para 27 and para 3.

<sup>47</sup> Secretary-General’s 2005 Report (n 38 above), para 3; Secretary-General’s 2006 Report (n 38 above), para 3; Secretary-General’s 2007 Report (n 39 above), para 3.

entities, of which one was his own Office of the Secretary-General.<sup>48</sup> A certain measure of the unevenness here may be attributed to changing conceptions of what constitutes an ‘entity’ for such purposes. This is best illustrated by the 2009 report which includes some of the Department of Political Affairs data in that for the Department of Peacekeeping Operations, along with figures for UN Volunteers.<sup>49</sup> Two years later and the Department of Political Affairs is counted separately, although ‘data related to special political missions supported by the Department of Field Support’ are now included in the figures for peacekeeping personnel.<sup>50</sup> Evidently, changing the conception of an ‘entity’ from one year to the next makes comparing levels of allegations for each entity year-on-year difficult, if not impossible.

Beyond questions of scale and comprehensiveness, there are almost annual changes in the categories of sexual exploitation and abuse that are reported upon: taxonomies developed in one year are jettisoned the next – with virtually no explanation for the changes. In 2004, a global figure of cases was provided under a generic title without attempt to differentiate between discrete categories or forms.<sup>51</sup> In 2005 and 2006, allegations were labelled with six different classifications: ‘sex with minors’, ‘employment for sex’, ‘sex with prostitutes’, ‘sexual assault’, ‘rape’ and ‘other’. The data was also organized by the type of personnel

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<sup>48</sup> UN Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, UN Doc. A/62/890, 25 June 2008, Annex1 (hereinafter ‘Secretary-General’s 2008 Report’).

<sup>49</sup> Secretary-General’s 2009 Report (n 40 above), footnotes 2 and 4. The same is true in 2010: Secretary-General’s 2010 Report (n 41 above), footnotes 1 and 2.

<sup>50</sup> UN Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, UN Doc. A/65/742, 18 February 2011, footnote 1 (hereinafter ‘Secretary-General’s 2011 Report’). See also Secretary-General’s 2012 Report (n 41 above), footnote 1; Secretary-General’s 2013 Report (n 42 above), footnote 1.

<sup>51</sup> Secretary-General’s 2004 Report (n 34 above), para 3.

against whom the allegation was made (such as military personnel).<sup>52</sup> In 2007 and 2008, the same labels were used, except that ‘employment for sex’ was jettisoned in favour of ‘exploitative sexual relationships’.<sup>53</sup> It is not clear that the two are synonymous and no explanation was given for the change. The next year, the report classified the nature of the allegations into eight new categories: ‘rape (victim under age 18 (minor))’, ‘rape (victim 18 years of age or over)’, ‘sexually exploitative pornography’, ‘transactional sex (including for food, work, money)’, ‘exploitative relationship’, ‘sexual abuse (non-consensual physical or emotional contact) (victim under age 18(minor))’, ‘sexual abuse (non-consensual physical or emotional contact) (victim 18 years of age or over)’ and ‘other’.<sup>54</sup> By 2011, the format of the statistics had again changed. Allegations were no longer labelled according to the nature of the allegation but only in relation to different types of peacekeeping personnel accused (military, police, etc) and their mission.<sup>55</sup> Two years on and the allegations were, for the first time, presented one-by-one in a list rather than as total figures in tabular form with the consequence that lines must be counted by the reader manually in order to discover the total numbers. For each allegation appeared the relevant mission, the category of personnel against

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<sup>52</sup> Secretary-General’s 2005 Report (n 38 above), Annex I; Secretary-General’s 2006 Report (n 38 above), Annex I.

<sup>53</sup> Secretary-General’s 2007 Report (n 39 above), Annex VI; Secretary-General’s 2008 Report (n 48 above), Annex VI.

<sup>54</sup> Secretary-General’s 2009 Report (n 40 above), Annex V. See also Secretary-General’s 2010 Report (n 41 above), Annex V.

<sup>55</sup> Secretary-General’s 2011 Report (n 50 above), Annex V. For personnel at UN entities other than those related to peacekeeping, allegations were still classified by their nature: see Annex II. Subsequently, a ‘supplementary’ list including updated information for allegations reported between 2010 and 2013 was released, at

<https://cdu.unlb.org/LinkClick.aspx?fileticket=fPIveoD9SBk%3d&tabid=93&mid=480> (last accessed 28 June 2016).

whom the allegation was made, whether the victim was an adult or minor (and in some cases, numbers of victims) and the nature of the allegation.<sup>56</sup> This time, as in the 2014 report,<sup>57</sup> the allegations were divided into 3 categories: ‘abuse’, ‘exploitation’ and ‘exploitation (paternity)’. The 2015 report maintained the format of a list but divided the allegations into four categories: ‘abuse’, ‘exploitation’, ‘exploitation (paternity)’ and ‘abuse (paternity)’, the final category being a new addition.<sup>58</sup> It is unclear whether this new category reflected another way of organising the different types of allegations or whether its absence from the year before was merely an indicator that there were no allegations of this type. Elsewhere in the 2015 report, statistics were separated by seven different labels: ‘sex with a minor’, ‘sexual assault – victim under 18’, ‘sexual assault – victim over 18’, ‘trafficking in persons for sexual exploitation’, ‘exchange of money, employment, goods or services for sex (adults only)’, ‘other forms of sexual exploitation and abuse’ and ‘other violations of the provisions of [the Secretary-General’s Bulletin] ... (e.g. false reporting of sexual exploitation and abuse)’.<sup>59</sup> How these statistics related to the earlier list in the 2015 report was left unexplained. In 2016, for the first time, the report included three different lists disaggregated by civilian, police and military personnel. The information in each list was also more elaborate than in earlier years. Each list identified the mission in which the allegation was made; the ‘[c]ategory of personnel and number of subjects’; the number of victims and whether they are an adult or a minor; a description of the allegation; the investigation status, duration, outcome and findings; whether paternity was established; what interim action and final action was taken; and

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<sup>56</sup> Secretary-General’s 2013 Report (n 42 above), Annex IV.

<sup>57</sup> Secretary-General’s 2014 Report (n 43 above), Annex III.

<sup>58</sup> Secretary-General’s 2015 Report (n 42 above), Annex III.

<sup>59</sup> Secretary-General’s 2015 Report (n 42 above), Annex IV.

whether there was referral for criminal prosecution.<sup>60</sup> For military and police personnel, the nationality of the suspects was also disclosed, and the question of referral for prosecution replaced by a category entitled ‘[d]etails of action by’ the troop or police contributor.<sup>61</sup> As with the 2015 report, the allegations were organised into separate classifications, but again these were different from those used the year before. For 2016, the categories provided were: ‘exploitative relationship’, ‘exploitative relationship (paternity)’, ‘transactional sex’, ‘transactional sex (paternity)’, ‘sexual activity with minor’, ‘sexual activity with minor (paternity)’, ‘sexual assault’, and ‘sexual assault (paternity)’.<sup>62</sup>

In reports for some years, the classification of the nature of allegations appears to have been done only for allegations into which the investigation has been completed<sup>63</sup> and the numbers listed for these years in relation to the nature of allegations therefore bear no relationship to the number of allegations that year, because allegations for which investigations are still pending are not counted and classified. In other years, that position seems to be reversed.<sup>64</sup> The term ‘investigation’ also does not give any indication of the likely scale of sexual exploitation and abuse. In some years, the reports said that ‘one investigation could involve ... multiple alleged perpetrators’<sup>65</sup> whilst in other years, the term ‘is used to refer to

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<sup>60</sup> Secretary-General’s 2016 Report (n 19 above), Annexes III, IV and V.

<sup>61</sup> Secretary-General’s 2016 Report (n 19 above), Annexes IV and V.

<sup>62</sup> Secretary-General’s 2016 Report (n 19 above), Annexes III, IV and V.

<sup>63</sup> See, for example, Secretary-General’s 2007 Report (n 39 above), Annex VI and para 10; Secretary-General’s 2008 Report (n 48 above), Annex VI; Secretary-General’s 2009 Report (n 40 above), Annex V.

<sup>64</sup> See, for example, Secretary-General’s 2013 Report (n 42 above), Annex IV and Secretary-General’s 2014 Report (n 43 above), Annex III.

<sup>65</sup> Secretary-General’s 2007 Report (n 39 above), footnote 1.



the number of individuals identified in investigation reports<sup>66</sup> ie each perpetrator counts as one investigation. After 2010, no explanation for what counts as an ‘investigation’ is provided, although one reading of the data for 2014 would be that each allegation now merits one investigation since the data on numbers of allegations and outcomes of investigations matches.<sup>67</sup> Many reports also provide data on outcomes of investigations, for example, documenting the number which found the allegation to be substantiated. The difficulty is that, for the period 2005 to 2010 at least, there is no relationship between the numbers of allegations and the outcomes of investigations. It is therefore not possible to understand, for example, how many allegations are deemed substantiated after they have been investigated and therefore to establish the extent to which perpetrators could be held legally accountable.

Whilst a charitable reading of the year-by-year changes to the UN’s reporting of this data may ascribe it to a desire to ‘improve’ that reporting, such changes obviously undermine the possibility of comparison between one year and the next. Understanding the statistics is further hampered as a consequence of the generic labelling that is employed. It is perhaps to be assumed that classifications involving the words ‘exploitation’, ‘abuse’ and ‘minors’, are defined according to the Secretary-General’s Bulletin, although in some instances it is unclear whether these descriptors fall within the terms of the Bulletin. For example, how does the category ‘sexual abuse (non-consensual physical or *emotional* contact)’ relate to the definition of sexual abuse from the Bulletin as ‘the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions’?<sup>68</sup> Furthermore,

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<sup>66</sup> Secretary-General’s 2008 Report (n 48 above), footnote 1; Secretary-General’s 2010 Report (n 41 above), para. 8.

