

Accountability of International Organisations

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11th May 2021

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Governance

- The processes of governing
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- Governance: the processes of governing undertaken by the members of a social organisation (government, business enterprise or a network – such as a tribe, a church, etc.)
- Such processes can be formal or informal -- through laws, norms, power structures – and relate to the interaction and decision-making among the actors involved in a collective problem that lead to the creation, reinforcement, and reproduction of social norms and institutions
- A variety of entities (known generically as governing bodies -- made of one individual or groups of individuals, who are elected, appointed or existing by virtue of social norms, personal beliefs, historical traditions and conventions (e.g., the Dalai Lama, the British monarchy, the European Commission, etc.) which are tasked with governing. The most formal is a government – i.e., a body whose sole responsibility and authority is to make binding decisions in a given geopolitical system (such as a state) by establishing laws
- Other types of governing include an organization (such as a corporation, recognized as a legal entity by a government), a socio-political group (such as a labor union) or an informal group of people (such as card players: hence the so called “rules of the game”)
- Governance frameworks are built into relational contracts (e.g., social contract, commercial contract, etc.), establishing mutual roles, responsibilities, rights and obligations, and fostering collaboration among the parties bound by the contract

Principles of Good Governance

- Global governance and actors involved
- Participation
- A large degree of democracy in the decision-making process
- Transparency
- Access to information

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- All actors involved in the exercise of Global Governance must be **legitimate, accountable and effective**, having positive impacts on people's lives, improving living standards, while adopting for themselves and in the exercise of their functions principles of equity, fairness and justice.
- Active participation not only does it imply a direct involvement of all relevant stakeholders in an organization (NB, not only Member States!), but also an **access to its decision-making mechanisms**, in order to guarantee **ownership**.
- Democracy to be implemented through open participation in all the decision-making processes, particularly when the latter are framed within governing bodies of intergovernmental organizations.
- The same for transparency, which has to be a major feature in both the decision-making processes and in the implementation of the ensuing institutional and operational decisions: there is a **close connection between transparency of the decision-making processes and its participatory character** (e.g.: non-plenary organs acting on behalf of all members, or informal consultations as opposed to open meetings discussions)
- Access to information should be open to all potentially concerned and/or affected by the decisions at stake: access to timely relevant information about an organization's activities and policies is vital to ensure that all stakeholders are able to hold an organization to account effectively; **NB: access to information (providing access to documents) is different from transparency (providing access to decision-making processes)**.

Principles of Good Governance (ctd.)

- Accountability (including internal accountability between organs)
- Fairness
- The well functioning of the international civil service
- Sound financial management through adequate accounting standards, by-laws and fair participation in the budgetary process

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- Accountability requires clarity about for whom and on whose behalf the organisation is making and implementing decisions, as well as about who has the power to limit or sanction the organization's work. Until recent years, IGOs were accountable, in the first place, to their Member States → with negative repercussions as poorest nations lack the capacity (or the power) within an organisation to hold it to account effectively and, more importantly, **citizens** are unable to engage effectively with the organisation's decision-making structures. Additionally, IGOs tend to perform an increasing range of tasks that affect many aspects of life and which go beyond their original mission → this "mission creep" makes it difficult to hold an organisation to account according to its stated mandate.
- Fairness could be (a) procedural (legalistic) i.e. the rules and standards of an organisation and the relevant mechanisms necessary for their enforcement should be established in an impartial and predictable way; and (b) substantive, i.e. how equitable the outcomes of an organisation are, as well as the level of equality existing in the distribution of power, influence and resource within that same organisation.
- The International Civil Service, a category by itself, in which the **principles of integrity, impartiality, loyalty to the aims and purposes of the organisation, functional independence and discretion** should be enshrined. In the performance of their duties and in accordance with international law, as considered by the charter/constitution of all IGO's, **international civil servants shall neither seek nor accept instructions from any Government or from any other authority external to the IGO itself**. By being a party to the treaty establishing the IGO, Member States have on their part undertaken to respect the exclusively international character of the responsibilities of the IGO CEO and the staff serving therein and not to seek to influence them in the discharge of their responsibilities.
- Accounting standards should be **clear, transparent, concise** and capable of providing to the layman an immediate understanding of the organisation's financial position (IPSAS vs UNSAS). Financial rules and regulations shall be clear, comprehensive and include rules and standards for the acceptance of voluntary or special-purpose contributions, shall foresee the widest participation of relevant stakeholders in the budgetary process and that budget and financial statements be presented in such a way as to facilitate internal and external audit and accountability.

Principles of Good Governance (ctd.)

- Appropriate reporting monitoring and evaluation mechanisms
- Decision-making process within the governing bodies:
 - Unanimity
 - Majority
 - Weighted Vote
 - Consensus
- Complaint and redress mechanisms

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- Reporting as part of the task **to ensure access to adequate information but also to provide proper evaluation tools**. For an IGO to adopt adequate and transparent mechanisms for the monitoring and evaluation of its policies and projects is fundamental if that organisation is to understand the effectiveness, the impact and the sustainability of its work.
- The governing bodies as the supreme organs to which the organisation reports should be functional, transparent to the point that the adopted voting system so permits (see below).
- In an IGO, the most straightforward way to ensure that all States have a voice in decisions is to enforce the rule of **unanimity** (in this case, each State has a veto power). **Consensus** decision-making avoids voting and therefore requires a less formal expression of agreement among the parties.
- Consensus improves the capacity of the organisation to dispatch its business, but it has negative effects on participation and transparency, as the decisions are taken through informal consultations that involve a limited number of members. The reasoning for the decision is not open to scrutiny by other members: the IGO's governing body is thus not accountable to those member states that were not party to the informal process, even if they are directly affected by the decision taken.
- Complaint & Redress mechanisms are vital aspects of good governance and accountability as they provide all stakeholders (both internal and external), having a genuine complaint about an organisation, the possibility of having that complaint recognized and addressed. Examples: WB's Inspection Panel, UN Office of Internal Oversight Services, ILO Administrative Tribunal. The existence of these mechanisms should also be accompanied with adequate policies aimed at the protection of whistle-blowers.

