ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS
BY INTERNATIONAL ORGANISATIONS

ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS BY INTERNATIONAL ORGANISATIONS

Jan Wouters
Eva Brems
Stefaan Smis
Pierre Schmitt
(eds.)

intersentia
Antwerp – Oxford – Portland

Distribution for the UK:
Hart Publishing Ltd.
16C Worcester Place
Oxford OX1 2JW
UK
Tel.: +44 1865 51 75 30
Email: mail@hartpub.co.uk

Distribution for the USA and Canada:
International Specialized Book Services
920 NE 58th Ave. Suite 300
Portland, OR 97213
USA
Tel.: +1 800 944 6190 (toll free)
Tel.: +1 503 287 3093
Email: info@isbs.com

Distribution for Austria:
Neuer Wissenschaftlicher Verlag
Argentinierstraße 42/6
1040 Wien
Austria
Tel.: +43 1 535 61 03 24
Email: office@nwv.at

Distribution for other countries:
Intersentia Publishers
Groenstraat 31
2640 Mortsel
Belgium
Tel.: +32 3 680 15 50
Email: mail@intersentia.be

Accountability for Human Rights Violations by International Organisations
Jan Wouters, Eva Brems, Stefaan Smis and Pierre Schmitt (eds.)

ISBN 978-90-5095-746-5
D/2010/7849/128
NUR 828

SUMMARY OF CONTENTS

CONTENTS

PART III. INTERNATIONAL CIVIL ADMINISTRATION

PART IV. ECONOMIC GOVERNANCE

ABBREVIATIONS

ADB	Asian Development Bank
ADL	Anti-Discrimination Law
AMIS	African Union Mission in Sudan
AMISOM	African Union Mission in Somalia
ARV	Antiretroviral Drug
ASR	Articles on State Responsibility
ATCA	Alien Tort Claims Act
BverfG	Bundesverfassungsgericht
CCA	Common Country Assessment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CIL	Coal India Limited
CIVPOL	Civilian Police
CoE	Council of Europe
CONOPS	Concepts of Operations
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	United Nations Convention on the Rights of the Child
DRC	Democratic Republic of Congo
DSU	Dispute Settlement Understanding
EAP	Environmental Action Plan
EC	European Community
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECommHR	European Commission on Human Rights
ECtHR	European Court of Human Rights
ELDO	European Launcher Development Organization
EPZ	Export Processing Zone
ERRC	European Roma Rights Centre
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo

FAO	Food and Agriculture Organization of the United Nations
FIAN	Food First Information and Action Network
GATT	General Agreement on Tariffs and Trade
GSP	General System of Preferences
HPCC	Housing and Property Claims Commission
HPD	Housing and Property Directorate
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IAT	International Administrative Tribunal
IBRD	International Bank for Reconstruction and Development
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDA	International Development Association
IFC	International Finance Corporation
IFI	International Financial Institution
IHL	International Humanitarian Law
ILA	International Law Association
ILC	International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
IMP	Independent Monitoring Panel
INBAR	International Network for Bamboo and Rattan
INTERFET	International Force in East Timor
IP	Intellectual Property
IPR	Intellectual Property Right
IPTF	International Police Task Force
ISAF	International Security Assistance Force
ITA	International Territorial Administration
KFOR	Kosovo Force
KPS	Kosovo Police Service
LDC	Least Developed Country
LNT	Administrative Tribunal of the League of Nations
LOAC	Law of Armed Conflict
LSMS	Legal System Monitoring Section

MDB	Multilateral Development Bank
MFN	Most Favoured Nation
MINUSTAH	United Nations Stabilisation Mission in Haiti
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
MoU	Memorandum of understanding
MSU	Multinational Specialised Units
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NFTC	National Foreign Trade Council
NHRC	National Human Rights Commission
OAS	Organization of American States
OCTA	US Omnibus Trade and Competitiveness Act
OECD	Organization for Economic Co-operation and Development
OHR	Office of the High Representative
OIK	Ombudsperson Institution for Kosovo
OIOS	Office of International Oversight Services
OPCW	Organisation for the Prohibition of Chemical Weapons
OPLAN	NATO Operation Plan
OSCE	Organization for Security and Co-operation in Europe
OTCA	Omnibus Trade and Competitiveness Act
PAP	Project-affected person
PIC	Peace Implementation Council
PIFWC	Person Indicted For War Crimes
PIK	Police Inspectorate of Kosovo
PISG	Provisional Institutions for Self Government
PRDSS	Property with Designated Special Status
R&R	Resettlement and Rehabilitation
ROE	Rules of Engagement
SC-SL	Special Court for Sierra Leone
S&DT	Special and Differential Treatment
SEZ	Special Economic Zone
SOFA	Status of Forces Agreement
SOMA	Status of Mission Agreement
SOP	Standing Operating Procedure
SRSG	Special Representative of the Secretary General
STANAG	Standardization Agreement
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TPRM	Trade Policy Review Mechanism
TRIPs	Agreement on Trade-Related Aspects of Intellectual Property

UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMET	United Nations Assistance Mission in East Timor
UNAMI	United Nations Assistance Mission for Iraq
UNAMID	United Nations – African Union Mission in Darfur
UNAT	United Nations Administrative Tribunal
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNEF	United Nations Emergency Force
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFIL	United Nations Interim Force in Lebanon
UNOMIG	United Nations Observer Mission in Georgia
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIS	United Nations Mission in Sudan
UNOSOM	United Nations Operation in Somalia
UNPROFOR	United Nations Protection Force
UNTAET	United Nations Transitional Administration in East Timor
UNTAG	United Nations Transition Assistance Group
WBAT	World Bank Administrative Tribunal
WHO	World Health Organization
WTO	World Trade Organization

ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS BY INTERNATIONAL ORGANISATIONS: INTRODUCTORY REMARKS

Jan Wouters, Eva Brems, Stefaan Smis and Pierre Schmitt

I. BACKGROUND

On 16–17 March 2007, an international conference on the theme of the present volume was organised in Brussels to mark the first issue of the journal *Human Rights & International Legal Discourse*. A selection of contributions presented at the conference has been published in the journal[1], while other papers including the keynotes have been adapted and are included in the present book, in addition to new contributions. The further conceptualisation of this book, the painstaking editing process, the collection of additional contributions, the updating of many chapters in liaison with the authors and the writing of a number of additional chapters, including the present editorial introduction, took place as part of an ongoing inter-university project between the Universities of Leuven (Katholieke Universiteit Leuven), Brussels (Vrije Universiteit Brussel) and Ghent (Universiteit Gent) funded by the Fonds Wetenschappelijk Onderzoek – Vlaanderen. We are grateful to the Fonds Wetenschappelijk Onderzoek – Vlaanderen, the Vlaamse Interuniversitaire Raad – University Development Cooperation, the Cabinet of the Minister of Foreign Affairs of Belgium, the Royal Flemish Academy of Belgium for Sciences and Arts, the Minister of External Relations of the Brussels Capital Region, and our universities for their support.

