

Dr Noëlle Quénivet – Written evidence (SVC0012)

I welcome the opportunity to comment on the issue of sexual violence in conflict. In my submission detailed below I focus primarily on matters relating to the international policy agenda and the sexual violence perpetrated by peacekeeping personnel.

First I believe that the reporting system established by the Convention on the Elimination of all Forms of Discrimination against Women could be successfully used to monitor States' compliance with the G8 and UN declarations if the Committee were to interpret the General Recommendation No 30 in a broad manner. Alternatively, the UK could support the creation of a Working group on Sexual Violence in Armed Conflict, emulating from the success of the Working Group on Children and Armed Conflict. Such a Working Group could make use of and build upon the current Monitoring, Analysis and Reporting Arrangements so as to review State's compliance with amongst other instruments the G8 and UN declarations. In the case of a violation, the Working Group could refer the matter to the UN Security Council, the International Criminal Court or the relevant Sanctions Committees as well as support the Secretary-General in drawing the list of parties that are credibly suspected of committing or being responsible for patterns of rape or other forms of sexual violence.

Second, despite the zero-tolerance policy of the United Nations, and good progress shown in the last few years, sexual violence perpetrated by peacekeeping personnel remains a significant problem. With regard to UN Staff and Experts I suggest that State whose nationals have had credible allegations confirmed against them be obliged to provide information to the United Nations on the measures adopted towards such individuals. If the acts are of a criminal nature than the UN should consider waiving immunity for a trial in the courts of the host State, but maintain immunity for the verdict should the trial not comply with human rights standards. In relation to national contingents I recommend that joint United Nations-troop-contributing countries (TCCs) investigation teams be the norm and that, if allegations are substantiated, the team recommendation, including criminal prosecution, be implemented by the TCC without delay. Further I would support a 'naming and shaming' list of TCCs that do not collaborate with the United Nations by failing to either investigate the allegations or report the measures adopted within a certain timeframe. Also commanders' responsibility should be strongly emphasised and in fact reinforced by requiring them to respond to such allegations.

The international policy agenda

1. What evidence is there on the effectiveness of the UK's engagement to date, with the global policy agenda on preventing sexual violence in conflict?

a. How can the commitments and aspirations set out in documents such as the G8 Declaration on Preventing Sexual Violence in Conflict and the UN General Assembly Declaration of Commitment to End Sexual Violence in Conflict be coordinated and monitored?

1. As a matter of introduction I would like to explain our understanding of the terms 'coordinated and monitored' as used in the question. Coordination involves a single body or mechanism responsible for the collation of information, oversight of activities, etc whilst monitoring denotes the active involvement of a body or mechanism in examining

information provided by States. In contrast reporting relates to the obligation of States to provide such information to the body and/or mechanism. Usually both reporting and monitoring mechanisms involve some form of commentary and recommendations by the body/mechanism after reviewing the information.

2. Generally, when looking at options to coordinate and monitor a set of commitments, there are two main options: the first one is to use a mechanism that is already in place and the second is to devise a new mechanism and often thereby establish a new monitoring body.

3. The main established mechanism I believe could be used is the reporting system under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). According to Article 18 States are obliged to report to a specifically dedicated Committee on how they fulfil their obligations. The legal basis of reporting on the commitments under the G8 Declaration and UN Declaration could be General Recommendation No. 30 which focuses on armed conflict and other situations of a similar nature (encompassing internal violence not reaching the threshold of an armed conflict, peacebuilding, post-conflict reconstruction, etc.). General Recommendation No. 30 obliges States to report which steps they have adopted to prevent, investigate and punish sexual violence.¹ Both declarations encourage States to adopt measures to this effect. Thus the Committee could request information on the implementation of G8 Declaration and the UN Declaration in the same way as it currently requests information on the Women, Peace and Security resolutions of the United Nations Security Council. Indeed, paragraph 83 of General Recommendation No. 30 requires States to provide information on their compliance 'with any agreed United Nations benchmarks or indicators developed as part of that agenda'.