<sup>67</sup> Secretary-General’s 2014 Report (n 43 above), Annex II.

<sup>68</sup> UN Secretary-General (n 6 above), s.1 (emphasis added).

we have no explanation in many reports of the meanings the UN gives to phrases such as: ‘employment for sex’; ‘sex with prostitutes’; ‘sexually exploitative pornography’; ‘trafficking in persons for sexual exploitation’, ‘exploitative relationship’, ‘exchange of money, employment, goods or services for sex’ and the even more generic ‘other’. Whilst the terminology of ‘sexual exploitation’ and ‘sexual abuse’ from the Secretary-General’s Bulletin appears in other international conventions,<sup>69</sup> which may assist us in determining their meaning, most of the descriptions adopted in the UN’s annual statistics do not seem to derive from other international sources. This leaves in question the meanings of many of the categories employed, and does not tell us whether the categories overlap or are deemed mutually exclusive.

From time to time the UN has sought to define some of the labels employed within the reports, but these have often posed more questions than they have answered. For example, the 2007 report defined ‘sexual assault’ as ‘any non-consensual act which is forced by one or more persons upon another.’<sup>70</sup> There is no further explanation of how the UN determines what amounts to ‘consent’ and what is meant by ‘forced’. By contrast, ‘rape’ in this report was defined as ‘sexual intercourse which is achieved without the person’s consent.’<sup>71</sup> There is

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<sup>69</sup> The phrases ‘sexual exploitation’ and ‘sexual abuse’ appear in the Convention on the Rights of the Child 1989, Art 34 although the definitions from the Secretary-General’s Bulletin do not. Some – but by no means all – aspects of those definitions seem reminiscent of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000, Art 3.

<sup>70</sup> Secretary-General’s 2007 Report (n 39 above), Annex VI.

<sup>71</sup> *ibid.* It is unclear whether the definition is gender-neutral and includes anal penetration. A case of ‘sodomy’ was identified by the Office of Internal Oversight Services in 2002: (n 3 above), 3.

no mention here of the need for force. The UN definitions therefore appear to differentiate between rape and sexual assault on the basis of the existence of sexual intercourse *and* force – the former being required for rape and the latter being required for sexual assault. Thus, it is not clear what happens if the sexual intercourse is unforced, for example, because the victim lacked the capacity to consent for reasons such as unconsciousness or intoxication.<sup>72</sup> This would appear to fit the definition of sexual assault but is it still rape by the UN's definition? By 2015, the distinction between these two forms of behaviour had been collapsed and the requirement for force abandoned: 'sexual assault' for this year was defined as '[n]on-consensual sexual activities, including rape.'<sup>73</sup> Similarly, the category entitled 'exploitative sexual relationships' in the 2007 report was defined as referring to 'exchanges of sexual favours for money, food, employment or other goods or services, excluding engaging in prostitution.'<sup>74</sup> Since one would imagine that the exchange of sexual services in return for money is a paradigm example of prostitution, the basis for this distinction is peculiar. By 2015, a *volte face* has occurred: 'exchange of money, employment, goods or services for sex' now explicitly '[i]ncludes solicitation of a prostitute.'<sup>75</sup> Statistics from the 2008 report on 'sex with prostitutes' adds to the confusion. The Secretariat noted that these statistics include 'investigations of commanders for failure of command, as well as investigations of prostitution with minors.'<sup>76</sup> Presumably, this means that allegations that UN commanders have failed to adequately prevent or punish cases of sex with prostitutes are included in the

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<sup>72</sup> In this report, those who lack the age-related capacity to consent are dealt with under the heading 'sex with minors': Secretary-General's 2007 Report (n 39 above), Annex VI.

<sup>73</sup> Secretary-General's 2015 Report (n 42 above), Annex IV.

<sup>74</sup> Secretary-General's 2007 Report (n 39 above), Annex VI.

<sup>75</sup> Secretary-General's 2015 Report (n 42 above), Annex IV.

<sup>76</sup> Secretary-General's 2008 Report (n 48 above), Annex VI.

data. Yet, this is the only time in any of the reports when cases of command responsibility are mentioned. Perhaps unsurprisingly, the category entitled ‘other’ is the most opaque of all, and often goes unexplained. In some reports a partial explanation is provided. For example, in the 2006 report: ‘other’ included ‘allegations of distribution of pornography over e-mail’, ‘inappropriate relationships with the local population’, ‘allegations of food in exchange for sex’ and ‘paternity claims.’<sup>77</sup> However, the figures given for these allegations do not add up to the total number classified as ‘other’, so presumably there were other ‘other’ allegations for which no explanation is provided.

### **The UN’s interpretation of the data**

If the unevenness in the data may be attributed to an on-going effort to ‘improve’ reporting to the General Assembly, one might be more critical of the inferences drawn from it by the UN Secretariat. In 2009 the Secretary General was pleased to report that the decrease in the numbers of reported allegations since 2007 was proof that the UN’s ‘zero tolerance’ policy towards sexual exploitation and abuse was working.<sup>78</sup> The Secretary-General proclaimed the success of the policy, stating that ‘[t]he decreased number of allegations related to peacekeeping personnel can be attributed partly to preventative measures’,<sup>79</sup> although it was further noted that ‘[t]he change in the methods of counting allegations/reports of misconduct

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<sup>77</sup> Secretary-General’s 2006 Report (n 38 above), para 11; see also Secretary-General’s 2007 Report (n 39 above), Annex VI.

<sup>78</sup> See also Secretary-General’s 2010 Report (n 41 above), para 15; Secretary-General’s 2012 Report (n 41 above), para 38.

<sup>79</sup> Secretary-General’s 2009 Report (n 40 above), paras 14.

over the past years may have also contributed to the decrease in the number of allegations being reported'.<sup>80</sup> By 2011, the Secretariat announced that

[g]iven the methodological difficulties of evaluating the weight of every single factor separately, the Secretariat considers it reasonable to conclude that the combination of enhanced training and the various preventive measures, ... together with accountability mechanisms, resulted in the overall continued decrease in reported allegations.<sup>81</sup>

In consequence, 'the structures, preventative measures and awareness-raising and training activities that have been put in place have contributed to the positive results achieved so far.'<sup>82</sup> This view was echoed – word-for-word – the following year.<sup>83</sup> By 2013, the UN was sufficiently confident to state that the '[c]ollaborative efforts between Member States and the Organization, in terms of preventative measures, awareness-raising and training, *must account* for such positive results.'<sup>84</sup>

As we shall see, the limitations of the data (including the poor quality of the UN's data management, potential false allegations and under-reporting) call into question the reliability of these statistics. In any event, it is surely obvious that merely because numbers of reported allegations have decreased, it does not per se follow that this is due to the success of the UN response. Correlation is not causation. A number of sources, including the UN's own Office of Internal Oversight Services, have suggested an equally plausible explanation for this

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<sup>80</sup> Secretary-General's 2009 Report (n 40 above), para 14.

<sup>81</sup> Secretary-General's 2011 Report (n 50 above), para 23.

<sup>82</sup> *ibid* para 34.

<sup>83</sup> Secretary-General's 2012 Report (n 41 above), para 34.

<sup>84</sup> Secretary-General's 2013 Report (n 42 above), para 47 (emphasis added).

decrease: rather than eradicating sexual exploitation and abuse, the ‘zero-tolerance’ policy may have driven it underground.<sup>85</sup>

To make matters worse, even increased allegations are taken by the UN as evidence of success. When the total reported allegations doubled between its reports of 2004 and 2005, the UN argued that this ‘deeply troubling’ increase ‘may result in part from the newly implemented measures to prevent and respond to sexual exploitation and abuse.... In these new work environments, it is to be expected that victims, United Nations personnel and others will be more inclined to come forward with their allegations.’<sup>86</sup> The following year, increased numbers of allegations ‘may result in part from the newly implemented measures to prevent and respond to sexual exploitation and abuse’,<sup>87</sup> and the further increase the year after ‘may reflect, in part, greater awareness and use of reporting mechanisms’ even though the same report later cautioned that ‘few local communities are aware of the standards of

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<sup>85</sup> Office of Internal Oversight Services, *Evaluation Report: Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations*, 15 May 2015 (reissued 12 June 2015), at <https://oios.un.org/page/download2/id/13> (last accessed 28 June 2016), 23; O. Simić, *Regulation of Sexual Conduct in UN Peacekeeping Operations* (Heidelberg: Springer, 2012) 161; 170; P. Higate, *Gender and Peacekeeping Case Studies: The Democratic Republic of the Congo and Sierra Leone*, ISS Monograph Series no 91 (South Africa: Institute for Security Studies, March 2004) 40; S. Martin, *Must Boys Be Boys? Ending Sexual Exploitation and Abuse in UN Peacekeeping Missions* (Washington, DC: Refugees International, 2005) 13 and Dahrendorf (n 18 above), para 32. But cf K. Neudorfer, ‘Reducing Sexual Exploitation and Abuse: Does Deterrence Work to Prevent SEAs in UN Peacekeeping Missions?’ (2014) 21(5) *International Peacekeeping* 623.

<sup>86</sup> Secretary-General’s 2005 Report (n 38 above), para 9.