II. AIM OF THE BOOK

The present book is designed to explore the mechanisms through which accountability can be realised for violations of human rights committed by, or attributable to, international organisations and their staff. The subject is at the

[1] See 1 *Human Rights & International Legal Discourse* 2 (2007) pp. 211–441.

intersection between human rights law, public international law and the law of international organisations. It profoundly affects some of the basic tenets and doctrines of the latter legal arena.

Some may consider the theme of the book far-fetched. How could one imagine international organisations violating human rights? Have they not been set up by their Member States with the purpose of contributing to the provision of global or regional public goods and does this not imply that they generally protect and promote, rather than violate, human rights? Some international organisations and bodies have even specifically been established to protect and promote human rights. One may think of regional human rights courts with great achievements, such as the European Court of Human Rights and the Inter-American Court of Human Rights, and of the plurality of bodies, committees and offices set up in the framework of the United Nations (UN), from the UN Human Rights Council to the treaty bodies that monitor the respect for the global human rights treaties and the Office of the High Commissioner for Human Rights. The UN itself is a prominent example of an international organisation which, from its inception in 1945, not only 'reaffirm[ed] faith in fundamental human rights'[2] but has as one of its primary objectives 'promoting and encouraging respect for human rights and for fundamental freedoms for all'[3], including promoting such respect and observance of human rights at a universal level.[4] Many other international organisations, particularly also regional ones (e.g. the European Union (EU), the African Union (AU) and the Organization of American States (OAS)), include human rights protection among their primary or accessory goals.

One should note that international organisations have proliferated enormously (currently their number is well over 500)[5] and over the years they have unfolded an unprecedented scope and intensity of activities in a wide range of policy fields. This expansion may be explained by the need for collective action to face global and regional problems: international organisations provide a means to institutionalise inter-State cooperation.[6] International organisations are frequently intervening in peace-keeping operations and military action. They sometimes even exercise administrative powers over territories. Many of them are heavily involved in international policy-making and/or standard-setting. Together

2 Third recital of the preamble of the Charter of the United Nations (UN Charter).

3 Art. 1(3) UN Charter; see also Art. 13(1)(a) (General Assembly), Art. 62(2) (ECOSOC), Art. 76(c) (trusteeship system).

4 Art. 55(c) UN Charter.

5 C.F. Amerasinghe, *Principles of the Institutional Law of International Organizations*, 2nd edn. (Cambridge, Cambridge University Press 1996) p. 6.

6 J.-M. Coicaud, 'International organisations, the evolution of international politics, and legitimacy', in J.-M. Coicaud and V. Heiskanen, eds., *The Legitimacy of International Organisations* (Tokyo/New York/Paris, United Nations University Press 2001) p. 545.

with an increasing impact of the activities of international organisations on the lives of people around the world, inevitably situations multiply in which human rights (political, civil, but also economic, cultural and social) may be threatened or violated through the actions, operations or policies of such organisations.

Since international organisations exercise important aspects of public authority and even act as substitute for States in some instances, an efficient accountability system has to be created in order to review the decisions made and to sanction any misconduct, similarly to the checks and balances established to control democratic governments. As observed by Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, 'an international accountability deficit is no good for anyone, least of all the local population. No one, especially an international organisation, is above the law.'[7]

The theme of responsibility of international organisations has progressively gained the attention of legal scholars[8] and international bodies in the past two decades. Especially the work of the International Law Commission (ILC) and of the International Law Association (ILA) should be mentioned in this respect.

The ILC decided to include the topic in its work programme in 2000.[9] Two years later, it established a Working Group and appointed a Special Rapporteur,

---

7 T. Hammarberg, Council of Europe Commissioner for Human Rights, 'International Organisations acting as quasi-governments should be held accountable', 8 June 2009, also available at the Commissioner's website at www.commissioner.coe.int.

8 See *inter alia,* H.G. Schermers, 'Liability of International organisations', *Leiden Journal of International Law* (1988) pp. 3–14; P. Klein, *La responsabilité des organisations internationales dans les ordres juridiques internes et en droit des gens* (Bruxelles, Bruylant 1998); R. Higgins, 'The Responsibility of States Members for the Defaults of International Organizations: Continuing the Dialogue', in S. Schlemmer-Schulte and K.-Y. Tunk, eds., *Liber Amicorum I.F.I. Shihata. International Finance and Development Law* (The Hague/London/Boston/New York, Kluwer Law International 2001) pp. 441–448; A. Reinisch, 'Governance without Accountability?', *German Yearbook of International Law* (2001) pp. 270–306; A. Reinisch, 'Securing the Accountability of International Organisations', 7 *Global Governance* (2001) pp. 131–149; I. Seidl-Hohenveldern, 'Liability of Member States for Acts or Omissions of an International Organization', in S. Schlemmer-Schulte and K.-Y. Tunk, eds., op. cit. in this note, pp. 727–739; K. Wellens, *Remedies against International Organisations* (Cambridge, Cambridge University Press 2002); K. Wellens, 'Accountability of International organisations: Some Salient Features', 97 *American Society of International Law Proceedings* (2003) pp. 241–245; K. Wellens, W.E. Holder and G. Hafner, 'Can International organisations be controlled? Accountability and Responsibility', 97 *American Society of International Law Proceedings* (2003) pp. 236–240; K. Wellens, 'Fragmentation of International Law and Establishing an Accountability Regime for International organisations: The Role of the Judiciary in Closing The Gap', 25(4) *Michigan Journal of International Law* (2004) pp. 1159–1181; S. Yee, 'The Responsibility of States Member of an International Organisation for its Conduct as a Result of Membership or Their Normal Conduct Associated with Membership', in M. Ragazzi, ed., *International Responsibility Today. Essays in Memory of Oscar Schachter* (Leiden/Boston, Martinus Nijhoff Publishers 2005) pp. 436–454.