QUIS CUSTODIET IPSOS CUSTODES?

Juvenal, Satires, 1ST Century AD

Accountability: How Does It Relate to Governance?

- Linking governance and accountability:
 - For each deliberation, action, result obtained by an organisation or omission → existence of accountability mechanisms
 - IOs decisional (governing) bodies, managerial cadre (executives), and the staff: collectively as well as individually, represent and manage the organisation → thus, both collectively and individually they shall be held accountable (i.e., responsible, answerable and liable)

Accountability and the United Nations:
What does that really mean?

- Accountability represents the obligation of the Organisation and its staff members to be answerable for delivering specific results that have been determined through a clear and transparent assignment of responsibility, subject to the availability of resources and the constraints posed by external factors.
- Accountability includes achievement of objectives and results in response to mandates, fair and accurate reporting on performance results, stewardship of funds, and all aspects of performance in accordance with regulations, rules and standards, including a clearly defined system of rewards and sanctions. (UN SG Report A/64/640).

Sixty-fourth session
Agenda item 159
Review of the efficiency of the administrative and financial functioning of the United Nations

Towards an accountability system in the United Nations Secretariat
Report of the Secretary-General

Summary

Accountability represents the obligations of the Organization and its staff members to be answerable for delivering specific results that have been determined through a clear and transparent assignment of responsibility, subject to the availability of resources and the constraints posed by external factors. Accountability includes achievement of objectives and results in response to mandates, but also covers reporting on performance results, stewardship of funds, and all aspects of performance in accordance with regulations, rules and standards, including a clearly defined system of rewards and sanctions.

The present report is submitted in response to General Assembly resolution 63/276, in which Member States requested the Secretary-General to submit a comprehensive report on accountability, including on 11 specific topics. In addition to a proposed definition of the term "accountability", the report includes eight recommendations for strengthening accountability in the United Nations Secretariat, which are presented in the relevant sections and in a complete list at the end of the report. Annex I contains a description of the current accountability system in the United Nations Secretariat. Annex II proposes a detailed plan and road map for the implementation of the enterprise risk management and internal control framework. Annex III provides the response of management to address errors in internal monitoring, inspection and accountability regarding the management of the sub-fund programme.

The Secretary-General requests the General Assembly to endorse the components of the accountability system for the Secretariat as described in the present report and the related measures to increase accountability.

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Séances-ouverture session
Point 159 de l'ordre du jour
Examen de l'efficacité de l'administration
administrative et financière de l'Organisation
des Nations Unies

Élaboration d'un système d'application du principe de responsabilité pour le Secrétariat de l'Organisation des Nations Unies
Rapport du Secrétaire général

Résumé

Le principe de responsabilité est le principe selon lequel l'Organisation et ses fonctionnaires doivent répondre, sous réserve des contraintes extérieures et de la disponibilité des ressources nécessaires, de l'obtention de résultats précis, attendus d'eux après que la responsabilité leur en a été confiée sans ambiguïté et selon des modalités transparentes. Il s'agit d'atteindre les objectifs et d'échouer les résultats dans les mandats, de rendre compte avec objectivité et exactitude des résultats de l'action de gestion des fonds et de se conformer à tous aspects fondamentaux aux règles, règlements et normes, et cela suppose aussi l'existence d'un système de récompenses et de sanctions bien défini.

Tel que demandé par la résolution 63/276 de l'Assemblée générale, dans laquelle les États Membres ont prié le Secrétaire général de présenter un rapport détaillé portant sur 11 questions précises relatives au principe de responsabilité, le présent rapport propose une définition du terme, assortie de huit recommandations concernant le renforcement de l'application de ce principe au Secrétariat de l'ONU; ces recommandations sont présentées dans sa version et intégrées à la fin du document. L'annexe I est une description du système d'application du principe de responsabilité actuellement en vigueur au Secrétariat. L'annexe II est un projet de plan détaillé définissant les étapes à parcourir pour mettre en place le système de gestion des risques de l'Organisation et le dispositif de contrôle interne. L'annexe III indique quelles mesures la direction a prises pour corriger les déficiences constatées dans la gestion du programme «Prêt contre assurance» en vertu de la surveillance interne, des inspections et de l'application du principe de responsabilité.