<sup>87</sup> *ibid.* See also Secretary-General’s 2006 Report (n 38 above), paras 9 and 21; Secretary-General’s 2008 Report (n 48 above), para 29; Secretary-General’s 2014 Report (n 43 above), para 25.

conduct ... and how to come forward when violations occur’, and some ‘in-country [reporting] networks ... have not been established ... or are not functioning properly.’<sup>88</sup> When allegations of certain forms of sexual exploitation and abuse increased in the 2007 report, this too was ‘partly attributed to better reporting mechanisms’.<sup>89</sup> The 2008 and 2010 reports echoed the same view.<sup>90</sup> In this latter year, the UN also argued that ‘despite the increase in allegations... the strong preventive measures put in place in the various peacekeeping operations and special political missions... have contained the occurrence of such incidents’.<sup>91</sup> So, first, the increase in allegations is in part a consequence of better UN reporting and other mechanisms, and second, but for the UN policy the level of allegations would be even higher. Leaving aside the apparent contradiction in the argument, it is difficult to find any evidence in the report to support this view. The use of this ‘UN speak’ in the annual reports seems emblematic of the fact that, as the 2015 Deschamps Review into sexual exploitation and abuse by international peacekeeping forces in the Central African Republic identified, ‘the UN is more concerned with rhetoric than action.’<sup>92</sup> It also gives the impression that the zero tolerance policy will be deemed a success regardless of what happens to the numbers of allegations. Heads I win, tails you lose.

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<sup>88</sup> Secretary-General’s 2006 Report (n 38 above), para 9 and paras 19-20.

<sup>89</sup> Secretary-General’s 2007 Report (n 39 above), para 13.

<sup>90</sup> Secretary-General’s 2008 Report (n 48 above), para 29; Secretary-General’s 2010 Report (n 41 above), para 31 and also para 14 and Secretary-General’s 2014 Report (n 43 above), para 25 and Secretary-General’s 2015 Report (n 42 above), para 21.

<sup>91</sup> Secretary-General’s 2010 Report (n 41 above), para 15. Cf Secretary-General’s 2011 Report (n 50 above), para 23.

<sup>92</sup> Deschamps et al (n 31 above), at xiii.

## Statistics as technologies of global governance

Despite the UN's claims, there are significant limitations to the usefulness of its statistics because of problems with data collection, false allegations and under-reporting. Furthermore, there are wider implications flowing from the UN's approach, and the inferences it draws from the data. These implications are particularly acute in respect of the space available for critique of UN policy. This also impacts on the political will to achieve legal reform which could address the worst cases of sexual exploitation and abuse. These matters are vividly illustrated by considering this data through the lens of the recent body of scholarship examining the role that statistics, particularly indicators, play in global governance.<sup>93</sup> As Davis et al explain, '[g]overnance comprises the means used to influence behaviour, the production of resources and the distribution of resources.'<sup>94</sup> The study of global governance therefore entails, amongst other matters, the study of how and for what ends power is structured between international actors.<sup>95</sup> In this context, the work of Davis et al allows us to examine the authority wielded by the UN Secretariat, and the significance this has for the

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<sup>93</sup> See generally Davis et al (n 32 above); S.E. Merry, K.E. Davis and B. Kingsbury, *The Quiet Power of Indicators: Measuring Governance, Corruption, and Rule of Law* (New York: Cambridge University Press, 2015); S.E. Merry, 'Measuring the World: Indicators, Human Rights, and Global Governance' (2011) 52(3) *Current Anthropology* S83; M. Satterthwaite, 'Measuring Human Rights: Indicators, Expertise, and Evidence-Based Practice' (2012) 106 *ASIL Proceedings* 253; T. Landman, 'Measuring Human Rights: Principle, Practice, and Policy' (2004) HRQ 906.

<sup>94</sup> Davis et al (n 32 above), 10. See also M. Jerven, *Poor Numbers: How We are Misled by African Development Statistics and What to Do about It* (Ithaca: Cornell University Press, 2013) 4-5 and N. Krisch and B. Kingsbury, 'Introduction: global governance and global administrative law in the international legal order' (2006) EJIL 1.

<sup>95</sup> Davis et al (n 32 above), 10-11.



willingness of the member states to amend existing legal structures dealing with sexual exploitation and abuse.

The different mechanisms used in respect of this global governance are ‘technologies’,<sup>96</sup> of which indicators are one. Indeed, indicators have become an increasingly common mechanism for those seeking to achieve political and legal change. As Krever identifies, international organisations have developed a ‘quantitative fetishism’ ‘[s]ince the 1990s [with] the expansion of econometric and quantitative modelling techniques, with an attendant almost automatic quantitative orientation to all social questions’.<sup>97</sup> The Women, Peace and Security framework which has been translated into indicators designed to measure progress in implementing Security Council Resolution 1325<sup>98</sup> is but one example; others abound in fields as diverse as human rights; the rule of law; sex-trafficking; water, sanitation and hygiene; to name but a few.<sup>99</sup>

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<sup>96</sup> P. Miller and N. Rose, *Governing the Present: Administering Economic, Social and Personal Life* (Cambridge: Polity Press, 2008); K.E. Davis, B. Kingsbury and S.E. Merry, ‘Introduction: The Local-Global Life of Indicators: Law, Power, and Resistance’ in Merry et al (n 94 above), 1.

<sup>97</sup> T. Krever, ‘Quantifying Law: legal indicator projects and the reproduction of neoliberal common sense’ (2013) 34(1) TWQ 131, 134-135.

<sup>98</sup> See Security Council Res. 1889 (2009), para 17 and UN Secretary-General, *Report on Women and Peace and Security*, UN Doc. S/2010/498 (2010), 27 *et seq.*

<sup>99</sup> eg Merry (n 94 above); Satterthwaite (n 94 above); Landman (n 94 above); I.T. Winkler, M.L. Satterthwaite and C. De Albuquerque, ‘Treasuring what we Measure and Measuring what we Treasure: Post-2015 Monitoring for the Promotion of Equality in the Water, Sanitation, and Hygiene Sector’ (2014) 32 Wisconsin ILJ 547; J. Parsons, B. Kutateladze, M. Thornton, A. Bang and A. Yaya, ‘Justice indicators for post-conflict settings: a review’ [2010] *Hague Journal on the Rule of Law* 203; A. Ahmed, ‘Trafficked? AIDS, Criminal Law and the Politics of Measurement’ (2015) 70(1) *University of Miami Law Review* 96.

The statistics reported by the UN on sexual exploitation and abuse share many common features with the indicators examined by Davis et al. Some of those features, including the absorption of uncertainty from the data and UN headquarters' attempts to govern remotely, call into question the reliability of the data and inferences drawn therefrom, as we shall see. Furthermore, the simplification of the phenomenon of sexual exploitation and abuse, the effect of labelling it, the privileging of expert knowledge on how to solve this 'problem' and the diminished space for critique of UN policy all weaken opportunities for meaningful legal reform.

Dealing with the first of these aspects – the reliability of the data and inferences drawn therefrom – the UN's interpretation of the data seems likely to be the product of 'uncertainty absorption'.<sup>100</sup> By its nature, the collection of data tends to be binary: individual units either count or do not; fit within a classification or do not. Uncertainty cannot be tolerated: there is no category of 'maybe' or 'almost'. It is argued that because of this, data collected in the field by local actors is stripped of its gaps, ambiguities and nuances as it filters up through the hierarchy of the organisation collecting it. Its uncertainty is absorbed.<sup>101</sup> Inferences are then drawn and decisions made, in this case in the UN Secretariat, at the General Assembly, and other UN bodies, on the basis of what purports to be clear and accurate evidence, but which has in fact lost its subtlety, and lost touch with its grass-roots origins. This leads to over-confidence in the inferences drawn, as will be apparent in relation to the UN's claims about the success of its policy. This is also particularly evident in the limited attention that the UN

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<sup>100</sup> J March and H Simon, *Organizations* (New York: Wiley, 1958), 165.

<sup>101</sup> *ibid*; Espeland and Stevens (n 36 above), 421-422; Davis et al (n 32 above), 9.

pays to problems in relation to the age of the victim, to the issues of under-reporting and false allegations, and to the risk that rather than reducing sexual exploitation and abuse, the UN's prohibitions have merely driven it underground.<sup>102</sup>

Dealing with the first of these, as we have seen, UN reports often categorise allegations against peacekeepers on the basis of whether the victim was under 18 years old. This reflects the terms of the Secretary-General's 2003 Bulletin which explains that: '[s]exual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence'.<sup>103</sup> However, determining the age of those involved in sexual activities with peacekeepers, particularly in post-conflict environments, is likely to be far from simple for investigators. In these locations, birth certificates may be lost (particularly if, during the conflict, victims were uprooted from their homes) and may subsequently be irreplaceable or, even if replaced, unverifiable (particularly in states without a central register of births). Similarly, in many states, birth certificates are falsifiable. Alternatively, medical evidence to determine the age of the victim may not be easily obtained and in any event, given scientific limitations in this area, is unlikely to be conclusive.<sup>104</sup> Yet, reading the reports, there is no mention of this doubt about the age of the victims.

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<sup>102</sup> See n XX above. Further uncertainty arises in respect of the ability of victims to recognise that they have been subject to what the UN would define as sexual exploitation or abuse: see below at XX.

<sup>103</sup> UN Secretary-General (n 6 above), s.3.2(b). Although a marriage exception to this rule is provided in s.4.4.

<sup>104</sup> E. Grimstad, *Final Report: Review of the OIOS Investigations Division, United Nations*, 26 June 2007, at [https://www.hrw.org/legacy/pub/2008/un/External\\_ReviewOIOS.pdf](https://www.hrw.org/legacy/pub/2008/un/External_ReviewOIOS.pdf) (last accessed 28 June 2016), 70; R.S.