4. The UN Declaration could, alongside the global indicators on women, peace and security,² be considered as a United Nations benchmark. However, two issues need further attention. First the UN Declaration and the G8 Declaration cover issues that go beyond women, peace and security as they refer to sexual violence against men and boys. However even if States were to report only on sexual violence against women and girls, this should be viewed as progress. Second, although UN benchmarks have so far been set by the United Nations Security Council they are not legally binding as they were not adopted under Chapter VII of the UN Charter; in this regard their legal nature is not fundamentally different from the UN Declaration or the G8 Declaration. If that is viewed as too big a hurdle to jump, at the very least the States (122 at the moment) that have endorsed the UN Declaration and the G8 States should be asked to report on how they are fulfilling their commitments or attempting to meet these political commitments. In the long term such an approach might assist in transforming the UN Declaration and the G8 Declaration into legally binding documents of customary nature.

5. Besides the advantage of using an existing mechanism, it should be mentioned that nearly all States (189) have ratified the Convention and are thus familiar with their reporting duties

¹ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations*, UN Doc CEDAW/C/GC/30, 18 October 2013, paras 34-38.

² United Nations Security Council, Resolution 1889 (2009), UN Doc S/RES/1889 (2009), 5 October 2009, para 17.

under CEDAW, having established a fairly good relationship with the Committee. Further the Committee is able at the next reporting cycle to verify that a State has taken on board the recommendations by the Committee. This cycle of monitoring and reporting no doubt encourages States to improve on their behaviour and ultimately adjust their acts with a view to complying with their obligations.

6. There are two main disadvantages of using the CEDAW Committee though. First, it is not a coordination but a reporting body. Second, it focuses only on women as the thrust of CEDAW is that violence against women and girls is a form of discrimination stemming from gender inequalities.³ In contrast, both the G8 Declaration and the UN Declaration cover sexual violence perpetrated against any individual, irrespective of his/her gender.

7. Rather than crafting a completely new mechanism it might be possible to emulate from a success story. In 2005 the UN Security Council passed resolution 1612 which set up the Working Group of Children and Armed Conflict to which the newly crafted Monitoring and Reporting Mechanism (MRM) on grave violations against children in armed conflict reports.⁴ Such a mechanism has to a certain extent been successful. Alike the MRM, this new Sexual Violence in Armed Conflict (SViAC) mechanism could operate at three levels: the country, the UN headquarters (Secretary-General and Special Representative on Sexual Violence in Armed Conflict) and 'destinations of action' (UN Security Council, International Criminal Court, Sanction Committees or other institutions the Working Group considers as suitable enforcement mechanisms).

8. Interestingly, there is already a Monitoring, Analysis and Reporting Arrangements (MARA) established under UN Security Council resolution 1960 which at the moment does not seem to have much visibility and could become central to this new mechanism. It could act as a relay, providing systematic and reliable information that is then fed not only into the reports of the Special Representative on Sexual Violence and the Secretary-General but also in country reports to be reviewed by a Working Group on SViAC which would appraise the situation and progress made in the implementation of the 1) time-bound commitments made by the parties to the conflict⁵ and 2) National Action Plans implementing resolution 1325, which serve as guiding national policy documents. The United Nations, and especially the Special Representative of the Secretary General on Sexual Violence, could push for States parties to reiterate their commitments undertaken under the G8 and UN Declarations or commit to its provisions, be it in the time-bound commitments or in the National Action Plans. In fact the G8 Declaration clearly refers to her as the person who can 'build coherence and coordination in the UN's response to sexual violence in armed conflict through UN Action against Sexual Violence in Conflict as well as her focus on national ownership and responsibility'.⁶ I do not see any objections to requiring non-State parties to commit to the UN Declaration as the wording of the Declaration can be so interpreted as to apply to non-State actors too. As the Secretary-General explained 'we now focus our collective efforts on converting these political commitments into concrete actions'.⁷

³ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 on Violence against Women*, UN Doc A/47/38, 29 January 1992.

⁴ United Nations Security Council, Resolution 1612 (2005), UN Doc S/RES/1612 (2005), 26 July 2005.

⁵ United Nations Security Council, Resolution 1960 (2010), UN Doc S/RES/1960 (2010), 16 December 2010, para 5. See also UN Security Council, Resolution 2106 (2013), UN Doc S/RES/2106 (2013), 24 June 2013.

⁶ G8 Declaration, para 2.

b. How can States be held accountable to the commitments they made at the 2014 Global Summit to End Sexual Violence in Conflict?

9. In law, accountability is viewed in terms of State responsibility and such State responsibility can only occur if the obligations upon the State are legally binding. Neither the Commitments made at the 2014 Global Summit nor the ones enumerated in the G8 Declaration are legally binding which means that States cannot be held legally responsible for failing to abide by them. In this light I understand the term accountability to denote the ability of a body/mechanism to comment on whether States have complied with their commitments, not whether they can be brought to court for failure to comply with their international law obligations.