10-23371 (F) 180210 240210



Sesquicentenario cuarto período de sesiones
Ítem 159 del programa
Examen de la eficiencia del funcionamiento
administrativo y financiero de las Naciones Unidas

Hacia un sistema de rendición de cuentas en la Secretaría de las Naciones Unidas
Informe del Secretario General

Resumen

La rendición de cuentas es la obligación que tienen la Organización y sus funcionarios de responder de la obtención de resultados específicos, determinados previamente mediante una asignación clara y transparente de responsabilidades, con respecto a la disponibilidad de recursos y a las limitaciones impuestas por factores externos. La rendición de cuentas incluye el logro de objetivos y resultados en el cumplimiento de los mandatos, la presentación de informes imparciales y fidedignos sobre los resultados de la gestión, la administración de los fondos y todos los demás aspectos relacionados con el desempeño, de conformidad con las disposiciones, reglas y normas vigentes, incluido un sistema de recompensas y sanciones claramente definido.

Este informe se presenta en cumplimiento de la disposición de la resolución 63/276 de la Asamblea General, en la que los Estados Miembros solicitaron al Secretario General que presentara un informe amplio sobre la rendición de cuentas en el que, entre otras cosas, se abordara 11 aspectos concretos. En el informe, además de una propuesta de definición del concepto de "rendición de cuentas", se incluyen ocho recomendaciones para reforzar la rendición de cuentas en la Secretaría de las Naciones Unidas, que se presentan en las secciones correspondientes y en una lista completa al final del informe. En el anexo I figura una descripción del sistema actual de rendición de cuentas en la Secretaría de las Naciones Unidas. En el anexo II se propone un plan detallado y una hoja de ruta para la aplicación del marco para la gestión del riesgo institucional y el control interno. En el anexo III se presenta la propuesta de la administración para hacer frente a las deficiencias en materia de supervisión interna, inspección y rendición de cuentas respecto de la gestión del Programa "Préstamos por Alzamiento".

El Secretario General solicita a la Asamblea General que haga suyas las componentes del sistema de rendición de cuentas de la Secretaría que se describen en el presente informe y las medidas conexas para mejorar la rendición de cuentas.

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One World Trust: GAP's 4 Dimensions of Accountability

- Transparency and Access to Information
 - *The provision of accessible and timely information to stakeholders and the opening-up of organisational procedures (including those related to decision-making), structures and processes to their assessment;*
- Participation
 - *The process through which an organisation enables key stakeholders to play an active role in the decision-making processes and activities which affect them;*
- Monitoring and Evaluation
 - *The process through which an organisation monitors and reviews its progress and results against goals and objectives; feeds learning from this back into the organisation on an ongoing basis; and reports on the results of the process;*
- Complaints and Redress
 - *Mechanisms through which an organisation enables stakeholders to address complaints against its decisions and actions, and ensures that these complaints are properly reviewed and acted upon.*

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- Founded in 1951, the One World Trust was created by cross-party Members of the UK Parliament who believed global governance can be improved to better protect the interests of all humanity as well as our environment. For over 65 years the Trust has promoted education and research into changes in global governance which would contribute to ending poverty and conflict and increase international understanding and the rule of law.
- In the first decade of the current century, the Trust launched a major new programme on Global Accountability, with funding from the Ford Foundation. Establishing at the outset a new methodology for assessing accountability in global organisations.
- The **Global Accountability Project (GAP)** is part of the Accountability Program at the One World Trust which aims to generate wider commitment to the principles and values of accountability; increase the accountability of organisations to those they affect; and strengthen the capacity of civil society to better engage in decision making processes. GAP was developed in 2001 with the aim of enhancing the accountability of inter-governmental organizations (IGOs), transnational corporations (TNCs) and international non-governmental organizations (INGOs) to the individuals and communities they affect.

The (Ideal) Accountable Organisation

- An accountable organisation takes proactive and reactive steps to address the needs of its key stakeholders while delivering against its mission.
 - It is **transparent** in both its activities and decision-making processes, engaging in ongoing dialogue with key stakeholders over the information they need to make informed decisions;
 - It ensures **participation** of its key stakeholders by engaging them in its decision-making processes related to policies and practice;
 - It **evaluates** performance, policies and practice in consultation with its key stakeholders and, importantly, it learns from, and reports on, the outputs of these evaluations.
- If an organisation manages to do this it will increase its accountability to key stakeholders. Yet, should it fail to deliver on any of these points:
 - It has channels for **complaint and redress** through which stakeholders can voice their grievances and receive an appropriate response.

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- To be accountable, an organisation needs to integrate all these dimensions into its policies, procedures and practice, at all levels and stages of decision-making and implementation, in relation to both internal and external stakeholders. The higher the quality and embeddedness of these in an organisation's policies, processes and procedures, the more accountable the organisation will be.
- Although each dimension exists independently of the others, the four overlap and intersect in multiple ways. Where there is overlap, there is strengthened accountability. For each of the four dimensions a policy needs to be in place that sets the objectives for the delivery of that dimension. How, and at what levels these are set, have a considerable impact on accountability. To ensure the objectives reflect a diversity of interests and needs, and thus are reflective of an organisation's multiple stakeholders, they need to be developed with the participation of these stakeholders.

To Whom should International Organisations be Accountable? = The Stakeholders

- Stakeholder = any group or individuals who can affect or is affected by an organisation's policies and/or actions (Freeman, 1984).
- **Internal Stakeholders** → member states, (shareholders), managers, staff members: i.e. they are part of the organisation.
- **External Stakeholders** → individuals or groups that are affected by an organisation's activities and decisions, but are not formally part of it: tax payers, National Parliaments, Courts, contractors, implementing partners and NGOs, other IGOs, non-Member States, etc.