Burke, *Sexual Exploitation and Abuse by UN Military Contingents: Moving Beyond the Current Status Quo and Responsibility under International Law* (Leiden: Brill, 2014), 43.

Similar uncertainty emerges in respect of levels of allegations. Simply put, '[e]vents-based data are prone to either underreporting of events that did occur or over-reporting of events that did not occur'.<sup>105</sup> In respect of the latter, there is evidence that some allegations are likely to have been fabricated. The UN has itself identified cases of false allegations made by fellow peacekeeping personnel, victims and local police. One report into the mission in the Democratic Republic of the Congo argued, controversially, that '[m]ore than one-third of the unsubstantiated allegations against civilian personnel were false allegations.'<sup>106</sup> Most recently, the Secretary-General has said only that false allegations 'sometimes' occur.<sup>107</sup> It is important not to overstate the significance of this. There are a variety of likely causes of these false allegations, including simple errors (mistaken identity, for example) and ulterior motives. The latter category includes allegations driven by political displeasure at the peacekeeping mission or in the hope of financial gain by way of compensation.<sup>108</sup> In this vein, one investigation found that false allegations 'were being made in order to extort money from United Nations personnel'.<sup>109</sup>

This issue has been contentious, with suggestions that the UN has been too willing to identify allegations as false, to classify them as unsubstantiated or to downgrade them to less serious offences. For example, Refugees International identified a case of rape wrongly classified as

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<sup>105</sup> Landman (n 94 above), 923.

<sup>106</sup> Dahrendorf (n 18 above), para 9. It is acknowledged that this analysis does not necessarily apply to other types of personnel or other missions.

<sup>107</sup> Secretary-General's 2016 Report (n 19 above), para 32.

<sup>108</sup> UN Department of Peacekeeping Operations (n 21 above), Annex C, para 3.4.

<sup>109</sup> Secretary-General's 2014 Report (n 43 above), para 26.

‘only’ prostitution. It also argued that when allegations of rape were made, victims were not taken seriously.<sup>110</sup> The explanation from the UN in its annual reports is that ‘allegations found to be unsubstantiated through an investigation were not necessarily false or made mala fides. Allegations were often found to be unsubstantiated because of factors such as a lack of conclusive evidence, a lack of witnesses or the impossibility of positively identifying alleged perpetrators.’<sup>111</sup> Unsubstantiated allegations may therefore be the result of inconclusive investigations rather than false allegations. Whilst the controversy surrounding this is understandable, a reluctance to openly discuss this issue and try to comprehend it leaves a significant gap in our understanding of sexual exploitation and abuse, and calls into question whether the UN’s data is displaying false positives. This is particularly so given that there is evidence that some victims have been paid by peacekeepers to keep their silence.<sup>112</sup> That, of course, is likely to fuel false allegations which are then made in the hope obtaining financial support.

By contrast, under-reporting of allegations of sexual exploitation and abuse is also an issue. A Save the Children Report from 2008 found that under-reporting of sexual exploitation and abuse against children was widespread, despite the ‘zero tolerance’ policy.<sup>113</sup> The report

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<sup>110</sup> Martin (n 86 above), 16 and 21. Some member states also seem reluctant to take the issue seriously: see the example at *Report of the Office of Internal Oversight Services*, UN Doc. A/64/326 (Part II), 23 February 2010, paras 47 and 57.

<sup>111</sup> Secretary-General’s 2011 Report (n 50 above), para 19; see also Secretary-General’s 2012 Report (n 41 above), para 14; Secretary-General’s 2013 Report (n 42 above), para 13.

<sup>112</sup> Awori et al (n 23 above), 7. See also Secretary-General’s 2014 Report (n 43 above), para 26.

<sup>113</sup> C. Csáky, *No One to Turn to: The under-reporting of child sexual exploitation and abuse by aid workers and peacekeepers* (London: Save the Children, 2008), 10 *et seq.*

attributed this to fear about the economic impact of reporting and fear of the reaction to an allegation. Many child victims also felt an ‘acceptance of, or resignation to, abuse’, they had a ‘lack of faith in the response’, and/or a lack of knowledge about reporting mechanisms.<sup>114</sup> The early annual reports by the UN Secretariat acknowledged the issue of under-reporting. In 2004 and 2005, the Secretary-General explained that ‘the data may still not reflect the true extent of these deplorable incidents’ because of under-reporting.<sup>115</sup> In 2008 and 2009, the Secretariat accepted that ‘reports from other organizations suggest chronic’<sup>116</sup> and ‘persistent’<sup>117</sup> under-reporting of allegations. Yet, since then, the annual reports have been virtually silent on the issue, despite the Security Council recently acknowledging that under-reporting remains a problem.<sup>118</sup>

This seems surprising given that there is some evidence from other sources that the UN data may in fact represent only a small proportion of cases of sexual exploitation and abuse. Empirical studies into the issue have been rare – not least because of the complexity of trying to collect data from potentially vulnerable victims in hostile environments.<sup>119</sup> Those studies that do exist also often pre-date the UN’s annual reporting and the steps it has taken to

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<sup>114</sup> *ibid* at 13-14.

<sup>115</sup> Secretary-General’s 2005 Report (n 38 above), para 11. See also Secretary-General’s 2004 Report (n 34 above), para 4.

<sup>116</sup> Secretary-General’s 2008 Report (n 48 above), para 13.

<sup>117</sup> Secretary-General’s 2009 Report (n 40 above), para 20.

<sup>118</sup> Security Council Res. 2272 (2016), preamble.

<sup>119</sup> The most significant study which tried to gather data on sexual exploitation and abuse used secondary sources: R. Nordås and S.C.A. Rustad, ‘Sexual Exploitation and Abuse by Peacekeepers: Understanding Variation’ (2013) 39(4) *International Interactions: Empirical and Theoretical Research in International Relations* 511.

address sexual exploitation and abuse. Nonetheless, one survey from the 1990s reported that 45 per cent of Dutch navy and marines personnel deployed in the UN's Cambodia mission 'had sexual contact with sex workers or other members of the local population during a five month tour' of duty.<sup>120</sup> Another estimated that there were 24,500 'peacekeeper babies' in Cambodia by the end of the mission,<sup>121</sup> whilst in Liberia, a report for UNIFEM stated that 6,600 babies were registered as having been fathered by peacekeepers during an eight-year period.<sup>122</sup> Other studies suggested that in six out of 12 States with peacekeeping operations under examination, 'the arrival of peacekeeping troops has been associated with a rapid rise in child prostitution.'<sup>123</sup> Under the Secretary-General's Bulletin, which has only been in force since 2003 and therefore predates some of these findings, sexual contact with the local population is not prohibited per se, and therefore not necessarily counted as sexual exploitation and abuse since '[s]exual relationships between United Nations staff and beneficiaries of assistance' are merely 'strongly discouraged'. However, transactional sex or sexual contact with those under 18 (and to whom the accused is not married) is always prohibited.<sup>124</sup>

In 2013, a panel was appointed by the Secretary-General to review the missions with the worst records on sexual exploitation and abuse. It found that '[t]he UN does not know how

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<sup>120</sup> UNAIDS, *AIDS and the Military: UNAIDS Point of View* (Geneva: UNAIDS, May 1998), 2.

<sup>121</sup> M. Ndulo, 'The United Nations Responses To The Sexual Abuse And Exploitation Of Women And Girls By Peacekeepers During Peacekeeping Missions' (2009) 27(1) Berkeley JIL 127, 157.

<sup>122</sup> Rehn and Johnson Sirleaf (n 5 above), 71.

<sup>123</sup> G. Machel, *Impact of Armed Conflict on Children: Report of the expert of the Secretary-General, Ms. Graça Machel*, UN Doc. A/51/306, 26 August 1996, para 98.

<sup>124</sup> UN Secretary-General (n 6 above), s.3.2(b), (c) and (d) and s.4.4.

serious the problem of SEA [sexual exploitation and abuse] is because the official numbers mask what appears to be significant amounts of underreporting'.<sup>125</sup> UN staff in the field seem to be aware of this. When interviewed by the panel, many reported their suspicions that 'the numbers and their decline ... do not accurately reflect the current situation'.<sup>126</sup> In 2015, the Office of Internal Oversight Services tried to assess what it called 'significant underreporting' of transactional sex by looking at 'condom distribution and the extent of voluntary counselling and confidential testing (VCCT)' for HIV infection.<sup>127</sup> Although it cautioned that this 'evidence is not conclusive,' its data showed that VCCT rates ranged from zero in one mission, to 37,310 over a six year period in another.<sup>128</sup> The recent Deschamps Review also found that it was likely that sexual exploitation and abuse was 'vastly under-reported.'<sup>129</sup> The Office of Internal Oversight Services has cited an independent survey of a random sample of 475 women living in Monrovia, Liberia, in 2012. When the results of the survey were extrapolated to the Monrovia population at large, the researchers reported that their 'best estimate' was 'that about 58,000 women ages 18-30 in 2012 had engaged in transactional sex with U.N. personnel at some point'.<sup>130</sup> This is not to suggest that these studies have produced the 'correct' answer to the question of how widespread sexual exploitation and abuse by UN

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<sup>125</sup> Awori et al (n 23 above), 14.

<sup>126</sup> *ibid* at 13.

<sup>127</sup> Office of Internal Oversight Services (n 85 above), 22.

<sup>128</sup> Office of Internal Oversight Services (n 86 above), 22.

<sup>129</sup> Deschamps et al (n 31 above), 16.