10. As explained earlier, I believe that the establishment of a UN Working Group on SViAC would enable a system whereby States are held accountable to their commitments. Under the current system of MARA it is the task of the Secretary-General to track and monitor the implementation of such commitments. A working group would be more suited for this task. It could also write its Conclusions and make recommendations to the parties to the conflict as well as the destinations of action that include the Security Council. The system would thus be part of the wider Women, Peace and Security agenda. This does not in any way impact on the annual reports by the Secretary-General; on the contrary, the Secretary-General could rely on the Working Group on SViAC to monitor compliance with the commitments (including the UN Declaration) which would assist him/her in drawing the list of parties that are credibly suspected of committing or being responsible for patterns of rape or other forms of sexual violence, as encouraged by Resolution 1960⁸ as well as removing such parties from the list.

11. Besides the Security Council as a possible destination of action, the Working Group could also refer matters to the various Sanctions Committees of the Security Council. Rather than the Special Representative encouraging each Sanction Committees to impose sanctions, the Working Group could bring more consistency and systematicity into the system. Of course the Special Representative should continue her excellent work of briefing sanctions committees, as called upon by the UN Security Council in Resolution 1960.⁹

c. How can the UK use its position as a permanent member of the UN Security Council to advance the global policy agenda on preventing sexual violence in conflict, for example, through the UK's input to the Security Council's High-level Review of Resolution 1325?

12. First, the UK could transform the UN or G8 declarations into United Nations Security Council resolutions that are part of the wider women, peace and security agenda. Although the title refers to women, the United Nations has espoused a broader view, including men and boys in the Secretary-General reports on conflict-related sexual violence.¹⁰ The

⁷ United Nations Secretary-General, *Report on Conflict-related Sexual Violence*, UN Doc S/2014/181, 13 March 2014, para 10.

⁸ UNSC, Resolution 1960 (2010), (n 5), para 3.

⁹ UNSC, Resolution 1960 (2010), (n 5), para 7.

¹⁰ Reports are based on the implementation of four resolutions. United Nations Security Council, Resolution 1820 (2008), UN Doc S/RES/1820 (2008), 19 June 2008; United Nations Security Council, Resolution 1888 (2009), UN Doc S/RES/1888 (2009), 30 September 2009; UNSC, Resolution 1960 (2010), (n 5); United Nations Security Council, Resolution 2106 (2013), UN Doc S/RES/2106 (2013), 24 June 2013.

resolution does not need to be adopted under Chapter VII and thus be legally binding. Indeed, experience demonstrates that resolutions adopted under Chapter VI, such as those in the context of the protection of children in armed conflict, can be as effective as legally binding ones.

13. As the UK is well regarded in the United Nations as the initiator of the G8 and UN declarations it has a certain leverage that other States do not have. It might therefore be in a position to enter into a dialogue with the CEDAW Committee and ask it to include these declarations into the review of national reports. It could also path the way by doing it itself when submitting its next report in July 2017.

14. If the UK believes that a new mechanism, such as the Working Group on SViAC, is warranted, then it will have to take the lead in setting it up via a United Nations Security Council resolution. In this case the UK will be able to use its position as a permanent member of the Security Council by proposing and supporting such a mechanism. Also, at a later stage when situations will be referred to it by the Working Group the UK could push for resolutions to be adopted and thereby ensure that the mechanism is a success.

Peacekeeping

8. How do we ensure that international peacekeepers are held to the highest standards and that any perpetrators of sexual violence and/or exploitation are held to account?

15. Following the revelation of sexual violence perpetrated by peacekeepers in the Central African Republic, Ban Ki Moon has reiterated the zero-tolerance policy of the United Nations with regard to sexual violence. As he stressed in his latest report ‘a single substantiated case of sexual exploitation or sexual abuse involving United Nations personnel is one case too many’.¹¹ The problem is sadly not new. After trying to seize the extent of the problem the Secretary-General issued the 2003 Bulletin ‘Special Measures for Protection from Sexual Exploitation and Sexual Abuse’.¹² The 2008 report prepared by the now UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, further recommended an array of measures to curb the problem, most of which were adopted by the UN General Assembly.¹³ Whilst there has been a decline in the number of allegations that might be explained by the implementation of the Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel a number of problems remains as shown by the 2015 Evaluation Report of the Office of Internal Oversight Services (OIOS).¹⁴ I will focus here on two issues (all within the enforcement pillar of the sexual exploitation and abuse (SEA) policy): the lack of common standards applicable to all those involved in peace operation missions and thus the inability of the United Nations

¹¹ United Nations Secretary-General, *Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc A/69/779, 13 February 2015, para 1. [hereinafter UNSG 2015 Report]

¹² Secretary-General’s Bulletin, *Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc ST/SGB/2003/13, 9 October 2003.