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- Edward Friemann (1984): Strategic Management: a stakeholder perspective.
- Friemann is the "father" of the "stakeholder theory", indicating that any corporate must ensure to act and define relevant mechanisms of governance aimed at ensuring a minimum benefit/return to all its "stakeholders" (namely, shareholders, clients, staff, vendors and suppliers), failing which the latter will abandon their interest in the corporate, which will eventually be out of business.
- Considering the external stakeholders, attention should be paid to the proportionality in defining the group of individuals major at stake that need to be brought into the decision making process.

The “Pillars” of Accountability

- Charter, Constitution, Statutes, Treaties
- Governing Bodies
- Secretariats
- By-laws – Policies, Rules and Regulations, Guidelines
- Access to Information and Participatory Engagement
- Accounting and Accounting Standards
- Internal and External Audit, Oversight and Inspection

UN PEACEKEEPING OPERATIONS AND
ACCOUNTABILITY:
Historical Evolution – the Legal Context – Sexual
Exploitation and Abuse – Some Examples

The UN and the Preservation of Peace: A Few Key Concepts

- Peacekeeping = preservation of peace, even if fragile, after halting fighting, while assisting the implementation of the agreements finalised by peacemakers. Has evolved substantially over the years from military only, to a model including many elements (military, police, civilian);
- Peace Enforcement = application of coercive measures authorized by the SC, including military force. Aimed at restoring international peace and security.
- Peacebuilding = a complex, long-term process involving measures aimed at reducing the risk of relapsing into conflict, by strengthening, among others, national capacities for conflict management and defining foundations for sustainable peace and development, also through the action of the various civil actors operating in the area to be directed, in a constructive climate, towards the objectives of peace support with activities in support of the civil environment, to facilitate the restoration of normal living conditions (Civil-Military Cooperation, CIMIC).

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- Peacekeeping is a technique designed to preserve the peace, however fragile, where fighting has been halted, and to assist in implementing agreements achieved by the peacemakers. Over the years, peacekeeping has evolved from a primarily military model of observing cease-fires and the separation of forces after inter-state wars, to incorporate a complex model of many elements – military, police and civilian – working together to help lay the foundations for sustainable peace.
- Peace enforcement involves the application, with the authorization of the Security Council, of a range of coercive measures, including the use of military force. Such actions are authorized to restore international peace and security in situations where the Security Council has determined the existence of a threat to the peace, breach of the peace or act of aggression. The Security Council may utilize, where appropriate, regional organizations and agencies for enforcement action under its authority.
- Peacebuilding involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundation for sustainable peace and development. Peacebuilding is a complex, long-term process of creating the necessary conditions for sustainable peace. It works by addressing the deep-rooted, structural causes of violent conflict in a comprehensive manner. Peacebuilding measures address core issues that affect the functioning of society and the State, and seek to enhance the capacity of the State to effectively and legitimately carry out its core functions.

Towards a “Responsibility to Protect”

- Rwanda 1994: UN forces knew that members of the then government planned a genocide, and strategies to prevent or at least mitigate the horror could have been made. Instead the Security Council did not take any action → failure of international will at the highest level. With consequences extending well beyond Rwanda, but entire Great Lakes region still being felt today (see case study on DRC).
- Bosnia, 1995: failure of the UN to prevent the massacre of thousands of civilians seeking shelter in UN “safe areas” in Srebrenica (more below).
- Kosovo, 1999: here the intervention did take place → major questions about the legitimacy of a military intervention in a sovereign state. Was the cause just? (abuses committed or threatened by the Serbs sufficient to warrant external involvement)? Was intervention manipulated by local secessionists? Were all other non-military means to resolve the conflict exhausted? Did intervention receive proper authority? In fact, NATO circumvented the Security Council (no “green light” to the air strikes by the SC): was that justified? Did the intervention alleviate human suffering or rather exacerbated it (cf. the number of civil casualties)? Conversely, had it not happen, would the slaughter reach the proportions reached in Bosnia 4 years earlier?

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- 1993 - 1994 → **UNAMIR** (Rwanda) to contribute to Rwandan security. Its commander had received secret intelligence about a genocide plot which he deemed convincing enough to begin planning for an active intervention. He was, however, restrained by his superiors at UN Headquarters in New York, who felt strongly the lack of commitment from the major powers in the Security Council, especially the United States (reluctant to take any action after the failure in Somalia). The atmosphere in New York, reflecting that in Washington, greatly dimmed the prospects for a greater, more pro-active UN presence in Rwanda that could have saved hundreds of thousands of human lives (at least 700,000 people killed).
- 16 April 1993: within the context of **UNPROFOR**, SC adopted Resolution 819 declaring Srebrenica a “safe area”, and cease fire was signed with Bosnian Serbs on 17 April and Canadian troops moved in. After Srebrenica, five other safe area were created.
- The alleged killing of several Serb soldiers by Srebrenica-based Bosnian soldiers, which were declared “terrorists” unleashed a Serb offensive at the beginning of the Summer of 1995; only 300, lightly armed, soldiers constituted the Dutch UNPROFOR battalion stationed in Srebrenica: the vague mandate, the difficult logistics (including lack of food), the dangers, as well as their eagerness to leave Srebrenica, made them not report (or not realize) the signals of a forthcoming major offensive which resulted in mass deportation and the killing of at least 8,000 people.
- The threat of force, followed by the use of armed violence, by NATO countries in **Kosovo** against the Federal Republic of Yugoslavia was contrary to the UN Charter. These countries acted without any authorization of the Security Council under Chapter VII of the Charter, nor could their action be justified as collective self-defence pursuant to its article 5. Therefore, recourse to force has taken place outside and against the Charter framework.
- The danger of setting a precedent: once a group of powerful States has realized that it can freely escape the restrictions of the UN Charter and resort to force without any censure except for that of public opinion, a Pandora’s box may be opened.

