

# CONTENTS

<i>Summary of Contents</i> .....	v
<i>Abbreviations</i> .....	xxi

## Accountability for Human Rights Violations by International Organisations:

### Introductory Remarks

Jan WOUTERS, Eva BREMS, Stefaan SMIS and Pierre SCHMITT .....	1
---	---

I. Background. ....	1
II. Aim of the Book. ....	1
III. Contentious Legal Issues .....	5
A. Are International Organisations Bound by International Human Rights Norms? .....	5
B. Accountability of Member States of International Organisations. ....	10
C. Obstacles to Accountability of International Organisations .....	11
D. The Need to Create Mechanisms To Ensure Accountability .....	13
IV. Structure of the Book .....	15
A. General Concepts .....	15
B. Peace and Humanitarian Operations. ....	16
C. International Civil Administration .....	16
D. Economic Governance .....	17
E. Staff of International Organisations. ....	18

## PART I. GENERAL CONCEPTS

### Accountability of International Organisations: An Evolving Legal Concept?

Ige F. DEKKER .....	21
---------------------	----

I. Introduction .....	21
II. Concepts of Accountability .....	23
A. Approaches to Accountability. ....	23
B. The ILA Concept of Accountability. ....	25
C. Critical Assessment. ....	28
III. An institutional Concept of Accountability .....	31
A. An Institutional Approach. ....	31

B.	Accountability as a Legal Institution . . . . .	32
C.	Accountability and the Institutional Character of International Organisations. . . . .	34
IV.	Concluding Observation. . . . .	36

International Organisations as Independent Actors: Sweet Memory or Functionally Necessary?

Niels M. BLOKKER. . . . .	37
---------------------------	----

I.	Introduction . . . . .	37
II.	Attribution of Powers . . . . .	39
III.	International Legal Personality. . . . .	43
IV.	The Theory and Practice of the Independence of International Secretariats . . . . .	46
V.	Concluding Remarks. . . . .	49

Human Rights and the Rise of International Organisations:

The Logic of Sliding Scales in the Law of International Responsibility

Olivier DE SCHUTTER. . . . .	51
------------------------------	----

I.	The Human Rights Obligations of International Organisations . . . . .	55
A.	The international Organisation ‘Succeeding’ to the Human Rights Obligations of Its Member States . . . . .	57
B.	Human Rights as Part of General Public International Law . . . . .	68
II.	The Problem of Accountability – One: State Responsibility. . . . .	73
A.	The Establishment of the International Organisation and the Initial Transfer of Powers. . . . .	77
B.	The Decision-Making Process Within the Organisation . . . . .	86
C.	The Implementation of Decisions Adopted by International Organisations. . . . .	94
D.	The Logic of Sliding Scales in Examining Questions of State Responsibility. . . . .	102
III.	The Problem of Accountability – Two: The Responsibility of International Organisations. . . . .	104
A.	Self-Regulation. . . . .	104
B.	Accession to International Human Rights Treaties. . . . .	110
C.	The Role of National Courts . . . . .	119
D.	The Logic of Sliding Scales Expanded . . . . .	123
IV.	Conclusion . . . . .	125

Binding International Organisations to Member State Treaties or Responsibility of Member States for Their Own Actions in the Framework of International Organisations Frederik NAERT .....	129
Introduction .....	129
I. Are International Organisations Bound by Treaties Concluded by Their Member States? .....	130
A. General Considerations .....	130
B. The EU, GATT and Customs Agreements. ....	136
C. The EU and the ECHR .....	138
D. The EU and Other Member State Treaties, Including the UN Charter .....	139
E. Other International Organisations. ....	154
II. Some Reflections on Responsibility of Member States for Their Own Actions in the Framework of International Organisations. ....	155
A. Responsibility for the Actions of an International Organisation Resulting from Its Establishment. ....	156
B. Responsibility of a Member State for Its Own Subsequent Conduct in the Framework of an International Organisation. ....	162
Conclusion .....	168
 The ‘Italian job’: How to Make International Organisations Compliant with Human Rights and Accountable for Their Violation by Targeting Member States Matteo TONDINI. ....	169
I. Introduction .....	169
II. A Few Remarks on Legal Personality and Accountability of International Organisations .....	172
A. The Attribution of Legal Personality to International Organisations and Their Accountability to Third Parties .....	172
B. The Establishment of Internal Claim Settlement Mechanisms ....	174
C. ‘Accountability’ and ‘Responsibility’ .....	176
D. The ILC Draft Articles .....	177
III. Possible Responsibility of UN Member States in Peace Operations ....	180
A. Possible Responsibility of Contributing States for Violations Committed by UN Military Forces. ....	180
B. Possible Responsibility of Member States for Violations Committed by UN Police Forces and Civilian Officers .....	185
C. Possible Human Violations Committed by UN Territorial Administrations: The UNMIK Case .....	188