9 ILC, *Report of its fifty-second session, 1 May to 9 June and 10 July to 18 August 2000*, UN Doc. A/55/10, pp. 135 *et seq.*

Professor Giorgio Gaja.[10] From its fifty-fifth (2003) to its sixty-first (2009) sessions, the ILC has received seven reports[11] from the Special Rapporteur and provisionally adopted draft articles 1 to 66.[12] According to draft article 3, '[e]very internationally wrongful act of an international organization entails the international responsibility of the international organization.' Draft article 4 provides that '[t]here is an internationally wrongful act of an international organization when conduct consisting of an action or omission: (*a*) [i]s attributable to the international organization under international law; and (*b*) [c]onstitutes a breach of an international obligation of that international organization.' The ongoing process of ILC work has permitted one to take into consideration the comments made by States and international organisations on the draft articles provisionally adopted by the ILC and to consequently make amendments thereto. For instance, in the 2006 report, draft article 28(1) went as follows: '[a] State member of an international organisation incurs international responsibility if it circumvents one of its international obligations by providing the organization with competence in relation to that obligation, and the organization commits an act that, if committed by that State, would have constituted a breach of that obligation.'[13] In 2009, the ILC substantially modified the provision and proposed draft article 60(1), which no longer links State responsibility to the conferral of powers to an international organisation:

> 'A State member of an international organization incurs international responsibility if it seeks to avoid complying with one of its own international obligations by taking advantage of the fact that the organization has competence in relation to the subject matter of that obligation, thereby prompting the organization to commit an act that, if committed by the State, would have constituted a breach of the obligation.'[14]

Partly prior to and parallel with the work of the ILC on the responsibility of international organisations, another important attempt in this area was made by the ILA. It established a specific Committee in 1996 to study the accountability of international organisations. The ILA Committee took a broader approach than the one taken by the ILC. Whereas the ILC only focuses on the responsibility towards Member and Non-Member States[15], the 'recommended rules and practices' of the

---

10 ILC, *Report of its fifty-fourth session, 29 April to 7 June and 22 July to 16 August 2002*, UN Doc. A/57/10, pp. 228 *et seq.*

11 See http://untreaty.un.org/ilc/guide/9_11.htm.

12 ILC, *Report of the sixty-first session 4 May to 5 June and 6 July to 7 August 2009*, UN Doc. A/64/10, chapter IV, paras. 31–51.

13 See, with commentary, ILC, *Report of the Fifty-eighth session, 1 May to 9 June and 3 July to 11 August 2006*, UN Doc. A/61/10, p. 283.

14 ILC, *Report of the sixty-first session, 4 May to 5 June and 6 July to 7 August 2009*, UN Doc. A/64/10, p. 38.

15 ILC, *Report of its fifty-fourth session, 29 April to 7 June and 22 July to 16 August 2002*, UN Doc. A/57/10, p. 229.

ILA Committee cover the accountability of an international organisation towards their members and third parties[16], i.e. 'victims or wrongdoers who are not members of the [international organisation] concerned: states, other [international organisation]s, individuals or legal persons, including private entities'.[17] Moreover, the ILA Committee focused on the 'accountability of international organisations', which is a broader concept than their responsibility. According to the final report of the ILA Committee published in 2004, '[a]ccountability of [international organisation]s is a multifaceted phenomenon. The form under which accountability will arise will be determined by the particular circumstances surrounding the acts or omissions of an [international organisation], its member States or third parties. These forms may be legal, political, administrative or financial. A combination of the four forms provides the best chances of achieving the necessary degree of accountability.'[18] The concept of accountability is thoroughly analysed by Ige F. Dekker in Chapter 2 of this book.

III. CONTENTIOUS LEGAL ISSUES

A. ARE INTERNATIONAL ORGANISATIONS BOUND BY INTERNATIONAL HUMAN RIGHTS NORMS?

As a preliminary to the analysis of the accountability of an international organisation for human rights violations, the binding character of international human rights law has to be assessed in regard to international organisations, which – with one exception for the EU[19] – are not bound as signatories by any human rights treaty.[20]

---

16 ILA, *Report of the seventy-first conference, Berlin 2004* (London, International Law Association 2004), p. 4.

17 *Ibid.*, p. 20.

18 ILA, *Report of the seventy-first conference, Berlin 2004* (London, International Law Association 2004), p. 5. Footnotes omitted.

19 Reference is made to the UN Convention on the rights of persons with disabilities, to which the EU (prior to the entry into force of the Treaty of Lisbon: the EC) is a signatory. It should also be noted that the Treaty of Lisbon (Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, Lisbon, 13 December 2007, *O.J. C* 306 (17 December 2007); consolidated versions of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) as they are amended by the Lisbon Treaty are published in *O.J. C* 85 (30 March 2010)) empowers the EU to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms: Art. 6(2) Treaty on European Union. Accession by the EU has become possible from the point of view of the Council of Europe now that Protocol No 14 (Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, done at Strasbourg 14 May 2004 (CETS No. 194, entered into force on 1 June 2010) inserts Art. 59(2) into the Convention, enabling the EU to accede to the latter.

20 A. Reinisch, 'Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions', 95(4) *American Journal of*

Indeed, the international human rights legal framework is generally designed for States. But does this mean that international organisations are not bound by any international human rights norms? This question necessitates, in the first place, a query into the international legal personality of the international organisation at hand[21] and the legal consequences flowing from its status as a subject of international law.[22] If their independent personality is recognised, international organisations will be held internationally responsible for their acts in case of a violation of an applicable international norm.[23]

The aforementioned question also begs another fundamental issue, namely the extent to which international human rights norms not only belong to established rules of treaty law, but also form part of customary international law and/or general principles of international law.[24] Although there seems to be a convergence of views on the obligation of international organisations to respect at least *some* human rights[25], controversies persist, notably as to the identification of sources of this obligation and its scope. For several authors, this obligation rests on the customary status of international human rights. The massive adoption and continuous affirmation of the fundamental human rights listed in the Universal Declaration of Human Rights (UDHR)[26] have, so it is submitted, transformed these rules – or at least some of them – into customary international law.[27] As

International Law (2001) p. 854; A. Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, Oxford University Press 2006) p. 91.

21 ICJ, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, *ICJ Rep.* (1949) pp. 173–219. The international legal personality of international organisations has given rise to heated debates among scholars. See notably J. Klabbers, *An Introduction to International Institutional Law* (Cambridge, Cambridge University Press 2009) pp. 46–52; N.D. White, *The law of international organisations*, 2nd edn. (Manchester, Manchester University Press 2005), pp. 30–70. Nigel D. White notably examines international organisations which have no international legal personality, such as the Organization for Security and Co-operation in Europe (OSCE).

22 ICJ, *Interpretation of the Agreement of 25 March 1991 between the WHO and Egypt*, Advisory Opinion, *ICJ Rep.* (1980) p. 73.