Humanitarian Intervention and the Responsibility to Protect (R2P)

- “Right of humanitarian intervention”: the question of when, if ever, it is appropriate for states to take coercive – and in particular military – action, against another state for the purpose of protecting people at risk in that other state; there continues to be disagreement, if there is a right of intervention, on how and when it should be exercised, and under whose authority.
- *“If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?”* (Kofi Annan, 2000) → establishment of the International Commission on Intervention and State Sovereignty (ICISS).

The 2001 ICISS Report on the Responsibility to Protect <http://responsibilitytoprotect.org/ICISS%20Report.pdf>

- The concept of R2P comes in response to the argument that human rights concerns transcend claims of sovereignty, as well as a result of the weak responses provided by the SC in Rwanda and in the Balkans (slow reaction to the need of authorizing force to protect vulnerable populations) → humanitarian concerns as a possible exception to the general prohibition on the threat and use of military force.
- 3 major concepts:
 - state sovereignty is infused with a human rights dimension, i.e. sovereignty is not a license to do as state authorities wish but is contingent on respecting minimal human rights standards (not committing mass atrocity crimes or allowing others to do so) → sovereignty is not longer accepted as **absolute** (a substantial normative change in international relations);
 - R2P calls for the responsibility (or obligation) of outsiders to act in protection of insiders, not only when large-scale loss of life occurs, but also to prevent armed conflicts;
 - A new international default setting: a modified just-war doctrine for future interventions to sustain humanitarian values or human rights.

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- R2P's 3 concepts:
 - R2P infuses state sovereignty with a human rights dimension, i.e. sovereignty is not a license to do as state authorities wish but is contingent on respecting minimal human rights standards (not committing mass atrocity crimes or allowing others to do so) → sovereignty is not longer accepted as **absolute** (a substantial normative change in international relations);
 - R2P reformulates the conceptual basis for humanitarian intervention, moving away from the rights of interveners (outsiders) toward the rights of victims (insiders) and calling for the responsibility (or obligation) of outsiders to act in protection of insiders, not only when large-scale loss of life occurs, but also to prevent armed conflicts;
 - A new international default setting: a modified just-war doctrine for future interventions to sustain humanitarian values or human rights → just cause, proportionality, likelihood of success, right authority (the SC) = essential elements for a decision to act.

The 2005 World Summit and the Adoption of the R2P Concept

The basis of the R2P consensus:

- Sovereignty as responsibility: a far larger concept than humanitarian intervention;
- R2P applies only to genocide, war crimes, ethnic cleansing and crimes against humanity;
- Narrow scope but large array of prevention and protection instruments available (“appropriate and necessary means”);
- Support of the UN by the international community in establishing an early warning capability.

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- The assembled Heads of State and Government reached consensus on the fact that:
 - The responsibility to protect is an ally of sovereignty, not an adversary: it grows from the positive and affirmative notion of sovereignty as responsibility, rather than from the narrower idea of humanitarian intervention;
 - The responsibility to protect applies, until Member States decide otherwise, only to the four specified crimes and violations: genocide, war crimes, ethnic cleansing and crimes against humanity: expanding it to natural disasters, climate change or to the HIV/AIDS pandemic would undermine the consensus;
 - While the scope should be kept narrow, the response ought to be deep, employing the wide array of prevention and protection instruments available to Member States (“appropriate and necessary means”), the United Nations system, regional and sub-regional organizations and their civil society partners;
 - The international community should “support the UN in establishing an early warning capability”: this would require: (i) the timely flow to UN decision makers of accurate, authoritative, reliable and relevant information about the incitement, preparation or perpetration of the four specified crimes and violations; (ii) the capacity for the UN Secretariat to assess that information and to understand the patterns of events properly within the context of local conditions; and (iii) ready access to the office of the Secretary-General.

Peacekeeping Operations – The Legal Framework

- Three main actors involved in any peacekeeping operation:
 - The United Nations (through the Security Council);
 - The Host Country(ies); and
 - The Troop Contributing Country(ies).
- Three major legal frameworks in operation:
 - The 1946 Convention on the Privileges and Immunities of the United Nations (CPIUN); and
 - The United Nations Status-of-Force Agreement (SOFA), entered into by the UN and the host country on a case by case basis (normally includes a waiver of any jurisdiction over the troops deployed within the country);
 - The Memorandum of Understanding (MoU), entered into by the UN and the TCC (includes the assumption of responsibility of the TCC on jurisdiction over its own troops), which also entails a problem in the applicability of the rule of attribution according to Art. 6 of the DARIO.