<sup>130</sup> B. Beber, M. Gilligan, J. Guardado and S. Karim, 'U.N. peacekeeping and transactional sex', *The Washington Post*, 16 June 2015, at [www.washingtonpost.com/blogs/monkey-cage/wp/2015/06/16/u-n-peacekeeping-and-transactional-sex/](http://www.washingtonpost.com/blogs/monkey-cage/wp/2015/06/16/u-n-peacekeeping-and-transactional-sex/) (last accessed 28 June 2016) cited in Office of Internal Oversight Services, n 85 above, 22; B. Beber, M.J. Gilligan, J. Guardado and S. Karim, 'Peacekeeping, International Norms, and Transactional Sex in Monrovia', Liberia, *International Organization*, forthcoming.



peacekeepers is. No doubt these findings could also be critiqued for their weaknesses, many pre-date the UN's reforms and there are obvious questions about the extent to which results for one mission or one group of victims would carry across to others. Rather, it is to suggest that the level of confidence which the UN has in its own data must be misplaced. *If* anything like 58,000 women in Monrovia have had transactional sex with UN personnel in the period up to 2012, then it seems unlikely that the accurate number of cases of sexual exploitation and abuse involving peacekeeping personnel globally during the period 2003-2012 was the 1,367 that appear in the UN's official reports.

Related to this issue of uncertainty absorption is another problem which calls into question the reliability of this data collected by missions in the field and interpreted by UN headquarters. As Espeland and Stevens explain, '[o]ne virtue of numbers is that they easily circulate and seem straightforward to interpret, making it possible to monitor or govern "at a distance"'.<sup>131</sup> In consequence, '[q]uantification permits remote parties to check on people and things they wish to control.'<sup>132</sup> The collection of data seeks to extend the hand of the Secretariat into peacekeeping missions operating in the field in countries all over the world. It is an attempt to exercise power remotely. Yet, despite the will of those in New York, '[l]ocal centers may understand the process differently, carry out the measurement tasks in different ways, or resist cooperating with national and international expectations.'<sup>133</sup> A good illustration of this is found in the Secretary-General's report of 2010. When UN entities were asked for their data, 'there was some confusion between sexual harassment and sexual exploitation and abuse', said the Secretary-General, 'which is an indication that further

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<sup>131</sup> Espeland and Stevens (n 36 above), 415.

<sup>132</sup> *ibid.*

<sup>133</sup> Merry (n 94 above), S89; Davis et al (n 32 above), 17 *et seq.*

education and awareness-raising needs to be done'.<sup>134</sup> The attempt by the Secretariat to control matters 'at a distance' is thus diffused by the missions' understanding of the data they are supposed to collect.

Additional problems with the UN's methods of data collection cast doubt on its ability to manage remotely. In 2006, the Secretariat first acknowledged that there exists a discrepancy between the numbers of investigations recorded by the Office of Internal Oversight Services and those recorded by the Department of Peacekeeping Operations, on account of their separate databases.<sup>135</sup> The following year, it was suggested that the root of the difficulty lay in the fact that some allegations were reported to the Office of Internal Oversight Services and some to the mission in the field as well. 'The confidentiality requirements that bind OIOS [the Office of Internal Oversight Services] pose challenges for the comparison and harmonization of data received by the Department of Peacekeeping Operations through its missions.'<sup>136</sup> In short, confidentiality prevents the two UN entities from sharing information that each holds. Attempts were made to remedy this through the development of 'an Internet-based Misconduct Tracking System',<sup>137</sup> although in 2009 the Office of Internal Oversight Services did not have access to it.<sup>138</sup> That having been resolved, the attempt to centralise the

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<sup>134</sup> Secretary-General's 2010 Report (n 41 above), para 30. See also Secretary-General's 2016 Report (n 19 above), footnote 1.

<sup>135</sup> Secretary-General's 2006 Report (n 38 above), Annex3, footnote d.

<sup>136</sup> Secretary-General's 2007 Report (n 39 above), para 14.

<sup>137</sup> Secretary-General's 2009 Report (n 40 above), para 15.

<sup>138</sup> Secretary-General's 2009 Report (n 40 above), para 15. Since 2010, some data from the Misconduct Tracking System has been made publicly available via the UN website: see Secretary-General's 2010 Report (n 41 above), paras 16 and 28(b) and <https://cdu.unlb.org/Statistics/OverviewofStatistics.aspx> (last accessed 28 June 2016). See also Secretary-General's 2014 Report (n 43 above), para 33.

collection of allegations via focal points and conduct and discipline teams has not been successful because allegations are still made to a variety of different entities.<sup>139</sup> In 2013, the panel appointed by the Secretary-General found that ‘[o]ne reason official SEA [sexual exploitation and abuse] allegation numbers do not match the actual numbers of instances of SEA is that all cases which make their way to the attention of UN officials do not get collated in the Misconduct Tracking System’ since ‘[t]he number of routes by which cases make their way through the UN is large’.<sup>140</sup> ‘Reports by CDT [Conduct and Discipline Teams] to senior management are not therefore comprehensive’ yet ‘it is widely believed in mission that CDT numbers include all reports to the UN.’<sup>141</sup> This is another demonstration of the misplaced confidence in the UN’s data.

### **Wider implications for legal reform**

Whilst these problems with the UN’s data make it unlikely that it can be relied upon as an accurate indicator of the scale of sexual exploitation and abuse, there are wider implications here too. The creation and dissemination of these statistics has become an exercise of global governance by the UN. As Löwenheim explains, ‘[f]rom a Foucauldian point of view all knowledge is political’<sup>142</sup> since the production of knowledge allows the governors to know

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<sup>139</sup> Awori et al (n 23 above), 11 and 14. See above at XX.

<sup>140</sup> *ibid* at 14.

<sup>141</sup> *ibid*.

<sup>142</sup> O. Löwenheim, ‘Examining the State: a Foucauldian perspective on international ‘governance indicators’’ (2008) 29(2) TWQ 255, 258.

those that they seek to govern.<sup>143</sup> Indeed, for Foucault, ‘statistics is knowledge of the state, of the forces and resources that characterize a state at a given moment.’<sup>144</sup> These practices of collating and disseminating statistics, therefore, ‘are important not only because they make possible a knowledge of the subject but also because they thereby make objects *visible*, shaping them into forms that are calculable and able to be regulated’.<sup>145</sup>

For the UN, its statistics on sexual exploitation and abuse are indisputably, undoubtedly, and undeniably political. They are a mechanism through which power can be exercised.<sup>146</sup> The contention by the UN that allegations of sexual exploitation and abuse are falling and, *ergo*, this demonstrates the success of the ‘zero tolerance’ policy is a clear attempt to wrestle back authority after the chaotic scandal which engulfed the organisation in 2003. To this end, the effect of labelling<sup>147</sup> the statistics is important: this sends the message that there is a phenomenon called ‘sexual exploitation and abuse’ and that it has been counted. This makes sexual exploitation and abuse visible, but only on the UN’s terms. That which is not deemed sexual exploitation and abuse is not counted. For example, in two reports to the General Assembly, the Secretary General explains that UN personnel sending pornography via email

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<sup>143</sup> M. Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977-1978* (M. Senellart ed; G. Burchell trans; New York: Palgrave Macmillan, 2007), 274 and 79.

<sup>144</sup> *ibid.*, 274 and see 315.

<sup>145</sup> B. Sokhi-Bulley, ‘Governing (Through) Rights: Statistics as Technologies of Governmentality’ (2011) 20(2) *Social and Legal Studies* 139, 141 (emphasis in original); Foucault (n 144 above), 274-275 and 315; Davis et al (n 32 above), 8; T.M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton: Princeton University Press, 1996), 45.

<sup>146</sup> Sokhi-Bulley (n 146 above), 141-142 and H.M. Jaeger, ‘UN reform, biopolitics, and global governmentality’ (2010) 2(1) *International Theory* 50; Davis et al (n 32 above), 1 *et seq.*

<sup>147</sup> Merry (n 94 above), S84.

is not sexual exploitation and abuse when it does not involve beneficiaries of assistance. Despite, therefore, still being misconduct, it is not included in the annually reported statistics.<sup>148</sup> ‘The mere act of measuring something confers value to it’<sup>149</sup> and hence not measuring something may be a statement of its lack of value. Arguably, this implies that the non-sexual exploitation and abuse is not worth counting as it does not have sufficient importance to make the collection of data about it worthwhile. One may reflect not only on the sending of pornography by email, but also on other forms of misconduct by peacekeepers – homicide, non-sexual violence, corruption and so forth. The General Assembly has not mandated the Secretary-General to report annually in this way on these forms of misconduct, despite the harm that these behaviours inflict on the local population in peacekeeping host States and the impact that they have on the mission and the UN as a whole.<sup>150</sup> Why is sexual exploitation and abuse more important than other forms of peacekeeper misconduct?

In making sexual exploitation and abuse visible, it is also simplified. Any form of quantification necessarily involves simplification of a multifaceted social phenomenon. The statistics purport to represent sexual exploitation and abuse in ‘black and white’,<sup>151</sup> making ‘a complex social reality easier to comprehend and analyse’.<sup>152</sup> As we have seen, the UN has

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<sup>148</sup> Secretary-General’s 2007 Report (n 39 above), para 12 and Secretary-General’s 2008 Report (n 48 above), para 12.

<sup>149</sup> Winkler et al (n 100 above), 592. See also S. Nouwen, ‘‘As You Set out for Ithaka’’: Practical, Epistemological, Ethical, and Existential Questions about Socio-Legal Empirical Research in Conflict’ (2014) 27(1) *LJIL* 227, 230.