23 Apart from the ongoing work of the ILC in this area and the final report published by the ILA in 2004, op. cit. n. 16, see the references mentioned *supra* in footnote 8.

24 See O. De Schutter, Chapter 4.

25 T. Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford, Clarendon Press 1989) pp. 94–96; H. Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law', 25 *Georgia Journal of International and Comparative Law* (1995–1996) pp. 287–395; C. Tomuschat, *Human Rights: Between Idealism and Realism Actors* (Oxford, Oxford University Press 2003) p. 4; T. Ahmed and I. de Jesús Butler, 'The European Union and Human Rights: an International Legal Perspective', 17(4) *European Journal of International Law* (2006) pp. 771–801; J. Wouters and C. Ryngaert, 'Impact on the Process of the Formation of Customary International Law', in M.T. Kamminga and M. Scheinin, eds., *The Impact of Human Rights Law on General International Law* (Oxford, Oxford University Press 2008) pp. 111–131.

26 UN General Assembly, Resolution A/217 (III), *Universal Declaration of Human Rights*, UN Doc. A/RES/3/217 A, 10 December 1948.

27 See notably H. Hannun, loc. cit. n. 25, at p. 322; C. Tomuschat, op. cit. n. 25, at p. 4.

customary international law applies to all subjects of international law, it is clear that such customary human rights norms are also binding upon international organisations.[28] Other authors consider that human rights have become general principles of international law through the medium of the 'general principles of law recognized by civilized nations' mentioned in Article 38(1)(c) of the Statute of the International Court of Justice.[29] Such general principles would not require State practice bur rather result from 'a variety of ways in which moral and humanitarian considerations find a more direct and spontaneous "expression in legal form".'[30] Moreover, some provisions of human rights law – such as the prohibition of racial discrimination – are considered as norms of *jus cogens*.[31] It is generally admitted that peremptory rules bind international organisations.[32]

Nevertheless, if obligations there are, their scope and content need to be clarified. In addition to the obligation to respect human rights, the question must be raised whether international organisations with no specific mandate in the area of human rights bear an obligation to protect, report on or monitor human rights. This question has been fiercely debated in relation to international development actors, such as the international financial institutions (IFIs) or the United Nations Development Program (UNDP). Let us take a closer look at these bodies in order to better gauge the debate and its sensitivities.

Human Rights are not mentioned in the Articles of Agreement of the International Monetary Fund (IMF), of the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). At the IMF, this has been interpreted as indicating that the organisation has no mandate to promote human rights.[33] At the World Bank, former General

---

28 H.G. Schermers, 'The Legal Bases of International Organization Action', in R.-J. Dupuy, ed., *Manuel sur les organisations internationales – A Handbook on International Organizations* (Dordrecht/Boston/London, Martinus Nijhoff Publishers 1998) p. 402; C. Tomuschat, 'International Law: Ensuring the Survival of Mankind on the Eve of a New Century: General Course on Public International Law', 281 *Recueil des Cours de l'Académie de Droit International* (2001) pp. 134–135.

29 See B. Simma and P. Alston, 'The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles', 12 *Australian Yearbook of International Law* (1988–1989) p. 82, at pp. 102–108.

30 *Ibid*., at p. 105.

31 B. Kondoch, 'Human Rights Law and UN Peace Operations in Post-Conflict Situations', in N.D. White and D. Klaasen, eds., *The UN, Human Rights and Post-Conflict Situations*, (Manchester, Manchester University Press 2005) p. 36.

32 H.G. Schermers, loc. cit. n. 28, at p. 402.

33 G.B. Taplin, 'Speaking Points: Globalization and its Impacts on the Full Enjoyment of Human Rights', Speech to Sub-Commission on the Promotion and Protection of Human Rights, 8 August 2001, available at www.unhchr.ch/huricane/huricane.nsf/view01/7A33AABB095C51F3C1256AA300282C86; see also G. Capdevila, 'IMF Not Taking into Account Human Rights Issues', 13 August 2001, available at www.globalpolicy.org/component/content/article/209/42944.html. Internet pages last visited on 3 March 2010.

Counsel R. Dañino acknowledged that 'human rights and international human rights law have become increasingly relevant to helping the Bank achieve its mission and fulfil its purposes' and that 'it is now evident that human rights are an intrinsic part of the Bank's mission.' Yet, he added that the role of the Bank (and by extension, the Fund) 'is not that of an enforcer of human rights obligations.' Indeed, enforcement 'is primarily the responsibility of member countries and of other, non-financial entities, such as the United Nations treaty monitoring bodies and regional human rights organizations.'[34]

The relationship between IFIs and human rights has been discussed at length by scholars.[35] Some authors suggest that international financial institutions should have with respect to human rights generally a 'duty of vigilance' to ensure that their actions have no negative effects on the human rights situation in their borrowing members.[36] Others go further and consider that the IFIs' substantial influence over borrowing countries make it 'increasingly untenable that the IFIs should function without human rights responsibilities within their spheres of influence, and without accountability for the impact of their economic decisions on the exercise of human rights.'[37]

---

34 R. Dañino, 'Legal Opinion on Human Rights and the Work of the World Bank by the Senior Vice-President and General Counsel', 27 January 2006, available at www.ifiwatchnet.org/sites/ifiwatchnet.org/files/DaninoLegalOpinion0106.pdf.

35 See *inter alia* D.D. Bradlow, 'The World Bank, the IMF, and human rights', *Transnational Law & Contemporary Problems* (1996) pp. 47–90; J.A. Fox and C.D. Brown, eds., *The Struggle for Accountability, The World Bank, NGOs and Grassroots Movements* (Cambridge, MIT Press 1998); D.L. Clark, 'The World Bank and Human Rights: The Need for Greater Accountability', *15 Harvard Human Rights Journal* (2002) pp. 205–226; S.I. Skogly, *The Human Rights Obligations of the World Bank and the International Monetary Fund* (London, Cavendish 2001); M. Darrow, *Between Light and Shadow: the World Bank, the International Monetary Fund and International Human Rights Law* (Oxford, Hart Publishing 2003); W. van Genugten, P. Hunt and S. Mathews, eds., *World Bank, IMF and Human Rights* (Nijmegen, Wolf Legal Publishers 2003); B. Carin and A. Wood, eds., *Accountability of the International Monetary Fund* (Ottawa, Ashgate and the International Development Research Centre 2005); B. Ghazi, *The IMF, the World Bank Group and the Question of Human Rights* (Ardsley, Transnational 2005); K. De Feyter, 'The International Financial Institutions and Human Rights: Law and Practice', in F. Gómez and K. De Feyter, eds., *International Protection of Human Rights: Achievements and Challenges* (Bilbao, University of Deusto 2006) pp. 561–592; R. Dañino, 'The Legal Aspects of the World Bank's Work on Human Rights: Some Preliminary Thoughts', in A. Palacio, C. Sage and S. Woolcock, eds., *The World Bank Legal Review: Law, Equity and Development,* vol. 2 (Leiden/Boston, Martinus Nijhoff Publishers 2006) pp. 295–324; D. Kinley, 'Human Rights and the World Bank: Practice, Politics and Law', in A. Palacio, C. Sage and S. Woolcock, eds., *The World Bank Legal Review: Law, Equity and Development,* vol. 2 (Leiden/Boston, Martinus Nijhoff Publishers 2006) pp. 353–383; L. Boisson de Chazournes, 'The Bretton Woods Institutions and Human Rights: Converging Tendencies', in W. Benedek, K. De Feyter and F. Marella, eds., *Economic Globalisation and Human Rights* (Cambridge, Cambridge University Press 2007) pp. 210–263.