IV.	Some Brief Remarks on International Organisations as Subjects Bound to Human Rights Law and Extraterritorial Application of Human Rights Treaties . . . . .	191
A.	The Mandatory Nature of Human Rights Law for International Organisations . . . . .	191
B.	The Extraterritorial Application of Human Rights Conventions . . . . .	193
V.	The “Job”: Bringing States to Courts . . . . .	195
A.	Finding the Right Forum . . . . .	195
B.	International Courts . . . . .	198
VI.	The “Italian Job” in the Most Recent Case Law (Be Assured – Your Sins Will Find You Out!) . . . . .	201
A.	The <i>Behrami &amp; Saramati</i> Cases . . . . .	202
B.	The <i>Al-Jedda</i> Case . . . . .	206
C.	Other Relevant Cases . . . . .	208
VII.	Concluding Remarks . . . . .	211

PART II. PEACE AND HUMANITARIAN OPERATIONS

Human Rights Accountability of International Organisations in the Lead of International Peace Missions

	Ulf HÄUßLER . . . . .	215
I.	Preliminary Remarks and Introduction . . . . .	215
II.	The Institutionalisation of Transitional Authority – A Brief Typology of Peace Missions . . . . .	218
III.	The Effects of Actions of Peacekeeping Operations on Human Rights . . . . .	222
A.	Exercise of Transitional Authority <i>vis-à-vis</i> Ex- and Would-Be-Belligerents or Governance Institutions in Receiving States . . . . .	223
B.	Exercise of Transitional Authority Directly Affecting the General Public . . . . .	226
C.	Conclusion . . . . .	229
IV.	Attribution of Conduct of Peacekeeping Operations to International Organisations . . . . .	229
A.	To Whom to Attribute I: Peace Missions or Lead Organisations? . . . . .	230
B.	To Whom to Attribute II: Lead Organisations or Contributing States? . . . . .	232
C.	Further Attribution Criteria . . . . .	251
D.	Conclusion . . . . .	253

V.	Defining the Limits of Transitional Authority of Peacekeeping Operations. . . . .	253
A.	The Emerging Customary International Law of Peace Missions . . . . .	255
B.	General Principles of International Humanitarian and Human Rights Law . . . . .	257
C.	Conclusion . . . . .	259
VI.	Balancing Public and Private Interests in the Framework of International Peacekeeping . . . . .	259
A.	Self-Defence . . . . .	259
B.	Military Necessity and Operational Necessity . . . . .	261
C.	Claims . . . . .	264
D.	Judicial Review of Operational Detention? . . . . .	266
VII.	Conclusion . . . . .	268
	Accountability of the United Nations: The Case of Srebrenica	
	Peter R. BAEHR. . . . .	269
I.	Introduction . . . . .	269
II.	What Happened at Srebrenica . . . . .	270
III.	The Role of Dutchbat . . . . .	274
IV.	The Role of the ‘International Community’ . . . . .	278
V.	Accountability . . . . .	280
VI.	Conclusion . . . . .	285
	On the Social Life of International Organisations: Framing Accountability in Refugee Resettlement	
	Kristin Bergtora SANDVIK . . . . .	287
I.	Introduction . . . . .	287
II.	The Problem . . . . .	288
III.	Framing Legal Humanitarianism . . . . .	290
IV.	Contextualising Accountability . . . . .	292
V.	Resettlement as Humanitarian Practice . . . . .	296
VI.	Surviving Torture Credibly . . . . .	298
VII.	Doing and Living Accountability Standards. . . . .	302
VIII.	Concluding Observations. . . . .	306