¹³ United Nations General Assembly, *Resolution: United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel*, UN Doc A/RES/62/214, 7 March 2008.

¹⁴ Office of Internal Oversight Services – Inspection and Evaluation Division, *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, para 7. [hereinafter OIOS Report]

to take action and the lack of power of the United Nations to prosecute those perpetrating sexual crimes.

16. Depending on the status of individuals working in peace operations, different sets of rules apply to them. For example UN officials are bound by the UN Staff Regulations and Rules that are complemented by the Secretary-General bulletins (including the 2003 Bulletin). The standards on SEA have been extended to UN experts. As a result, allegations of SEA-related offences made against UN staff and personnel deployed with the status of experts on mission (police personnel and military observers) can be investigated by the OIOS. Where allegations are confirmed, the United Nations can take disciplinary action against its own staff. In the case of experts on mission the United Nations can repatriate the individuals concerned and prevent them from taking part in future peace operations but disciplinary or other types of measures can only be actioned by the relevant Member States which will be alerted by the OIOS. There is however no obligation on States to provide information on actions taken though a number of States do. Our recommendation is that in all cases (UN staff and personnel as well as UN experts) the State of nationality should be informed of the confirmed allegations and be asked to report on the adopted measures, in line with the standards applicable to national contingents. In this view I support the UN Secretary-General's recommendation that Member States commit to a six-month timeline for completing investigations.¹⁵

17. As for military and civilian police members of national contingents, they are bound by their own national laws. The 2009 Memorandum of Understanding¹⁶ signed between the United Nations and the troop-contributing country (TCC) makes the UN standards of conduct (eg the 2003 Bulletin) of conduct binding on such personnel. With regard to investigation the Model Status-of-Forces Agreement¹⁷ grants the troop-contributing state exclusive jurisdiction over such members when crimes are committed on the territory of the host state. In addition, under the 2009 Memorandum of Understanding,¹⁸ the latter has the primary responsibility to investigate alleged cases of sexual violence by its military personnel. It is left to States to investigate allegations and take disciplinary or any other measures. As the largest number of allegations involve military personnel¹⁹ this issue needs to be tackled as a matter of urgency. Investigations are carried out by national investigation officers of the troop-contributing countries, the OIOS being relegated to a role of preserving the evidence prior to the TCC investigation or investigative and logistical support to investigations conducted by the TCC. That being said, the OIOS and field missions do conduct investigations where troop-contributing countries do not act. Whilst I understand that national contingents have to follow their national laws the consequence is that military personnel in the same mission are subjected to different levels of willingness to investigate. I thus recommend that joint United Nations (either OIOS or field missions) and troop-

¹⁵ UNSG 2015 Report, (n 11), para 48.

¹⁶ Memorandum of Understanding between the United Nations and [Participating State] Contributing Resources to [the United Nations Peacekeeping Operation], Chapter 9 in UN Doc. A/C.5/63/18, 29 January 2009, Article 7bis. [hereinafter MoU]

¹⁷ United Nations Secretary-General, *Comprehensive Review of the Whole Question of Peace-keeping Operations in all Their Aspects: Model Status-of-Forces Agreement for Peace-Keeping Operations*, UN Doc A/45/594, 9 October 1990, Annex. [hereinafter Model SOFA]

¹⁸ MoU, (n 16), Article 7 quinquies.

¹⁹ OIOS Report, (n 14), page 9.

contributing countries investigations be the norm. I support the UN Secretary-General's proposal to create a team tasked with responding to SEA-related allegations, comprising of officers from the TCC.²⁰ This team should however not only take care of the initial response and support the process, as suggested by the UN Secretary-General, but also carry out the full investigation, possibly using the International Protocol on the Investigation and Document of Sexual Violence in Conflict. If the allegation is substantiated, the panel could recommend appropriate sanctions that would then have to be applied by the troop contributing country using its national laws.