36 P. Klein, 'La responsabilité des organisations financières internationales et les droits de la personne', *Revue Belge de Droit International* (1999) p. 97.

37 M.E. Salomon, 'International Economic Governance and Human rights Accountability', in M.E. Salomon, A. Tostensen and W. Vandenhole, eds., *Casting the Net Wider: Human rights, Development and New Duty-Bearers* (Antwerp, Intersentia 2007) p. 27.

In a recent study on the impact of structural adjustment programmes on human rights in 131 developing countries between 1981 and 2003, R. Abouharb and D. Cingranelli concluded that 'equitable economic development efforts would be more efficient and many of the negative impacts of World Bank and IMF loans and grants would be mitigated or eliminated if the IFIs pursued a human-rights based strategy of development assistance.'[38] Despite this external pressure, the IFIs maintain their suspicion towards human rights and show reluctance to integrate them in their operations.[39]

Another important development actor is the UNDP, which works with 166 countries in order to achieve progress in development. At the UN World Summit of 2005, heads of government recognised that peace and security, development and human rights are the three interlinked and mutually reinforcing pillars of the UN system.[40] Despite this consensus, the relationship between human rights and development has been subject to disagreement between UN Member States. Indeed, both within the General Assembly Triennial Comprehensive Policy Review (TCPR) process and the General Assembly's System-wide Coherence (SWC) process, Member States diverged on the place of human rights in UN development activities. The G-77 and China expressed their concern about the inordinate emphasis given to human rights in UN development activities. The Group feared a discrimination against developing countries if human rights were to be considered as UN development objectives. Human rights 'could be misused to introduce new conditionalities on international development assistance. This is not acceptable to the developing countries.'[41] Similar arguments were raised within the UNDP Executive Board discussions on the UNDP strategic plan 2008–2011. The final strategic plan states that 'while UNDP should uphold universal United

38 R. Abouharb and D. Cingranelli, *Human Rights and Structural Adjustment* (Cambridge, Cambridge University Press 2008) p. 13.

39 G.A. Sarfaty considers that human rights are a marginal issue at the World Bank because of the organisational culture of the latter. 'Human rights are a particularly difficult set of norms to incorporate into an economic institution because doing so forces employees into a struggle between principles and pragmatism – that is, it creates a tension between normative, intangible values and goals, and practical ways to solve problems (which may make it necessary to reconcile competing principles). In an environment like the Bank where most issues are subject to cost-benefit analysis, employees may be ambivalent about principles that appear to be non-negotiable or subject to trade-offs. They may perceive potential costs in trying to render seemingly incommensurable values commensurate.' G.A. Sarfaty, 'Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank', 103 *American Journal of International Law* (2009) pp. 647–683.

40 UN General Assembly, '2005 World Summit Outcome', UN Doc. A/Res. 60/1 (2005), paras 9 and 72; see also UN General Assembly, 'Human Rights Council', UN Doc. A/Res. 60/251 (2006), sixth recital; UN General Assembly, 'The Role of the United Nations in Promoting a New Global Human Order', UN Doc. A/Res. 62/213 (2008), second recital.

41 M. Akram, Statement on behalf of the Group of 77 and China at the operational activities segment of the 2007 substantive session of the ECOSOC, 12 July 2007, available at www.g77.org/statement/getstatement.php?id=070712.

Nations norms and standards, including those related to human rights, UNDP does not have any normative or monitoring role with regard to human rights.'[42] Yet, the terms 'normative' or 'monitoring role' have not been defined in the plan.[43]

B. ACCOUNTABILITY OF MEMBER STATES OF INTERNATIONAL ORGANISATIONS

Next to the accountability of international organisations themselves, the question arises whether Member States are or remain accountable for violations of human rights attributed to the international organisation of which they are a member. If one recognises that international organisations are bound by international human rights norms, the accountability for acts of the international organisation relies exclusively on the international organisation itself, and not on its Member States. However, it can be argued that a 'piercing of the veil' is or should be possible[44], since it would prevent Member States from evading their obligations in acting through the international organisation.[45] Such piercing of the veil would permit either holding top officials and/or collaborators of the organisations personally liable for human rights violations, and/or reaching (some of) the Member States that are behind the decisions in question that result in human rights violations.

The evasion by Member States of their obligations by acting (in one way or another) through international organisations constitutes an abuse of the legal personality of an international organisation. Moreover, situations can and do occur where Member States take advantage of their prerogatives as laid down in the constitutional act of the international organisation. If violations of human rights result from such behaviour of a Member State (or a number of Member States) that – based on its (or their) prerogatives in the decision-making process of the international organisation at hand (for example the veto right within the Security Council) – forces through a decision, should there not at least be the possibility for a concurrent accountability of this (these) Member State(s)?[46]

---

42 Executive Board of the UNDP and the United Nations Population Fund, ' UNDP Strategic Plan 2008–2011, Accelerating Global Progress on Human Development', UN Doc. DP/2007/43/Rev.1, 22 May 2008.

43 For a comprehensive analysis of the relation between human rights and UNDP, see M. Darrow and L. Arbour, 'The Pillar of Glass: Human Rights in the Development Operations of the United Nations', 103 *American Journal of International Law* (2009) pp. 446–501.

44 C. Brölmann, *The Institutional Veil in Public International Law. International Organisations and the Law of Treaties* (Amsterdam, Oxford, Hart Publishing 2007) pp. 262–267.

45 M. Hirsch, *The Responsibility of International Organizations Toward Third Parties: Some Basic Principles* (Dordrecht-Boston-London, Martinus Nijhoff Publishers 1995) p. 170.