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- The application of the Convention on the Privileges and Immunities of the United Nations (CPIUN) to a peacekeeping mission has, as a practical effect that any members of the United Nations Secretariat involved would, as "officials of the United Nations", be "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity". The military observers themselves had a similar entitlement by being classified as "experts on mission" for the organization. The relevant wording of the CPIUN is a little different, but the practical effects are the same.
- SOFA → regulates the presence of foreign troops on the host country's territory; normally it includes a waiver of any jurisdiction over those troops even in case of serious criminal offences, on the basis that such jurisdiction rests uniquely on the country of origin, which has the onus of persecuting these criminal offences.
- MoU → the operation and its members "*shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the present arrangements.*" Moreover, all involved are to "*respect all local laws and regulations,*" and the Special Representative/Commander is to "*take all appropriate measures to ensure the observance of these obligations*". In addition, the Secretary-General is obligated to: "*... obtain assurances from Governments of participating States that they will be prepared to exercise jurisdiction with respect to crimes or offences which may be committed by members of their national contingents serving with the peace-keeping operation.*"
- The MoU and the attribution of responsibility → The general rule of attribution set out in Article 6 of the DARIO would only be applicable when troops are fully seconded to the UN by the TCC : this is never the case; hence the responsibility remains in the hands of TCCs, which maintain jurisdiction on their troops.

Sexual Exploitation and Abuse – SEA (1/2)

- Unfortunately, throughout the UN PKOs there has been no dearth of SEA cases;
 - In 2005, elaboration of the Zeid Report, “Eliminating Sexual Exploitation and Abuse” (document A/59/710)
 - Accountability of the Organisation → measures to help eliminate SEA (training, outreach, data collection, dedicated positions, co-ordination);
 - Accountability of Managers and Commanders → elimination of SEA = one of the performance goals (sic...);
 - Individual Disciplinary Accountability → acts of SEA defined as serious misconduct within the meaning of the Staff Regulations and **a TCC must agree to prosecute in accordance with its laws;**
 - Individual Financial Accountability → for harm caused to victims as a result of acts of SEA (e.g. obligation to provide child support);
 - Criminal Accountability of Military Members → as provided by the MoU, TCC must exercise criminal jurisdiction over its troops in return for the immunity conferred upon them by the host State under the terms of the SOFA.
- A new international instrument to ensure that United Nations personnel are subject to criminal prosecution for defined crimes of SEA?...

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- Document A/59/710 <https://undocs.org/A/59/710>
- Accountability of the Organisation: measures to help eliminate sexual exploitation and abuse (SEA) in peacekeeping missions, including extensive training, an effective programme of outreach to the local community, a data collection system to track the investigation and resolution of allegations of sexual exploitation and abuse and the establishment of a few full-time positions at HQ and in the field to coordinate action by missions on those issues.
- Accountability of managers and commanders: measures to eliminate SEA be made part of the performance goals of managers and commanders, and managerial performance should be rated in accordance with the actual implementation of those goals. Those who fail must be removed.
- Individual disciplinary accountability: strict disciplinary accountability for peacekeeping personnel who violate the Organization’s rules against SEA; General Assembly should define acts of SEA as serious misconduct within the meaning of the Staff Regulations to emphasize that Member States will not tolerate such abuse. The SOFA should provide that, if a Department of Peacekeeping Operations investigation concludes that a member of a contingent committed an act of SEA, the relevant TCC must agree to forward the case to its competent national or military authorities to be considered for prosecution in accordance with its laws and to report the results to the Secretary-General.
- Individual financial accountability: UN peacekeeping personnel be held financially accountable for harm caused to victims as a result of their acts of SEA; General Assembly to authorize the Secretary-General to require DNA and other tests to establish paternity in appropriate cases so as to ensure that peacekeeping personnel can be obligated to provide child support to so-called peacekeeper babies that they father and abandon.
- Criminal accountability of military members of national contingents: TCC must ensure that their contingents are obligated to respect local law, and have a legal obligation to consider for prosecution acts of SEA committed by military members of peacekeeping missions that constitute crimes under the laws of the TCC or the host State. The TCC should report on any action taken by it on cases referred to it: acceptance of such procedures constitutes a necessary condition for acceptance of an offer by a troop contributing country to supply troops to the Organization.

2017 → Secretary-General António Guterres' Reform: The Three "Pillars"

- **MANAGEMENT**
 - Simplification, decentralisation and flexibility to ensure a nimble, efficient and effective UN;
 - More focus on delivery and less on process;
 - More on people and less on bureaucracy;
 - A culture of accountability that requires strong performance management and effective protection for whistle-blowers.
- **UN DEVELOPMENT SYSTEM**
 - Support to Member States in achieving the SDGs, as an expression of global solidarity, with the promise to leave no one behind;
 - A comprehensive reform of the United Nations development system, at Headquarters and country levels that must involve leadership, coordination, delivery and accountability.
- **PEACEKEEPING**
 - **Consider that women and men involved in peacekeeping operations are often confronted with the dilemma of keeping a peace that does not exist;**
 - **A new thread for peace uniting prevention and conflict resolution, peacebuilding and development;**
 - **→ Inherent connection with the SDGs.**

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Guterres' Reform

- Special measures for protection from sexual exploitation and abuse: a new approach (Document A/71/818);
- A new strategy focusing on four main areas of action:
 - Prioritising the rights of victims (establishment of the Victims Right Advocate);
 - Ending impunity (reporting, investigation, follow-up and indictment);
 - Engaging civil society and external partners; and
 - Improving strategic communications for education and transparency;
- Several measures related to prevention, investigation and individual accountability of staff members and military personnel decided and implemented and/or under implementation, involving the Secretariat, Member States and the entire UN system;
- Yet, 138 alleged SEA cases in 2017 only...