18. At the moment the only way for the United Nations to ensure some form of accountability is that the troop-contributing country is obliged to report to the United Nations on the outcome of the investigation and the actions taken. It appears that States are increasingly collaborating with the United Nations as the last few years have shown an increased number of notifications to the UN Secretariat of measures adopted by national authorities. As suggested by the 2015 OIOS report I support the adoption of a strict timeline regarding the completion of the investigations,²¹ the UN Secretary-General having proposed a deadline of six months.²² This would no doubt speed up the investigations (unless there are serious reasons for failing to comply with the timeline). This however does not solve the problem of non-responsive States (despite regular follow-up). I thus believe that a naming and shaming policy as suggested in Recommendation 5 of the OIOS report²³ and the Secretary-General in his 2013²⁴ and 2015²⁵ reports be put in place. The annual Special Measures Protection from SEA report of the Secretary-General should indeed identify failure to initiate or complete SEA allegations and report measures adopted by the troop-contributing country. In its 2015 report the UN Secretary-General has also referred to a number of options to strengthen accountability.²⁶ I believe that payments to States that are named and shamed in for example three such reports and thereby display a pattern of non-compliance should be reduced or suspended until action is taken by the States. Many developing States send troops because the United Nations is generous in its payments. Yet, to avoid reaching this point, the United Nations should engage in a constructive discussion with the troop-contributing countries and offer them amongst others further training on the UN zero-tolerance policy.

19. The type of measures imposed on individuals found to have committed SEA-related acts must be questioned too. The most commonly used measure is dismissal from service for UN staff, and disciplinary repatriation, usually combined with disbarment from future peace operations, for UN experts.²⁷ Although the investigation concludes that the allegations are credible UN inquiries never lead to anything more serious than a dismissal even if such acts are of a criminal nature.²⁸ This is due to the fact that the United Nations lacks an internal

²⁰ UNSG 2015 Report, (n 11), paras 44-46.

²¹ OIOS Report, (n 14), para 69.

²² UNSG 2015 Report, (n 11), para 48.

²³ OIOS Report, (n 14), page 28.

²⁴ United Nations Secretary-General, *Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc A/67/766, 28 February 2013, para 25.

²⁵ UNSG 2015 Report, (n 11), para 55.

²⁶ UNSG 2015 Report, (n 11), paras 54 and 64.

²⁷ OIOS Report, (n 14), Figure 5 and paras 35-38.

²⁸ According to the latest UN Secretary-General report, 35% 'of the number of allegations involved the most

criminal justice system. Prosecution of UN staff and experts is left to the host state or the State of nationality of the offender. It is often not possible for the host State to prosecute as United Nations personnel engaged in peace operations enjoy immunities with regards to local laws.²⁹ Furthermore, experts on mission are by virtue of the Model SOFA³⁰ protected by the Convention on the Privileges and Immunities. Immunities however are only conferred for acts undertaken in official capacities and thus should not affect prosecution for criminal acts of sexual exploitation and abuse. Yet, in practice, an immunity waiver is sought. I share the concern of the United Nations that as peacekeeping personnel are usually deployed in states with inadequate legal and judicial systems, due process and human rights standards might not be guaranteed to UN personnel when standing trial in national courts. Thus prosecution in the host State is questionable. Two solutions are possible. First, such individuals could face prosecution in their home State. With this view the UN General Assembly has urged States to establish jurisdiction over crimes committed by their nationals when deployed on UN missions³¹ and the UN to facilitate the use of information and material for the purpose of criminal proceedings.³² Yet, there is no obligation for these States to take action though they are expected to 'prosecute credible allegations of criminal offences brought to their attention by the Secretariat'.³³ An international convention on the accountability of UN personnel and an obligation on States to report on the outcome of the investigation would be welcome.³⁴ Alternatively, I suggest that the United Nations, when it waives the immunity of its personnel, only does so for the trial itself but not the outcome and requires that a member of the aforementioned investigation team observe the trial. Should the member believe that the human rights of the accused have been breached, the United Nations could refuse to waive the immunity for the enforcement of the punishment. The advantage of such a system is that the suggestion for appropriate sanctions made by the panel would be taken into consideration whilst the human rights of the UN personnel safeguarded. Concurrently the rights and ability of the State to prosecute territorial crimes, as stipulated in the Status of Forces Agreement, would be preserved. Furthermore, it would also demonstrate that justice is been done, thereby setting out a precedent and hopefully deterring further crimes. Indeed the local population would be aware that such behavior is totally unacceptable. Moreover, it would ensure conformity in the criteria applied and not be dependent on the State whose national has committed the crime.