46 See J. d'Aspremont, 'The Limits of the exclusive responsibility of international organizations', 1(2) *Human Rights & International Legal Discourse* (2007) pp. 217–229; J. d'Aspremont, 'Abuse of the Legal Personality of International organisations and the Responsibility of Member States', *International Organisations Law Review* (2007) pp. 91–119.

A way of ensuring that Member States do not evade their obligations by acting through international organisations would be to consider that international organisations are bound by the treaties that bind their Member States. Frederik Naert thoroughly analyses this question in chapter 5 of this book.[47] Moreover, the ILC has integrated the topic of Member States seeking to avoid compliance in its draft article 60, provisionally adopted in 2009 and mentioned *supra*, II.[48]

C. OBSTACLES TO ACCOUNTABILITY OF INTERNATIONAL ORGANISATIONS

Even if recognised in principle, accountability of international organisations for human rights violations faces difficult obstacles in practice. There is no international court that generally has jurisdiction over international organisations. Moreover, national courts may not adjudicate claims against international organisations because of the immunity traditionally granted to them.[49] As a consequence, one is almost completely dependent on the goodwill of an international organisation to submit itself to an accountability mechanism. This being said, recent years have seen an evolution in international and national case-law grounded on the human rights principle of access to courts to waive immunity and offer individuals a mechanism to challenge acts of international organisations.[50] In the parallel cases *Waite and Kennedy v Germany* (1999) and *Beer and Regan v Germany* (1999), the European Court of Human Rights ruled that immunity of jurisdiction of international organisations was permissible insofar as 'the applicants had available to them reasonable alternative means to

47 F. Naert, Chapter 5.

48 ILC, *Report of the sixty-first session, 4 May to 5 June and 6 July to 7 August 2009*, UN Doc. A/64/10, p. 38. See the text corresponding to footnote 14.

49 A. Reinisch, *International Organisations before National Courts* (Cambridge, Cambridge University Press 2000). For certain international organisations, constitutive documents provide for a limited immunity, as for instance Article VII (3) of the IBRD Articles of Agreement: 'Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.'

50 See for instance Brussels Labour Court of Appeals, Belgium, *Siedler v. Western European Union*, 17 September 2003, *Journal des Tribunaux* (2004) p. 617; Case Note by E. David, 'L'immunité de juridiction des organisations internationales', *Journal des Tribunaux* (2004) p. 619; Cour de Cassation (soc.), France, *African Development Bank v. Haas*, 25 January 2005, *Journal des Tribunaux* (2005) p. 454; Case Note by E. David, 'Observations', *Journal des Tribunaux* (2005) p. 454; A. Reinisch, 'The Immunity of International Organizations and the Jurisdiction of their Administrative Tribunals', 7 *Chinese Journal of International Law* (2008) pp. 285–306; P. Sands and P. Klein, *Bowett's Law of International Institutions*, 6th edn. (London, Sweet & Maxell 2009) p. 498.

protect effectively their rights under the Convention'.[51] While this case-law attempts to reconcile individual rights with the rights of the organisation, it also raises fundamental questions on the role of national courts. It requires national courts to assess the complaint mechanisms established by the international organisations. The question is whether national courts have the required expertise to decide on such cases and whether they constitute an appropriate forum to assess the specificities of the dispute settlement mechanisms set up by international organisations. Moreover, the rejection of immunity by national courts may open the door to divided decisions of the courts of different Member States of international organisations and lead to uncertainty and tensions.[52] Furthermore, interference by the national judiciary may threaten the independence of an international organisation in the discharge of its mission.[53] Finally, even in the case of a victim obtaining a judgment convicting an international organisation, the question arises how this person can enforce the national decision.

These legal issues have direct and concrete implications for victims. In 2007, a group called the 'Mothers of Srebrenica' asked a Dutch court – The Hague District Court – to indict the UN for its failure to prevent the Srebrenica massacre and asked for financial compensation. In July 2008, the court ruled that it had no jurisdiction as the UN enjoys full immunity from actions by national courts.[54] This decision was upheld on 30 March 2010 by the Court of Appeal in The Hague. The Court of Appeal considered that because of the UN's 'special position' in providing peacekeeping and ensuring peace and security around the world, 'it is very important that the UN has the broadest immunity possible allowing for as little discussion as possible' in order to permit the UN to undertake its duties.[55] The 'Mothers of Srebrenica' had also requested the Court

---

51 ECtHR, *Beer and Regan v. Germany*, Application No. 28934/95, 33 *EHHR* (2001) p. 3; ECtHR, *Waite and Kennedy v. Germany*, Application No. 26083/94, 30 *EHHR* (1999) p. 261.

52 The D.C. Court of Appeals noted in *Broadbent v. Organization of American States* (1980) that '[a]n attempt by the courts of one nation to adjudicate the personnel claims of international civil servants would entangle those courts in the internal administration of those organizations. Denial of immunity opens the door to divided decisions of the courts of different member states passing judgment on the rules, regulations, and decisions of the international bodies. Undercutting uniformity in the application of staff rules or regulations would undermine the ability of the organization to function effectively.' *Marvin R. Broadbent et al. v. Organization of American States et al.*, US Court of Appeals, DC Cir, 8 January 1980, 628 F.2d 27, 30–35 (DC Cir 1980).

53 F. Mégret, 'The Vicarious Responsibility of the United Nations for "Unintended Consequences of Peace Operations"', in C. Aoi, C. de Cooning and R. Thakur, eds., *The 'Unintended' Consequences of Peace Operations* (Tokyo, United Nations University Press 2007).

54 District Court in The Hague, The Netherlands, *The Association of Citizens Mothers of Srebrenica v. The Netherlands and the UN (Incidental Proceedings)*, 295247/HA ZA 07–2973, 10 July 2008.