PART III. INTERNATIONAL CIVIL ADMINISTRATION

Understanding the International Territorial Administration  
 Accountability Deficit: Trusteeship and the Legitimacy of  
 International Organisations

Ralph WILDE .....	311
I. Introduction .....	311
II. Trusteeship .....	313
A. Colonial Trusteeship .....	313
B. International Territorial Administration as a Form of Trusteeship .....	316
C. The Progressive Internationalisation of Trusteeship .....	316
III. Accountability under Trusteeship .....	317
A. Humanising Colonialism .....	317
B. Requirement of Accountability .....	318
C. Accountability in the Trusteeship Context .....	318
IV. Reviving the Trusteeship Council .....	320
A. International Oversight of State-Conducted Trusteeship .....	320
B. The Trusteeship Council and ITA .....	321
V. Self-Determination as an Explanation for the Lack of Accountability ..	322
A. The Repudiation of Trusteeship .....	322
B. The Link with Accountability .....	324
VI. The ‘Legitimacy’ of International Organisations as an Explanation for the Lack of Accountability .....	324
A. Normative Ideas of State-Conducted Trusteeship .....	325
B. Normative Ideas of International Organisations .....	326
VII. Conclusion .....	329

Human Rights Accountability of International Administrations: Theory  
 and Practice in East Timor

Eric DE BRABANDERE .....	331
I. Introduction .....	331
II. Human Rights Obligations of International Organisations .....	333
A. The UN Charter .....	334
B. Human Rights as Customary International Law .....	335
C. Human Rights and Military Contingents .....	339
D. Observations on the Attribution of Conduct .....	342
III. Immunity and Accountability Mechanisms in East Timor .....	344
A. UNTAET’s Human Rights Obligations .....	345
B. Immunity of International Actors .....	346
C. Alternative Accountability Mechanisms .....	349
IV. Conclusion .....	354

Should the United Nations Create an Independent Human Rights Body in a Transitional Administration? The Case of the United Nations Interim Administration Mission in Kosovo (UNMIK)	
Remzije ISTREFI .....	355
I. Introduction .....	355
II. UNMIK’s Mandate as a Cause of Human Rights Violations .....	359
III. The Applicable Law in Kosovo and UNMIK Accountability .....	361
IV. UNMIK Accountability at the Domestic level .....	362
A. Judicial Review .....	362
B. Ombudsperson Institution in Kosovo .....	363
V. UNMIK’s Accountability at the International Level .....	364
A. Is the Advisory Panel an Adequate Mechanism to Deal with Alleged Human Rights Violations in Kosovo? .....	366
B. Creation of a Human Rights Protection Mechanism: A <i>Sui Generis</i> Body for Kosovo .....	367
C. The Authority for Establishing the UN Commission for Kosovo ..	369
D. The Mandate and Structure of the UN Commission for Kosovo ..	369
E. Composition of the UN Commission for Kosovo .....	370
F. Procedural Rules of the UN Commission for Kosovo .....	370
G. Jurisdiction of the UN Commission for Kosovo .....	371
H. UNMIK’s Accountability in Front of the UN Commission for Kosovo .....	372
VI. Conclusion .....	372
 The Ombudsperson Institution vs the United Nations Interim Administration Mission in Kosovo (UNMIK)	
Gjylbehare Bella MURATI .....	373
I. Introduction .....	373
II. The United Nations Mission in Kosovo .....	374
A. The Legal Framework Governing the UNMIK .....	374
B. The Legal Implications Arising from UN SC Resolution 1244 ...	376
C. The United Nations Domestic Lawmaking .....	377
D. UNMIK and Its Role in the Judiciary .....	378
III. The Ombudsperson Institution .....	382
A. Protecting Residential Property (Housing and Property Directorate and Housing and Property Claims Commission) ...	384
B. Protecting the Right to Liberty and Security of Person .....	390
C. Protecting Freedom of Expression .....	393
IV. Conclusion .....	397