<sup>150</sup> Data on other forms of misconduct appears on the Conduct and Discipline Unit website but is not reported to the General Assembly in the same manner as sexual exploitation and abuse.

<sup>151</sup> Davis et al (n 32 above), 8.

<sup>152</sup> Krever (n 97 above), 135.

taken its ‘flawed and incomplete data ... and merge[d] them together to produce an apparently coherent and complete picture.’<sup>153</sup> The statistics, and the Secretary-General’s reports, claim to show the nature and extent of peacekeeper sexual exploitation and abuse. Nevertheless, it is of course not a simple phenomenon. It has complex social, historical, legal and economic features which we consider next, and which contribute to the issue and present challenges to addressing it.<sup>154</sup> Reducing it to numerical values belies this complexity and context.<sup>155</sup>

Another obvious manifestation of this exercise of global governance is the creation of bureaucracy.<sup>156</sup> The UN has established the Conduct and Discipline Unit in New York and focal points and conduct and discipline teams within missions which are responsible for collecting and assimilating the data so that it can be reported to the General Assembly. This has obvious economic implications. When the Secretariat was requested to quantify the annual cost of the UN’s work on sexual exploitation and abuse, it explained that an estimate was ‘only partially possible’ because UN systems for dealing with misconduct are not limited to sexual exploitation and abuse. Nonetheless, the Secretary General calculated the costs of the conduct and discipline teams and the central Conduct and Discipline Unit for 2012/13 to be over US\$9million.<sup>157</sup> The decision to collect this data therefore influences decisions made about the allocation of resources to tackle the issue of sexual exploitation and abuse.<sup>158</sup>

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<sup>153</sup> Davis et al (n 32 above), 8-9.

<sup>154</sup> See below at XX.

<sup>155</sup> Winkler et al (n 100 above), 593.

<sup>156</sup> Foucault (n 144 above), 315; Espeland and Stevens (n 36 above), 410-411 and Porter (n 146 above), 35-36.

<sup>157</sup> Secretary-General’s 2013 Report (n 42 above), para 42.

<sup>158</sup> Davis et al (n 32 above), 15-16.

Furthermore, the extent to which the data shows it to be a continuing problem (or not) may have similar implications for future budgets.

By creating this bureaucracy to collate and disseminate statistics on sexual exploitation and abuse, the UN has shown a tendency to ‘consolidate power in the hands of those with expert knowledge.’<sup>159</sup> The annual reports present and establish the UN as “‘technical” experts’ on the issue of sexual exploitation and abuse, ‘produc[ing] knowledge’ about this phenomenon ‘to define or shape the way’ in which it is ‘understood’.<sup>160</sup> The danger with this is that ‘[b]y providing a particular specialized lens to investigate a problem, experts will come up with solutions that fit the range of their spectacles, and create their own blind spots along the way.’<sup>161</sup> The failure to adequately acknowledge the limitations of the data may be a demonstration of such a blind spot. This privileging of technical expert knowledge also comes at the expense of local knowledge.<sup>162</sup> Indeed as Merry highlights, indicator projects tend to be ‘created in the global North – which sets the agenda, names the indicator, and assembles the criteria – while data collection typically takes place mostly in the global South.’<sup>163</sup> This is equally true of UN statistics on sexual exploitation and abuse.

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<sup>159</sup> Merry (n 94 above), S85; Davis et al (n 32 above), 19; D. Kennedy, ‘Challenging Expert Rule: The Politics of Global Governance’ (2005) 27 *Sydney Law Review* 5.

<sup>160</sup> Davis et al (n 32 above), 8 and 19.

<sup>161</sup> A. Leander and T. Aalberts, ‘Introduction: The Co-Constitution of Legal Expertise and International Security’ (2013) 26 *LJIL* 783, 786.

<sup>162</sup> Espeland and Sauder (n 36 above), 93.

<sup>163</sup> Merry (n 94 above), S89.

Perhaps the best illustration of this privileging of expert knowledge is the problem of under-reporting. The UN, when it acknowledges this issue, often views the root of the difficulty as practical: lack of knowledge of or access to reporting mechanisms by those who need them.<sup>164</sup> Yet, since the UN itself created the definition of sexual exploitation and abuse via the Secretary-General's Bulletin, whether victims and witnesses will report allegations depends in large part on their understanding of this 'expert' definition, their ability to identify that their experience merits reporting and their willingness to do so. In a different but related context, research from the 1990s into domestic violence in the UK found that the majority of victims would not define as criminal the violence to which they had been subject<sup>165</sup> and therefore would not consider reporting it to the police. A similar difficulty might well exist in relation to reporting sexual exploitation and abuse to the UN. In societies which may harbour strong patriarchal attitudes, coupled with a history that might include extensive conflict-related sexual violence, and a lack of either existing or enforceable domestic laws addressing gender-based crimes, it will always be challenging to rely on victims to self-identify as victims.<sup>166</sup> This is particularly so because of the wide variety of locations to which peacekeeping missions are deployed, and the wide variety of states which provide personnel to such missions. From Cyprus to Sudan, via Lebanon and Haiti, the 'zero tolerance' policy applies as if one size fits all, regardless of different local laws, histories, cultures and gender politics. If those local victims and witnesses of sexual exploitation and abuse do not understand the remit of the 'zero tolerance' policy or where they fall within it, or even that

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<sup>164</sup> E.g. Secretary-General's 2016 Report (n 19 above), para 47.

<sup>165</sup> C. Mirrlees-Black, *Domestic Violence: Findings from a new British Crime Survey self-completion questionnaire*, Home Office Research Study 191 (London: Home Office, 1999), 47-48.

<sup>166</sup> Similar criticisms have been made of indicators on sex trafficking: Ahmed (n 100 above), 149.



such matters can be reported to the UN, it is unsurprising that statistics on allegations will suffer from under-reporting.

Additionally, what may be important to some victims is not whether their allegation does or does not fall within the official definitions of sexual exploitation and sexual abuse, but the extent to which they felt their experience was believed when reported, whether they were treated with respect and/or whether adequate compensation was forthcoming. Others may be resigned to, or indeed eager to continue, their interaction with peacekeepers, even though it falls foul of the UN's prohibitions. These experiences are not, and perhaps cannot, be adequately measured.

This exercise of power through statistics has the further effect of diminishing contestation,<sup>167</sup> shrinking the space available for challenging the gendered, colonial, legal, economic and political factors which influence the existence of sexual exploitation and abuse and the response to it.<sup>168</sup> If the UN is to be believed, the numbers moving in the 'correct' direction (ie downwards) is proof that the 'zero tolerance' policy is working and therefore the policy must be a positive development. Aside from the fact that a causal relationship between the UN's policy and the diminishing number of allegations may not be established, this representation

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<sup>167</sup> Satterthwaite (n 94 above), 255-256; Davis et al (n 32 above), 19.

<sup>168</sup> See, eg, Awori et al (n 23 above); J. McGill, 'Survival Sex in Peacekeeping Economies: Re-Reading the Zero Tolerance Approach to Sexual Exploitation and Sexual Abuse in United Nations Peace Support Operations' (2014) 18 *Journal of International Peacekeeping* 1; M. Kanetake, 'The UN Zero Tolerance Policy's Whereabouts: On the Discordance between Politics and Law on the Internal-External Divide' (2012) 4 *Amsterdam Law Forum* 51; S.H. Razack, *Dark Threats and White Knights* (Toronto: University of Toronto Press, 2004).

of the data neglects broader critiques about that policy. Scholars, concerned that the policy amounts to a ‘sex panic’, have challenged the UN’s assertion that transactional sex between peacekeepers and locals is inherently exploitative.<sup>169</sup> Undoubtedly there are some cases which are exceptionally exploitative. But, some have argued that it is an oversimplification to suggest that this is true of all transactional sexual relationships. Empirical research involving interviews with some of those who have provided sex to peacekeepers demonstrates the point. What emerges is a broad range of motivations. At one extreme are cases of ‘survival prostitution’ involving those who sell sex for food and shelter.<sup>170</sup> Yet, at the other end of the spectrum are those looking for a ‘sugar daddy’, that is to say a ‘mutually beneficial’ relationship with a peacekeeper which would allow the local party to ‘improve their standard of living.’<sup>171</sup>

This complexity amongst cases of prostitution – and the varying degrees to which the supplying party is able to act with agency – is lost in the UN’s blanket prohibition.<sup>172</sup> The legal structures established by the Secretary-General and the member states for addressing sexual exploitation and abuse do not seem capable of reflecting this level of nuance. There is virtually no debate at the UN about the appropriateness of prohibiting all the behaviours

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<sup>169</sup> D. Otto, ‘Making sense of zero tolerance policies in peacekeeping sexual economies’ in V. Munro and C.F. Stychin (eds), *Sexuality and the Law: Feminist Engagements* (London: Routledge, 2007); K.M. Jennings, ‘Service, sex, and security: Gendered peacekeeping economies in Liberia and the Democratic Republic of the Congo’ (2014) 45(4) *Security Dialogue* 313; Simić (n 86 above); O. Simić, ‘Rethinking ‘sexual exploitation’ in UN peacekeeping operations’ (2009) 32 *Women’s Studies International Forum* 288.

<sup>170</sup> Higate (n 86 above), 23; K.M. Jennings, ‘Unintended Consequences of Intimacy: Political Economies of Peacekeeping and Sex Tourism’ (2010) 17(2) *International Peacekeeping* 229, 233.

<sup>171</sup> *ibid* at 234.