55 Court of Appeal in The Hague, The Netherlands, *The Association of Citizens Mothers of Srebrenica v. The Netherlands and the UN (Appeal)*, 200.022.151/01, 30 March 2010.

of Appeal to submit the question whether the UN enjoys absolute immunity or not to the European Court of Justice. They argued that fundamental human rights enshrined in the legal order of the European Union were threatened by this immunity. This request was rejected by the Court of Appeal. As to the argument on their right of access to courts raised by the plaintiffs, the Court of Appeal held that this right is not limited by the immunity of jurisdiction of the UN since the victims can sue the perpetrators of the genocide and the State. Srebrenica survivors and victims' families used the latter possibility in the past and filed a claim for compensation against the Dutch government, arguing that Dutch troops failed to take effective action to prevent the massacre. Yet, on 10 September 2008, the Hague District Court rejected the claim for compensation and ruled that the Dutch government could not be held responsible since the Dutch battalion was under UN command. Consequently, the Dutch State had transferred its powers in the area of security and freedom to the UN and could not be held liable for any violation committed during UN operations.[56] As a follow-up to the decision of 30 March 2010 by the Court of Appeal in The Hague, lawyers for the families have declared that they may bring the case to the Dutch Supreme Court and once again request that the question be submitted to the European Court of Justice.[57]

D. THE NEED TO CREATE MECHANISMS TO ENSURE ACCOUNTABILITY

This example illustrates the urgent need to create mechanisms to ensure accountability of international organisations. Various mechanisms may be envisaged.[58] Some have already been established, such as the Inspection Panel at the World Bank[59], or the European Ombudsman[60], who deals with complaints from citizens about maladministration by EU institutions. Certain mechanisms have been established by the UN, such as specific procedures for third-party claims with a private law character in peace support operations. Most of these

56 District Court in The Hague, The Netherlands, *Individual Claimants v. The Netherlands*, 265618/HA ZA 06–1672, 10 September 2008.

57 Law Firm Van Diepen Van der Kroef, Press Release, 'Issue of UN immunity surprisingly not submitted to European Court of Justice by Court of Appeals in The Hague', 30 April 2010, available at www.vandiepen.com/upload/file/srebrenica/srebrenica-press-20100330.pdf.

58 See for instance S. Kuyama and M.R. Fowler, eds., *Envisioning Reform. Enhancing UN Accountability in the Twenty-First Century* (New York, United Nations University Press 2009).

59 International Bank for Reconstruction and Development, International Development Association, Resolution No. IBRD 93–10, Resolution No. IDA 93–6, 'The World Bank Inspection Panel', available at http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ResolutionMarch2005.pdf.

60 Article 228 of the Treaty on the Functioning of the European Union.

claims were settled by a local claims review board composed of UN officials and specifically established for a peacekeeping mission.[61] Another important example of internal mechanisms set up by the UN are the UN Dispute Tribunal and the UN Appeals Tribunal[62], which replaced the UN Administrative Tribunal as of 31 December 2009.[63] They have jurisdiction to adjudicate applications alleging non-observance of contracts of employment of staff members of the UN Secretariat or of their terms of appointment. Similar to the UN, the European Union has set up a European Union Civil Service Tribunal to deal with staff disputes.[64] These mechanisms constitute very elaborate examples of an internal justice system established by international organisations. Other mechanisms remain at the level of theoretical suggestions, such as the creation of an independent human rights court or panel.[65] It is noticeable that each of these mechanisms is specifically established to ensure the accountability of one single international organisation. One may be tempted to imagine a general mechanism to ensure accountability, applicable to all international organisations that accept its competence, such as the establishment by the UN Human Rights Council of a working group with the mandate of receiving complaints about the effects on the human rights situation of intergovernmental organisations' operations.[66] However, will the specificity of each international organisation not run counter to the establishment of a general system? Would tailor-made instruments corresponding to the specific mission and nature of the international organisation concerned not be preferable in order to optimise accountability?

61 UN Secretary-General Report, 'Financing of the United Nations Protection Force, the United Nations Confidence Restoration Operation in Croatia, the United Nations Preventive Deployment Force and the United Nations Peace Forces headquarters Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: financing of the United Nations peacekeeping operations', UN Doc. A/51/389 (1996) paras. 20–33; UN Secretary-General Report, Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations', UN Doc. A/51/903 (1997) paras. 7–11; K. Schmalenbach, *Die Haftung Internationaler Organisationen im Rahmen von friedenssichernden Maßnahmen und Territorialverwaltungen* (Frankfurt am Main, Peter Lang 2004).

62 UN General Assembly, 'Administration of justice at the United Nations', A/Res/62/228, 6 February 2008.

63 UN Secretary-General, 'Transitional measures related to the introduction of the new system of administration of justice – Secretary-General Bulletin', SGB/2009/11, 24 June 2009.

64 Decision 2004/752/EC, Euratom of the Council of 2 November 2004 establishing the European Union Civil Service Tribunal, OJ L 333/7, 9 November 2004.

65 T. Hammarberg, loc. cit. n. 7.

66 Cf. the proposal of S.I. Skogly, op. cit. n. 35 at p. 188.

IV. STRUCTURE OF THE BOOK

A. GENERAL CONCEPTS

The first part of the book focuses on a number of general concepts and fundamental problems. This pertains in the first place to the notion of 'accountability'. This book's title uses the term 'accountability', and not 'liability' or 'responsibility', for human rights violations of international organisations. **Ige F. Dekker** analyses these different concepts in his contribution and critically assesses the work of the International Law Commission on this topic.

Even though many international organisations have an international legal personality which is to be distinguished from their Member States, **Niels M. Blokker** examines whether international organisations are really independent actors and whether such independence corresponds to a functional necessity.

The question arises whether there remains also a form of responsibility for the Member States of the organisation. The interrelation between international organisations and their Member States is addressed by **Olivier De Schutter**, who suggests a logic of sliding scales in the law of international responsibility: 'the more the organisation itself complies with human rights, and establishes mechanisms, whether internal or external, relying either on international monitoring bodies or on national courts, in order to ensure such compliance, the less there will be reasons to suspect that, by transferring powers to the organisation, the Member States have somehow 'circumvented' their human rights obligations.'[67]

Frederik Naert discusses two aspects of the responsibility of Member States in the context of international organisations. In a first part, he analyses whether international organisations are bound by treaties binding their Member States, because that might be one way of ensuring that Member States do not evade their obligations when they act through international organisations. The second part of Frederik Naert's contribution reflects on the responsibility of Member States for their own actions in the framework of international organisations. **Matteo Tondini** describes the possibility of suing before national and international judicial/supervisory bodies States that belong to international organisations.[68]

---

67 O. De Schutter, at p. 128.

68 See also C.F. Amerasinghe, 'Liability to Third Parties of Member States of International organizations: Practice, Principle and Judicial Precedent', 85(2) *American Journal of International Law* (1991) p. 275; A. Reinisch, op. cit. n. 49.