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- Documents A/71/818 and A/71/818/Corr.1 (<https://undocs.org/A/71/818> and <https://undocs.org/A/71/818/Corr.1>)
- Prioritising the rights of victims → establishment of the Victims Right Advocate (in the office of the SG) and of the Field Victims' Right Advocates in the four peacekeeping operations in which the highest number of allegations of SEA had been reported (MINUSCA, MONUSCO, MINUJUSTH and UNMISS), to strengthen the support the United Nations gives to victims and ensure that a victim-centred approach is integrated into prevention and response, including access to justice.
- Ending impunity → strengthened measures in reporting (through standardised forms), investigations (by consolidating UN's investigative capacities for SEA) and follow-up to hold responsible individuals to account (establishment of a matrix outlining United Nations responsibilities for actions to prevent and respond to allegations of SEA), while engaging with Member States on their judicial responsibilities, through the signature of a Voluntary Compact on the commitment to eliminate SEA.
- Engaging civil society and external partners → organization of roundtables with a range of civil society actors working on SEA prevention, including grass-roots community groups, faith-based organizations, youth groups and legal aid groups, in order issue recommendations aimed at strengthening preventive measures against SEA, including by reviewing mission and country team risk assessments and best practice.
- Improving strategic communications for education and transparency → to increase awareness among communities of the conduct and behaviour they should expect from UN personnel.

Guterres' Reform: Criticalities

- *“The attempts made by the SG to reform the system have been piecemeal and have not addressed a complex problem such as SEA perpetrated by peacekeepers, that requires nuanced and targeted responses”.*
- Current laws, policies and practices to tackle SEA operate across different scales, including at the international level, at the UN level, at the local level where the peacekeeping operation is being carried out, and within the TCCs.
- No major changes on the mechanisms to ensure institutional or individual accountability in the field;
- The three major legal frameworks (CPIUN, SOFA and MoU) remain as they were, with all their *pros* and *cons*...

Srebrenica: Where Does UN's Accountability Lie?

- When asked during a press conference, on 12 July, whether the fall of Srebrenica represented the U.N.'s biggest failure in Bosnia and Herzegovina, U.N. Secretary-General Boutros Boutros-Ghali responded, "No, I don't believe that this represents a failure. You have to see if the glass is half full or half empty. We are still offering assistance to the refugees ... and we have been able to maintain the dispute within the borders of former Yugoslavia."
- However, the Secretary-General did not indicate that the U.N. had a responsibility to protect the "safe area" in Srebrenica and its inhabitants at a time when Bosnian Serb forces were overrunning it, holding Dutch U.N. soldiers as hostages, and executing the enclave's residents.
- But there was more, both from the legal and moral points of view!

Srebrenica: UN's and Dutch's Liabilities (1/3)

Irrespective of their immunities, the Dutch troops and the UN at large can be considered as liable for fraud, gross negligence and breach of duty.

Fraud = A false representation of a matter of fact, that deceives and is intended to deceive another so that the individual will act upon it to her or his legal injury

The creation of a "safe heaven" in Srebrenica and the promise to its inhabitants of being "under UN protection", represents a fraudulent action. Signs of a forthcoming massacre were there and yet the UN disarmed the inhabitants of Srebrenica, stationed a peacekeeping mission not equipped to guarantee their protection and eventually handed them to the Bosnian Serbs.

Srebrenica: UN's and Dutch's Liabilities (2/3)

Gross Negligence= *Carelessness in reckless disregard for the safety of lives of others, so great that it appears to be a conscious violation of other people's right to safety.*

The UN was negligent by deploying a very limited number of soldiers and had no plan to face a Serb attack when it occurred.

Srebrenica: UN's and Dutch's Liabilities (3/3)

Breach of Duty = when one person has a **duty of care** toward another person, but fails to live up to that standard and that failure causes injuries to such person

The UN and the Dutch soldiers established a duty to protect the people of Srebrenica by disarming them and promising their protection. Their breaching of that duty resulted in the killing.

→ Class actions filed by survivors of Srebrenica against the Dutch government and the UN.

They failed because the Dutch were under UN control, and because of UN immunities. Major breakthrough however in 2013: the Dutch Supreme Court recognised the responsibility of the Dutch soldiers by their forcing civilians to leave their compound, thus handing them over to the Serbs, while well aware that the latter were committing summary executions. The sentence was confirmed by the Appeals Court of the Hague in 2017.

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MINUSTAH and the Cholera Epidemic

- 2004 → MINUSTAH (UN Stabilisation Mission in Haiti), established after President Aristide departure from the country; just the latest after a number of unsuccessful PK Missions that succeeded each other since 1990;
- October 2010 → cholera outbreak in an area along the river Artibonite: from October 2010 to October 2018, over 800,000 cases and almost 10,000 deaths, i.e. the worst epidemic (according to WHO) in modern history, in an island that hadn't had a cholera case for over a century;
- MINUSTAH, whose Nepalese troops were stationed in the area, claimed that the epidemic was due to the precarious hygienic conditions and ensuing water contamination;
- Scientific evidence has demonstrated that the bacteria were “imported” by some Nepalese soldiers (one would be sufficient...), following a troop rotation on that same month: those soldiers had not been preventively tested before departure from a country where cholera is endemic;
- Internal appeals for redress were upheld as non-receivable and a number of class actions filed by Haitians in US Courts were rejected on the basis of UN's immunity (last rejection in August 2017):

A serious Accountability Gap...