<sup>172</sup> Higate (n 86 above), 21 *et seq.*

caught by the ‘zero tolerance’ policy. The UN’s response to this phenomenon has also focused considerably less attention on the economic factors which contribute to sexual exploitation and abuse, including the sharp discrepancy between the incomes of locals and peacekeepers. This creates a two-tier economy in the host State, arguably fuelling the need for some locals to engage in transactional sex.<sup>173</sup> The lack of employment opportunities for women in the aftermath of conflict, driving some into prostitution, has not been addressed.<sup>174</sup> Instead, by presenting the statistics as proof of the success of the ‘zero tolerance’ policy, the ‘embedded... “ideology”’ of the statistics<sup>175</sup> is revealed: that sexual exploitation and abuse is all bad, and that the UN’s strategy is the ‘solution’ to this ‘problem’.

This serves to limit criticism of UN policy. The media takes the statistics at face value, whilst academics have been remarkably uncritical of the UN’s annual reports.<sup>176</sup> Despite the volume

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<sup>173</sup> Ndulo (n 122 above), 145; Higate (n 86 above), 7; Shotton (n 15 above), 103.

<sup>174</sup> O. Simić, ‘Rethinking ‘sexual exploitation’ in UN peacekeeping operations’ (2009) 32 *Women’s Studies International Forum* 288, 290-292; UN Office of Internal Oversight Services (n 10 above), paras 32 and 33.

<sup>175</sup> Davis et al (n 32 above), 9.

<sup>176</sup> See, for example, M. O’Brien, ‘Sexual Exploitation and Beyond: Using the Rome Statute of the International Criminal Court to Prosecute UN Peacekeepers for Gender-based Crimes’ (2011) 11(4) *ICLR* 803, 806; K. Alexandra, ‘Peacekeepers’ Privilege and Sexual Abuse in Post-Conflict Populations’ (2011) 23(3) *Peace Review: A Journal of Social Justice* 369, 370; Z. Deen-Racsmány, ‘The Amended UN Model Memorandum of Understanding: A New Incentive for States to Discipline and Prosecute Military Members of National Peacekeeping Contingents?’ (2011) 16(2) *JCSL* 321, 343 *et seq*; R. Burke, ‘Attribution of Responsibility: Sexual Abuse and Exploitation, and Effective Control of Blue Helmets’ (2012) 16 *Journal of International Peacekeeping* 1, 2; M. 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, 224; The Guardian, *Ban Ki-moon says sexual abuse in UN peacekeeping is ‘a cancer in our system’*, 14 August 2015, at [www.theguardian.com/world/2015/aug/14/ban-ki-moon-says-sexual-abuse-in-un-](http://www.theguardian.com/world/2015/aug/14/ban-ki-moon-says-sexual-abuse-in-un-)

of literature produced by the academy over the last decade on the UN response to sexual exploitation and abuse, very little research attempts to undertake an analysis of these statistics.<sup>177</sup> Even the panel appointed by the Secretary-General, despite its criticisms of the issues of under-reporting and data management, accepts the official version of events, commenting that ‘it is true that the number of SEA [sexual exploitation and abuse] cases is decreasing’ in the missions it was mandated to examine.<sup>178</sup> The raw data is, of course, not publicly released, and the effort of reading and analysing the statistics is such that few have the time, money or patience to sustain it. Even fewer institutions have statistics to compete with the UN’s own, and compiling alternative data is complex, expensive and perhaps impossible, particularly given the environments to which peacekeeping operations are deployed.<sup>179</sup> Since the UN’s data cannot realistically be subject to external audit, the UN cannot be held accountable.

Most significantly, because the data is used by the UN to paint the perpetrators of sexual exploitation and abuse as a few ‘bad apples’, it is no longer necessary to scrutinize the structural features of this issue or of UN policy, and particularly the role that law plays. The impetus to improve the legal arrangements which establish accountability for the worst cases of sexual exploitation and abuse seems to have lost the momentum which existed in the

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[peacekeeping-is-a-cancer-in-our-system](#); The Guardian, *UN received 99 sexual abuse complaints against its staff in 2015*, 4 March 2016, at <https://www.theguardian.com/world/2016/mar/04/un-received-99-sexual-assault-complaints-against-its-staff-in-2015> (last accessed 28 June 2016).

<sup>177</sup> One significant study, which created its own database of allegations from a variety of secondary sources, is Nordås and Rustad (n 120 above). See also Neudorfer, n 85 above.

<sup>178</sup> Awori et al (n 23 above), 2.

<sup>179</sup> Porter (n 146 above), 5-6.

aftermath of the Zeid report in 2005. In respect of officials and experts on mission, prosecution by their State of nationality may not be possible if the State lacks extra-territorial jurisdiction. Prosecution in the mission host State may also not be feasible where the State lacks resources, legal infrastructure or fails to comply with international fair trial standards. To remedy this, the Draft Convention on the Criminal Accountability of United Nations Officials and Experts on Mission was recommended by Prince Zeid.<sup>180</sup> It has yet to materialize. More than ten years on, it remains stuck in the Sixth (Legal) Committee of the General Assembly<sup>181</sup> and it is unclear whether agreement is likely to be reached as to its contents, or whether sufficient numbers of member states will become signatories to it. The result is that, for some of those committing even the worst acts of sexual exploitation and abuse, the most serious consequences they may encounter is dismissal from employment by the UN.

In respect of military contingents who are unlikely to be covered by the Draft Convention, there is still a flaw in the existing legal arrangements, namely the exclusive jurisdiction of the troop-contributor to investigate and prosecute cases by its personnel.<sup>182</sup> Whilst the Secretary-General's annual reports said little, until recently, about the extent to which troop-contributors prosecuted their military contingents for sexual exploitation and abuse, the

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<sup>180</sup> Zeid, *A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations*, UN Doc. A/59/710, 24 March 2005, para 93.

<sup>181</sup> Secretary-General's 2013 Report (n 42 above), para 37 and Secretary-General's 2016 Report (n 19 above), para 66. See also General Assembly Res. 67/88 (2013) and M. O'Brien, 'Issues of the Draft Convention on the Criminal Accountability of United Nations Officials and Experts on Mission' in N. Quéniwet and S. Shah-Davis (eds), *International Law and Armed Conflict* (The Hague: T.M.C. Asser Press, 2010).

<sup>182</sup> Deen-Racsmány (n 177 above), 332.

suspicion has remained that few perpetrators are subject to disciplinary or criminal proceedings by their home State.<sup>183</sup> In his most recent annual report, the Secretary-General proposed that peacekeeping host states be provided with a subsidiary jurisdiction, allowing them to prosecute in cases where the troop-contributor is unwilling,<sup>184</sup> although whether that will garner political support from the member states remains to be seen. In light of the delays affecting the Draft Convention, it might be unlikely. Moreover, it does not address the difficulty of host states that are logistically unable to try such cases or would not provide a fair trial.

In the meantime, the Security Council has endorsed the Secretary-General's new position that entire military or police units should be repatriated where that is 'credible evidence' that sexual exploitation and abuse is 'widespread or systemic', and that such units may be replaced where the troop or police contributor fails to investigate or prosecute cases.<sup>185</sup> Yet, these proposals notwithstanding, the counter-narrative from the UN's annual reports that the 'zero-tolerance' policy is proving successful distracts public attention and deflects criticism from the limitations of the law.<sup>186</sup> The need for legal reform to tackle this 'accountability

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<sup>183</sup> Information about whether a case was referred for criminal prosecution or what action was taken by the troop-contributor was added to the UN's 2016 annual report: Secretary-General's 2016 Report (n 19 above), Annexes III, IV and V.

<sup>184</sup> Secretary-General's 2016 Report (n 19 above), para 97.

<sup>185</sup> Security Council (n 119 above), para 1 and 2.

<sup>186</sup> See Burke (n 105 above); Deen-Racsmány (n 177 above); Z. Deen-Racsmány, 'Exclusive' Criminal Jurisdiction over UN Peacekeepers and the UN Project(s) on Criminal Accountability: A Self-Fulfilling Prophecy?' Grotius Centre Working Paper 2014/029-Psl (2014); M. Odello, 'Tackling Criminal Acts in Peacekeeping Operations: The Accountability of Peacekeepers' (2010) 15(2) JCSL 347; G. Simm, 'International Law as a Regulatory Framework for Sexual Crimes Committed by Peacekeepers' (2011) 16(3) JCSL 473; S.

deficit'<sup>187</sup> has reduced urgency when the number of allegations appears in the data to be diminishing. After all, if sexual exploitation and abuse is only a 'small problem' which seems to be going away, then there is less incentive to expend political will attempting to develop new policies and legal avenues for accountability. In particular, the Secretariat's claims about the success of 'zero tolerance' leaves the member states absolved of the responsibility for undertaking these reforms.

This latter consequence is exacerbated because the UN's reporting, until recently, deliberately omitted statistics on the nationality of those accused of sexual exploitation and abuse, allowing police- and troop-contributors to remain anonymous. It is interesting here to note Foucault's argument that historically statistics 'were considered as secrets of power not to be divulged'.<sup>188</sup> Until 2016, the identity of troop and police-contributors whose personnel commit sexual exploitation and abuse was the UN's secret. Although never stated explicitly, it is assumed that the unwillingness to name these states stemmed from the political muscle wielded by contributors in providing peacekeepers to UN missions in a context of shortages.<sup>189</sup> This stands in contrast to the recommendation of the Zeid Report that

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Wills, 'Continuing Impunity of Peacekeepers: The Need for a Convention' (2013) 4(1) *Journal of International Humanitarian Legal Studies* 1.