B. PEACE AND HUMANITARIAN OPERATIONS

The risk of violations of human rights by international organisations is especially high when they exercise direct operational command and/or power, such as in the case of peacekeeping and humanitarian operations.[69] This is the focus of the second part of the book. As explained by **Ulf Häußler** in his contribution on accountability for possible human rights violations by international organisations in the course of peace missions, '[t]oday's peace missions differ considerably from classical Blue Helmet peacekeeping (…) many of these peace missions have become increasingly embedded in receiving states' power balances, and some are expected to remain in that position for significant periods.'[70] **Peter R. Baehr** focuses his analysis on the accountability of the United Nations in the case of Srebrenica, while **Kristin Bergtora Sandvik** investigates the role of procedural accountability in the organisation of humanitarian projects, especially on refugee resettlement. She postulates notably that '[a]ccountability measures are governance tools with complex effects. Devised as *means* to achieve greater legitimacy for bureaucratic interventions – by way of installing institutional cultures of human rights and administrative justice – these measures may themselves be transformed into instrumental ends through everyday practice.'[71]

C. INTERNATIONAL CIVIL ADMINISTRATION

Furthermore, one notices a significant expansion of the traditional peacekeeping missions, which have evolved toward complex operations and have even sometimes been entrusted with international territorial administration.[72] In the third part of this book, the analysis of the accountability for human rights violations of international organisations concentrates on such cases of international territorial administration. **Ralph Wilde** focuses on the normative identity of the UN and explains the general denial of the legitimacy of international trusteeship as a way of understanding why the accountability

---

69 F. Mégret and F. Hoffmann, 'The United Nations as Human Rights Violator? Some Reflections on the United Nations Changing Human Rights Responsibilities', 25 *Human Rights Quarterly* (2003) pp. 314–342; A. Faite, J. and L. Grenier, eds., *Expert Meeting on Multinational Peace Operations: Applicability of International Humanitarian Law and International Human Rights Law to UN Mandated Forces*, 80 Geneva, ICRC, October 2004; N.D. White and D. Klaasen, eds., op. cit. n. 31; M. Zwanenburg, *Accountability of Peace Support Operations* (Leiden/Boston, Martinus Nijhoff Publishers 2005); H. Langholtz, B. Kondoch and A. Wells, eds., 10 *International Peacekeeping: The Yearbook of International Peace Operations* (2006).

70 U. Häußler, at p. 215.

71 K. Sandvik, at p. 289.

72 H. Krieger, *The Kosovo Conflict and International Law: An Analytical Documentation* (Cambridge, Cambridge University Press 2001); R. Kolb, G. Porretto and S. Vité, *L'application du droit international humanitaire et des droits de l'homme aux organisations internationales: forces de paix et administrations civiles transitoires* (Brussels, Bruylant 2005).

structures operating in relation to international territorial administration have been inadequate. **Eric De Brabandere** examines the issues of international territorial administration and accountability in concentrating on the UN Transitional Authority in East Timor, while **Remzije Istrefi** analyses the case of the UN Mission in Kosovo.[73] In the latter case, the United Nations Interim Administration (UNMIK) has set up a non-judicial mechanism to address human rights abuses by the surrogate State (UNMIK), namely the Ombudsperson Institution. **Gjylbehare Bella Murati** addresses the role of the Ombudsperson in Kosovo, focusing in particular on the analysis of violations concerning the right to property, the right to liberty and security of an individual and the right to freedom of expression.

D. ECONOMIC GOVERNANCE

Rather than being directly and operationally involved, many international organisations operate mainly through policies in the areas of their specific mission, from development financing to the promotion of culture, health, justice, labour standards, monetary stability or trade. That is what the fourth part of the book focuses on. The organisations' particular focus on their own specialised mission may bring them to inadvertently or even consciously neglect or prejudice human rights protection in specific areas. Especially in the realms of international economic governance such policies have attracted increasing attention in terms of their human rights implications. Throughout the years human rights problems arising from the policies of the Bretton Woods institutions, i.e. the International Monetary Fund and the World Bank Group have received considerable academic attention.[74] **Rekha Oleschak-Pilai**'s contribution analyses the World Bank's Inspection Panel, while **Pierre Schmitt** focuses on the International Monetary Fund's accountability for human rights violations. Moreover, the other pillar of the international economic order – the World Trade Organization (WTO) – offers an intriguing example of the complexities of the relationship between an international organisation and its Members as far as the responsibility for respecting human rights is concerned. WTO Members are in an awkward position as WTO rules and disciplines are legally binding upon them and oblige them to implement such rules and disciplines in their national policies and legal systems, thereby often compelling them to prioritise trade over other societal values, including certain human rights. **Jeroen Denkers** and **Nicola Jägers** ask

73 See also J. Cerone, 'Minding the gap: outlining KFOR accountability in post-conflict Kosovo', *12 European Journal of International Law* (2001) pp. 469–488; E. Abraham, 'The Sins of the Saviour: Holding the United Nations Accountable to International Human Rights Standards for Executive Order Detentions in its Mission in Kosovo', 52(5) *American University Law Review* (2003) p. 1291.

74 See the references mentioned *supra* n. 35.

whether the WTO forms an obstacle to enforcing human rights obligations. **Stefaan Smis, Stephen Sevidzem Kingah** and **Christine Janssens** focus on the relationship between one particular WTO agreement, the TRIPs Agreement (trade-related aspects of intellectual property rights), and human rights, notably the issue of access to cheaper AIDS medicines. The authors find that, although international trade can enhance human rights in some situations, the TRIPs Agreement has a negative impact on the right of access to cheaper HIV/AIDS medicines. Intellectual property and the right to health need not be friends or foes and a proper balance may be found. Finally, **Gauthier de Beco** analyses the possibility of using human rights indicators to improve the accountability of development agencies for their human rights obligations.

E. STAFF OF INTERNATIONAL ORGANISATIONS

Last but not least, the book's fifth part concerns human rights related problems affecting the staff of international organisations. In the employment relationship with their own staff, international organisations are in a position of direct authority in which infringements of human rights can take place. In 2003, some 110 000 to 130 000 people were working as international public servants.[75] **Chittharanjan Felix Amerasinghe** examines the accountability of international organisations for violations of the human rights of staff, with an emphasis on the recourse to judicial machinery for staff. **Sarah Hunt** focuses her analysis on the UN and the difficulties faced by litigants within the UN internal legal system. **Osmat Azzam Jefferson** analyses how workplace equality is understood, applied, and valued through practice in international organisations. She evaluates why such equality is an illusory concept and notes that it is in the international organisations' best interest to 'redesign and implement effective equality-based rules and to examine rules-based governance structures.' As a distinguished international legal practitioner, **Edward Kwakwa** examines human rights obligations of international organisations in general and as applied to staff relations in particular from an international organisation's point of view, namely the World Intellectual Property Organization.

75 H.G. Schermers and N.M. Blokker, *International Institutional Law. Unity within Diversity*, 4th ed. (Boston/Leiden, Martinus Nijhoff Publishers 2003) para. 496.