PART IV. ECONOMIC GOVERNANCE

Accountability of International Organisations: An Analysis of  
the World Bank's Inspection Panel

Rekha OLESCHAK-PILLAI .....	401
I. Accountability in International Law .....	402
A. Accountability of International Organisations .....	404
B. Who is Accountable? .....	406
C. For What? .....	406
D. To Whom? .....	407
E. By What Mechanisms? .....	408
F. With What Outcomes? .....	408
II. World Bank and Human Rights Violations .....	408
III. Inspection Panel .....	409
A. Perceptions in International Legal Discourse .....	411
B. Operational Standards and Policies .....	413
IV. Investigations by the Inspection Panel .....	415
A. India Ecodevelopment Project (1998) .....	416
B. NTPC Project (1997) .....	420
C. Coal India Project (2001) .....	422
D. Mumbai Urban Transport Project (2004) .....	425
V. Outcomes and Concluding Remarks .....	428

The Accountability of the International Monetary Fund for Human  
Rights Violations

Pierre SCHMITT .....	431
I. The Sources of the International Human Rights Obligations of the IMF .....	434
II. The Significance of the Human Rights Obligations of the IMF .....	438
A. The Mandate of the IMF .....	438
B. The Practice of the IMF .....	440
C. Evolution of the Mandate and the Practice of the IMF .....	443
III. Mechanisms of Accountability .....	447
A. Accountability: Probably the Weakest Aspect of IMF Governance .....	447
B. Internal Accountability Mechanism .....	449
C. External Accountability Mechanisms .....	453
IV. Conclusion .....	459



The World Trade Organization: An Obstacle to Enforcing Human Rights Obligations? Jeroen DENKERS and Nicola JÄGERS. . . . .	461
I. Introduction . . . . .	461
II. An Example: Brazil . . . . .	462
III. The Permissibility of Import Bans on Sugar and Steel from Brazil under WTO Law . . . . .	466
A. Article XI of the GATT. . . . .	466
B. Article I of the GATT . . . . .	466
C. Article III:4 of the GATT . . . . .	468
IV. WTO Dispute Settlement and Human Rights . . . . .	470
V. Import Bans as Countermeasure. . . . .	472
VI. Legal Standing . . . . .	474
VII. Does the Prohibition of Forced Labour Entail an Obligation <i>Erga Omnes</i> ? . . . . .	477
VIII. Can General International Law Serve as an Autonomous Defence in WTO Dispute Settlement? . . . . .	480
IX. Conclusion . . . . .	484
 TRIPs and Human Rights: Access to Cheaper AIDS Medicines Stefaan SMIS, Stephen Sevidzem KINGAH and Christine JANSSENS . . . . .	 485
I. Introduction . . . . .	485
II. The Development of Intellectual Property Protection. . . . .	486
III. The Rights to Access AIDS Medicines, TRIPs and Patent Rationale . . . . .	487
IV. Balancing Intellectual Property Rights and Right to Health . . . . .	493
V. Accountability Mechanisms. . . . .	499
VI. Conclusion . . . . .	503
 Accountability of Development Agencies through the Use of Human Rights Indicators Gauthier DE BECO . . . . .	 505
I. Introduction . . . . .	505
II. The Accountability of Development Agencies for Their Human Rights Obligations . . . . .	506
A. The Human Rights Obligations of Development Agencies . . . . .	506
B. Monitoring Mechanisms for Development Agencies . . . . .	508
III. Human Rights Indicators to Monitor Development Programmes . . . . .	509
A. Developing Human Rights Indicators . . . . .	511
B. Data on Human Rights Violations . . . . .	513
C. Structural, Process and Outcome Indicators . . . . .	517