<sup>187</sup> S Chesterman 'Globalization Rules: Accountability, Power, and the Prospects for Global Administrative Law' (2008) 14 *Global Governance* 39, 42.

<sup>188</sup> Foucault (n 144 above), 275.

<sup>189</sup> Chesterman (n 188 above), 43; K. Grady, 'Sexual Exploitation and Abuse by UN Peacekeepers: A Threat to Impartiality' (2010) 17(2) *International Peacekeeping* 215, 219.

contributors who fail to address sexual exploitation and abuse should be so-called named and shamed.<sup>190</sup>

In 2013, the Secretary-General committed to producing ‘country-specific data’ for his report in 2015<sup>191</sup> but such commitment seems to have wavered in the face of political opposition. Instead, in the 2015 report, it was explained that, ‘[w]ith a view to doing so in future reports, the Secretary-General expects to further discuss this matter with Member States.’<sup>192</sup> The policy of ‘name and shame’ was, however, resurrected after the recent allegations involving peacekeepers in the Central African Republic made headlines again.<sup>193</sup> Meanwhile, the Office of Internal Oversight Services controversially added its voice to the call for ‘naming and shaming’. It released publicly, for the first time, Department of Field Support ‘data from 2010 to 2013 showing substantiated SEA allegations against’ named member states. Sixty-four substantiated allegations were recorded against 31 identified troop-contributors.<sup>194</sup> Yet, this data does not appear to match that from the Secretary-General’s annual reports. From the disjointed information provided to the General Assembly for the same period, it seems possible to uncover only 42 substantiated allegations involving military contingent

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<sup>190</sup> Zeid, (n 181 above), para 82.

<sup>191</sup> Secretary-General’s 2013 Report (n 42 above), para 25. See also Secretary-General’s 2014 Report (n 43 above), para 33.

<sup>192</sup> Secretary-General’s 2015 Report (n 42 above), para 55. See also Office of Internal Oversight Services (n 86 above), 12.

<sup>193</sup> The Guardian (n 177 above). See also R. Boom, ‘Impunity of Military Peacekeepers: Will the UN Start Naming and Shaming Troop Contributing Countries?’ (2015) 19(25) *ASIL Insights*, at <https://www.asil.org/insights/volume/19/issue/25/impunity-military-peacekeepers-will-un-start-naming-and-shaming-troop> (last accessed 28 June 2016).

<sup>194</sup> Office of Internal Oversight Services (n 86 above), 12-13.



personnel.<sup>195</sup> Finally, in the 2016 annual report, the Secretary-General for the first time documented the nationality of military and police personnel subject to allegations (although not civilian staff),<sup>196</sup> and committed to do so for future years, including for allegations ‘reported prior to 2015’.<sup>197</sup> The question which follows is what the consequences for recalcitrant States will be, and whether they should be blacklisted from making future contributions. The Secretary-General recently recommended that states identified in his conflict-related sexual violence reports should not be permitted to provide troops or police to peacekeeping missions<sup>198</sup> but has not gone quite as far in the annual reports on sexual exploitation and abuse. Instead, the Security Council has requested the ‘Secretary-General to assess whether a Member State has taken the appropriate steps to investigate, hold accountable and inform him of the progress of its investigations when determining whether that Member State should participate in other current or future United Nations peacekeeping operations’.<sup>199</sup> With increasing numbers of peacekeepers deployed to increasingly complex environments, the UN Secretariat will now have to decide whether to bite the hand that feeds them.

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<sup>195</sup> See ‘Updated information on all allegations, as reported to the Office of Internal Oversight Services between 1 January 2010 and 31 December 2013, involving personnel in field missions supported by the Department of Field Support – as at 31 December 2014’ at <https://cdu.unlb.org/LinkClick.aspx?fileticket=fPIveoD9SBk%3d&tabid=93&mid=480> (last accessed 28 June 2016).

<sup>196</sup> Secretary-General’s 2016 Report (n 19 above), Annexes IV and V.

<sup>197</sup> Secretary-General’s 2016 Report (n 19 above), para 40.

<sup>198</sup> UN Secretary-General, *Report of the Secretary-General on conflict-related sexual violence*, 20 April 2016, UN Doc. S/2016/361, para 90(d).

<sup>199</sup> Security Council (n 119 above), para 3.

## Conclusion

Statistics are often deployed as impartial, accurate and authentic reflections of social reality. As Ward, explains, '[t]o many an untrained eye, figures convey a form of truth that is uncontested and incontrovertible. People regard data as facts and assume that statistics represent reality. They view statistics as a neutral, sanitized, and objective expression of an unseen truth'.<sup>200</sup> Statistics are therefore taken to be the numerical expression of an identified social phenomenon. In quantifying and classifying data, authors 'generate an appearance of scientific objectivity and methodological rigour'<sup>201</sup> in which the data appears reliable and apolitical.<sup>202</sup> This neutral and objective appearance is one of the explanations for the 'burgeoning production and use of indicators in global governance' across a vast swathe of areas.<sup>203</sup> As we have seen, the unreliability of the UN's data calls into question the extent to which inferences from it can be substantiated. However, whilst the UN's data is flawed, this is not, ultimately, a call for the production of 'better' data. Regardless of their quality, these statistics about sexual exploitation and abuse cannot be apolitical. The process of collating and disseminating these statistics necessarily requires the concept being studied to be labelled, simplified and ambiguity absorbed. The collection and presentation of the statistics therefore results in increased influence for those with 'expert' knowledge about how to do this, ensures that the space for contestation is diminished, and undermines the pressure for legal reform.

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<sup>200</sup> M. Ward, *Quantifying the World: UN Ideas and Statistics* (Bloomington, USA: Indiana University Press, 2004), 24-25. See also Merry (n 94 above), S89.

<sup>201</sup> Löwenheim (n 143 above), 258. See also Jerven (n 95 above), 4; Merry (n 94 above), S84 and S89.

<sup>202</sup> Davis et al (n 32 above), 18; Merry (n 94 above), S84.

<sup>203</sup> Davis et al (n 32 above), 4 and 18; Krever (n 98 above), 134-137.

As we have seen, the manipulation of data in this manner is a ‘technology’ of global governance with implications for the exercise of power in international relations. The UN Secretariat’s political authority, its relationship with member states, the impetus for new legal arrangements and the allocation of economic resources are all affected by these statistics. Increasingly, academic attention is being paid to efforts to enhance the accountability of global governance, whether by legal mechanisms or other means.<sup>204</sup> An aspect of this is growing ‘questions regarding accountability and legitimacy’<sup>205</sup> of indicators and those that produce them, combined with calls for their regulation. To this end, the UN’s statistics on sexual exploitation and abuse are a useful warning about the risks of seeking to improve accountability by ‘pray[ing] to false gods that offer quantitative certainty’.<sup>206</sup> The initial reason for UN data collection on sexual exploitation and abuse was part of an attempt to increase the accountability of the organisation by monitoring the extent to which its personnel engaged in (what it deemed) exploitative and abusive behaviour with locals in peacekeeping host States. The consequence was that the UN Secretariat became responsible for measuring its own internal phenomenon, collecting data about itself and producing statistics on the conduct of its own personnel, whether directly employed or acting under its command. This is unusual because indicators established by international organisations, States or non-governmental organisations more commonly measure behaviour by, or features of, other States or private individuals. Research on indicators as an exercise in global governance has, in general, focused on the indicators which purport to measure phenomenon external to the

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<sup>204</sup> Krisch and Kingsbury (n 95 above), 5-8. See also B. Kingsbury, ‘The Concept of “Law” in Global Administrative Law’ (2009) 1 *EJIL* 23.

<sup>205</sup> S. Cassese and L. Casini, ‘Public Regulation of Global Indicators’ in Davis et al (n 32 above), 466.

<sup>206</sup> D. Bederman, ‘Constructivism, Positivism, and Empiricism in International Law’ (2000-1) 89 *Georgetown Law Journal* 469, 469.

entity undertaking the measurement. But the landscape is more complex than this. Whilst the Secretary-General's annual reports have external effects (for example, in seeking to promote the UN's authority to member states, communities in peacekeeping host States, the media and the public at large), they are also an attempt at self-regulation. The UN is here charged with collecting the data and setting the standards in respect of a phenomenon created by the conduct of its own personnel. The obvious conflict of interest here, arguably leading the UN to project false confidence in the data, seems to have passed by largely unnoticed.

As this article has shown, as an attempt to ensure accountability, the statistics have suffered the same weaknesses found in other indicators which simplify a complex social phenomenon, losing ambiguity and nuance. Worse, criticism of the UN's 'zero tolerance' policy is muted in the face of statistics which are presented to demonstrate that the 'problem' is decreasing and therefore the policy is 'working' – a policy the Deschamps Review described as having 'had little effect'.<sup>207</sup> Similarly, the role of law in addressing sexual exploitation and abuse – and the responsibility of member states in this regard – appears diminished. The need for legal reform seems less pressing in light of statistics which purport to show limited numbers of allegations which are now falling year-on-year. This is particularly ironic given that the initial request by the General Assembly that the data be collected arose out of concerns that perpetrators of sexual exploitation and abuse could behave with impunity. In this case, the search for more accountability may have resulted in less.

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<sup>207</sup> Deschamps et al (n 31 above), 16.

This is the version of the article accepted for publication in *Modern Law Review* Vol. 79, (6) published by Wiley:

[http://onlinelibrary.wiley.com/journal/10.1111/\(ISSN\)1468-2230/issues](http://onlinelibrary.wiley.com/journal/10.1111/(ISSN)1468-2230/issues)

Accepted version downloaded from SOAS Research Online: <http://eprints.soas.ac.uk/23064/>

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