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- Cholera appeared in Haiti in October 2010 for the first time in recorded history: the causative agent was identified by US CDCs;
- Over 800,00 government-acknowledged cases and more than 7,000 deaths have occurred, making it the largest cholera epidemic in the world, with the real death toll probably much higher;
- 2011 → The Institute for Justice and Democracy in Haiti (IJDH) files a claim on behalf of 5,000 Haitian cholera victims with MINUSTAH's claims unit, seeking compensation and investments in water and sanitation infrastructure; response received in 2013 from the UN Office of Legal Affairs stating that the the claims were not receivable pursuant to Section 29 of the Convention on the Privileges and Immunities of the United Nations;
- January 2015 → first class action lawsuit filed by IJDH against the UN in the New York Federal Court, which is dismissed as “non-receivable”, due to the immunities of the organisation;
- August 2016 → the UN admits its responsibility, but, while engaged in raising substantial funds to address the situation in the field and mitigate the problems for survivors and victims' families, refuses to consider these as “reparations” and maintains its legal stand related to its immunities;
- August 2017 → following an appeal in New York, the last class action is rejected by the Federal District Court in Brooklyn;
- 2018 → in spite of the hope that the new SG would mark a break with the inaction that characterised Ban Ki-moon's response to the epidemic, Guterres has done little to accept UN responsibilities and signal a commitment to cholera victims in Haiti.

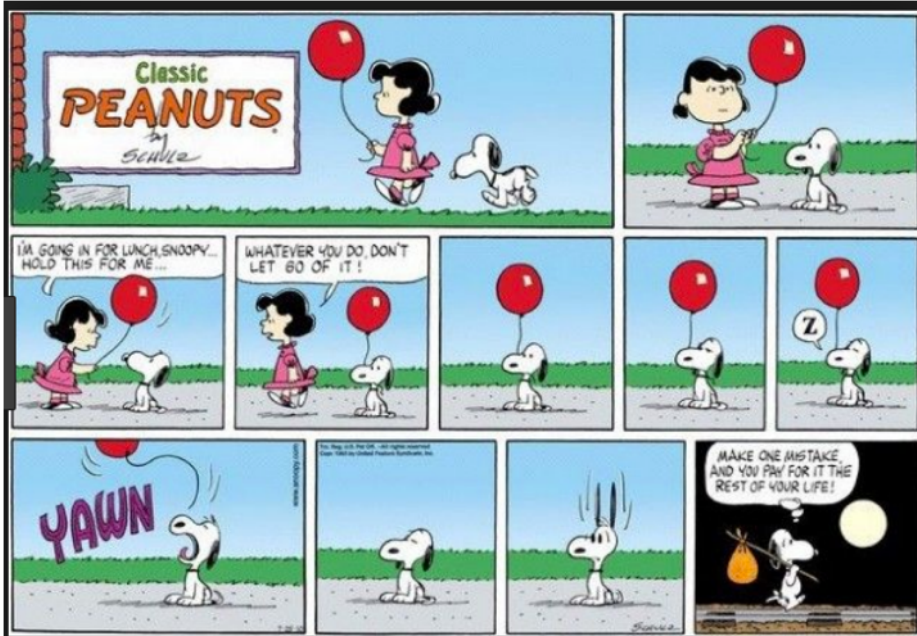
MINUSTAH and SEA Cases

- Cases of sexual exploitation and abuse (SEA) were reported from the very beginning of MINUSTAH's deployment;
- The UN Conduct and Discipline Service (CDS) reported a total of 65 confirmed cases throughout the duration of the mission;
- Independent investigators consider however that the total number could be as high as 564...
- Reluctance to report cases, delays in investigations, non-cooperation of potential witnesses, etc.
- And also when the allegations are proved, the perpetrators can be prosecuted only by the judicial of the TCC which often do not take action (e.g. 114 Sri Lankan soldiers found guilty, repatriated on disciplinary grounds and never prosecuted!):

An even more serious Accountability Gap...

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- Throughout the various missions that succeeded each other in Haiti, cases of SEA have been abundant and, at least during MINUSTAH, proved and reported;
- Haiti was certainly not an isolated case (several other missions were hampered by similar problems, including in Former Yugoslavia and in the Democratic Republic of the Congo);
- This led the UN to start taking action → "Zeid Report" in 2005;
- However, decades of inaction and "looking the other way" have left a heavy legacy;
- In Haiti, the various mechanisms put in place, such as the creation of the CDS and the extensive efforts with the three pillars of prevention of misconduct, enforcement of UN standards of conduct, and remedial action, do not appear to have been adequate in preventing further SEA perpetrated by MINUSTAH personnel;
- In spite of a reduction in the number of reported cases, a private investigation (Snyder, 2017) has proved that the downward trend of accusations is not due to decreased levels of SEA perpetrated by MINUSTAH staff, but instead is caused by a reduction in victims' reporting of these acts;
- Even when the wrongdoing has been proved and the perpetrators (or alleged perpetrators) were identified, on the basis of the SOFA and the MoU, neither the UN nor the Haitian judiciary system had any judicial power over the culprits, that could be prosecuted only by the TCC's judiciary;
- November 2007 → 114 soldiers of the Sri Lanka contingent are found guilty of SEA by a combined UN-IOI - Sri Lankan investigation and immediately repatriated to Sri Lanka on disciplinary grounds;
- However, none of the 114 were criminally prosecuted once back in their home country, i.e. Sri Lanka did not stand to its own part of the deal!



THANK YOU!!

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