IV. The Use of Human Rights Indicators in Development Programming . . . . .	519
A. Establishing Human Rights Indicators for Development Programmes . . . . .	519
B. Actors using Human Rights Indicators for Development Programmes . . . . .	521
V. Conclusion . . . . .	522

PART V. STAFF OF INTERNATIONAL ORGANISATIONS

Accountability of International Organisations for Violations of the Human Rights of Staff

Chittharanjan Felix AMERASINGHE . . . . .	527
---	-----

I. International Organisations and the Substantive Law of Human Rights . . . . .	527
II. Accountability . . . . .	531
A. Desirability of Judicial Machinery . . . . .	531
B. Judicial Machinery: A Human Right . . . . .	535
C. Authority to Establish Courts . . . . .	536
III. Independence of Judicial Organs . . . . .	538
A. Qualifications . . . . .	539
B. Emoluments . . . . .	540
C. Renewals of Terms of Appointment . . . . .	540
IV. Human Rights Recognised by International Administrative Tribunals . . . . .	541
A. Discrimination Based on Sex . . . . .	541
B. Due Process of Law . . . . .	542
V. Conclusion . . . . .	543

Human Rights Accountability of International Organisations *vis-à-vis* Their Staff: The United Nations

Sarah HUNT . . . . .	545
----------------------	-----

Introduction . . . . .	545
I. The History of Diplomatic Immunity: How Did It Become Professionalised? . . . . .	546
II. An Internal Recognition of Failings of the UN Legal System . . . . .	548
III. Applicability of Human Rights Principles and International Law: General Understanding <i>vs</i> Practice in the Field of the Law of the International Civil Service . . . . .	549

IV.	The Potential Application of Public International Law to International Organisations. . . . .	552
A.	What Substantive Legal Standards Apply to the Rights and Entitlements of International Organisation Staff Members? . . . . .	553
B.	These and Many Other Employees Rights are Guaranteed in Various ILO Conventions, in Most National Legal Systems and in European Union Laws . . . . .	553
C.	A Relevant and Related Question is the Extent to Which International Law or Fundamental Concepts such as Due Process, Are Applicable . . . . .	553
V.	Internal Claims Involve Appeals Against Administrative Decisions Relating to Discipline of Staff or Grievances, Involving Other Staff or Management . . . . .	556
VI.	The UN Redesign Panel Report. . . . .	559
	Conclusion . . . . .	565

Workplace Equality in International Organisations: Why is It an Illusory Concept?

	Osmat Azzam JEFFERSON . . . . .	567
I.	Introduction . . . . .	567
II.	Equality and Discrimination Concepts in International Organisations. . . . .	570
III.	Mapping the Core Rules in the Ensemble of Employment Conditions. . . . .	572
A.	The Contract with the Organisation . . . . .	572
B.	What Are the Statutory Elements? . . . . .	573
C.	The Right of Recourse to an Administrative Court. . . . .	574
IV.	How Are the Core Rules Used and What is Their Impact on Staff? . . . . .	577
A.	Effect on Junior Staff. . . . .	577
B.	Effect on Selected Groups of Staff. . . . .	580
V.	What Core Elements are Needed to Realise Equality? . . . . .	584
A.	The Unilateral Right of the Organisation to Amend Statutory Elements . . . . .	584
B.	Ambiguous and Unclear Broad Provisions of Anti-Discrimination Laws. . . . .	585
VI.	Informal Remedies and Administrative Courts. . . . .	586
A.	Accountability Standards and Their Enforcement. . . . .	587
B.	Can These Legal Discrepancies be Challenged and Changed? . . . . .	588
VII.	Personal View. . . . .	589

An International Organisation's Point of View Edward KWAKWA.....	591
I. Introduction.....	591
II. Human Rights Obligations of International Organisations.....	592
III. Human Rights Obligations of International Organisations <i>vis-à-vis</i> Their Staff Members.....	594
IV. Conclusion.....	600
<i>List of Contributors</i> .....	601
<i>Table of Cases</i> .....	607
<i>Index</i> .....	617