20. With regard to national contingents, the laws of their home country are applicable which means that, when warranted, criminal sanctions can be imposed. I welcome the fact that prison terms can be imposed as some of the sexual acts committed by military personnel are crimes and should be treated as such. Whilst the national authorities report

egregious forms of sexual exploitation abused', ie sexual activities with minors and non-consensual sex with persons aged 18 or older. UNSG 2015 Report, (n 11), para 8.

²⁹ Convention on Privileges and Immunities of the United Nations, 13 February 1946, 1 UNTS 15.

³⁰ Model SOFA, (n 17), Article 26.

³¹ United Nations General Assembly, *Resolution 66/93: Criminal Accountability of United Nations Officials and Experts on Mission*, UN Doc A/RES/66/93, 13 January 2012, para 3.

³² *Ibid*, para 11.

³³ UNSG 2015 Report, (n 11), para 93.

³⁴ See Draft Convention on Criminal Accountability in United Nations Secretary-General, *Ensuring the Accountability of United Nations Staff and Experts on Mission with Respect to Criminal Acts Committee in Peacekeeping Operations*, UN Doc A/60/980, 16 August 2006, Annex III.

to the UN Secretary-General on the measures adopted following an investigation the local population is not aware that such crimes are examined and/or are treated seriously. For this reason I support the proposal that, whenever appropriate, courts martial be used for military personnel in peacekeeping missions.³⁵ It would have the twin effects of promoting accountability and improve (if not create) transparency; in other words, it would enhance the visibility of the actions taken by the national contingents and show a true zero-tolerance policy in action. As the saying goes 'justice must be seen to be done'. Further it would act as a deterrent to other personnel of the contingent and, as words would spread, to members of other national contingents.

21. I also believe that the principle of command responsibility should be used in a more constructive fashion all the more as it is anchored in military law and international humanitarian law. It should be noted that the responsibility of commanders is also relevant in other areas of international law, such as State responsibility. For example, as early as 1976 the European Commission of Human Rights found that as a result of commanders having taken inadequate measures to prevent sexual violence and failed to take any disciplinary measures following the events, the rapes could be imputable to the State.³⁶ First, as suggested by the OIOS report,³⁷ I support the idea that communications on sexual offences allegations be sent to the contingent commanders rather than the capital. The State should, of course, be included in the communication but it should be the commander's duty to respond to such allegations. Whether he waits to be instructed by his State before initiating an investigation should be left to national preferences but the point is that I believe that such a system would make him clearly understand that it is his responsibility to ensure that his troops are behaving in an appropriate manner. It reinforces the view that the commander is, as the 2009 Memorandum of Understanding stipulates in Article 7ter, 'responsible for the discipline and good order of all members of the contingent'. There is no doubt that the accountability of contingent commanders has not been sufficiently stressed and acknowledged. In a military environment where hierarchy is ever-present, the role of a commander is of utmost importance and I should use this opportunity to ensure that troops do not act in contravention of the zero-tolerance policy of the United Nations. As the UN Secretary-General explains, failure to exercise effective command and control equates to turning a blind eye.³⁸ Failure of the commanders to take action should as such be reprimanded. The Department of Field Support has actually recognized that command responsibility is an issue and needs to be tackled. It has recommended that a third category of OIOS investigation be introduced, namely failure of commanders to take action.³⁹ As a result their action (or rather their lack thereof) would be recorded in the Misconduct Tracking System and related reporting functions. I believe that the creation of such a category would send a clear message that it is the responsibility of commanders to ensure that their troops comply with the UN zero-tolerance policy. It would act both as a deterrent and a sanctioning mechanism.

17 September 2015

³⁵ OIOS Report, (n 14), para 69 and UNSG 2015 Report, (n 11), para 60.

³⁶ European Commission of Human Rights, *Cyprus v Turkey*, Applications Nos 6780/74 and 6950/75, 10 July 1976, para 373.

³⁷ OIOS Report, (n 14), para 69.

³⁸ UNSG 2015 Report, (n 11), para 51.

³⁹ OIOS Report, (n 14), page 49.