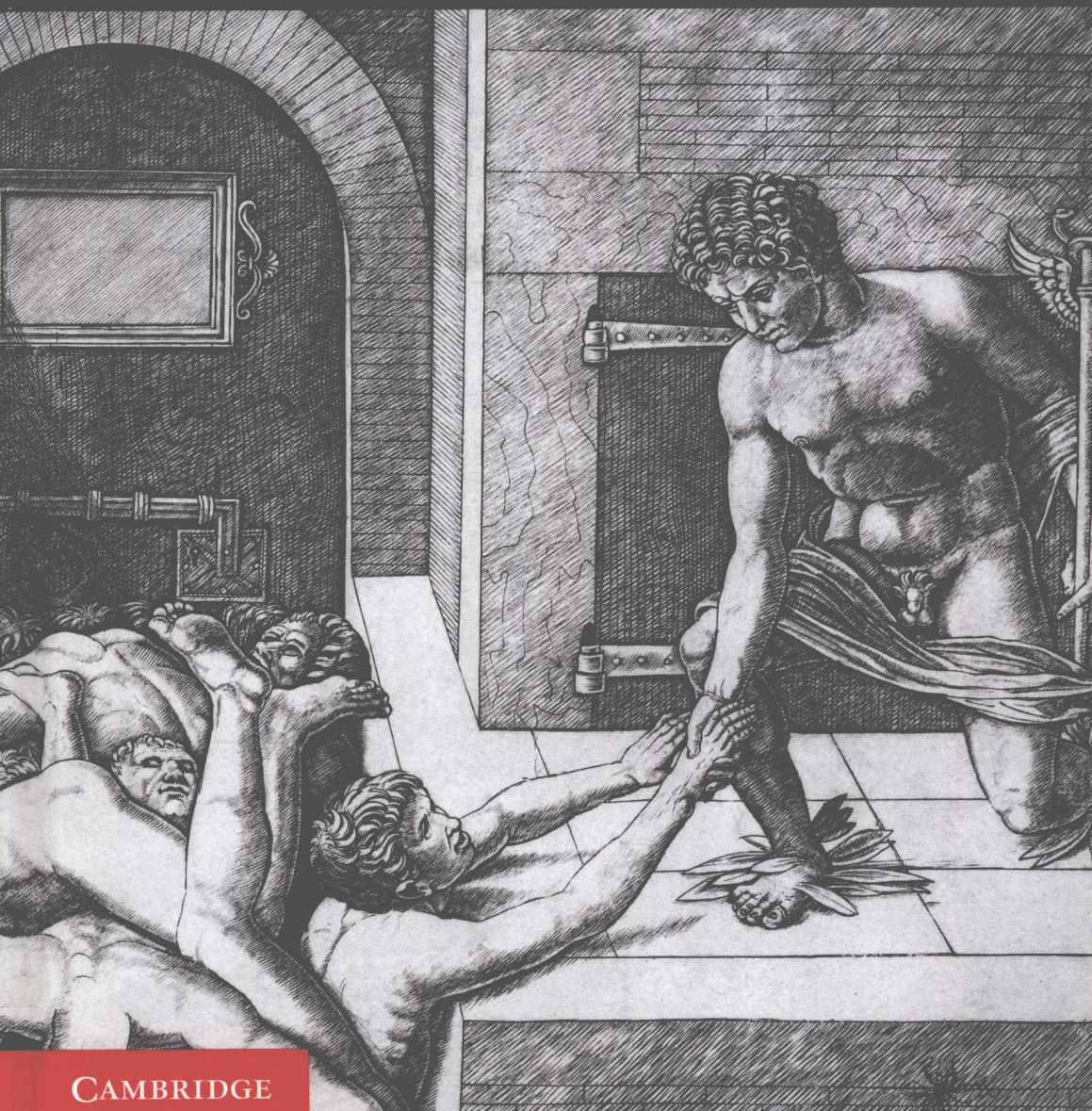


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The UN and Human Rights

Who Guards the Guardians?



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For Nina

Foreword

The framers of the Charter of the United Nations ‘decided to create an organisation to ensure respect for fundamental human rights, establish conditions under which justice and the rule of law could be maintained, and “promote social progress and better standards of life in larger freedom”’.¹ But in setting out these lofty ideals they could not have foreseen the wide range of tasks the organisation would be called upon to undertake by its member states and the challenges these would present for it to act consistently with its own expressed moral values. By the end of the first decade of the twenty-first century these have evolved to include peacekeeping, peacebuilding and peace enforcement; field operations; *de jure* exercise of legislative, executive and judicial power through the administration of territory (for a relatively short period as in Timor-Leste or for nearly a decade as in Kosovo); *de facto* exercise of powers in refugee camps; sanctioning behaviour deemed to threaten international peace and security; and delivery of relief or humanitarian assistance in multiple forms and places. None of these undertakings can be performed through following a template; rather the demands of each vary according to place and context, the mandate and the persons involved. There is today a paradox: on the one hand there has been ‘declining public confidence’² in the organisation while on the other ever more complex and dangerous mandates have been assigned to it.

Alongside the expansion in the nature and functions of international organisations has been another, interrelated, story, that of

¹ Report of the Secretary General, ‘In Larger Freedom: Towards Development, Security and Human Rights for All’, UN Doc A/59/2005, 21 March 2005, para. 13.

² *Ibid.*

the growth of human rights law and procedures. Through the work first of its Commission on Human Rights and more recently that of the Human Rights Council, the UN has created a significant edifice for the protection of human rights and fundamental freedoms. Today UN member states are bound by a plethora of human rights standards and are answerable to a number of mechanisms for failure to comply with those obligations. However, these two stories sit somewhat uneasily together: the UN has too often fallen short in ensuring high standards of respect for fundamental human rights and the rule of law from its own personnel, thereby undermining trust in the institution in the very persons it has been mandated to serve.

These are the themes examined in this book. Professor Verdirame analyses the ways in which the UN (and other international organisations) may be factually responsible for the commission of human rights abuses and the gap between such actions and their accountability. Unlike many international lawyers Professor Verdirame's starting point is that of empirical observation: the witnessing of violations of human rights in refugee camps under the administration and control of UNHCR and the realisation of their not infrequent occurrence. His concern is how those responsible for such abuses as collective punishment of vulnerable inmates can be held accountable. There is of course a vast literature on the UN, describing the ways in which it has responded to its changing place in international relations, including from international lawyers. However, many such studies have focused on a single facet of its work (for example peacekeeping or territorial administration) or a specific mandate (such as that in Rwanda or the former Yugoslavia). More extensive legal discussion has concentrated on its normative functions. In contrast Professor Verdirame provides a detailed account of the organisation's human rights obligations and shortcomings across a broad range of its activities.

Although Professor Verdirame questions the scholarly tradition of non-polemic and dispassionate writing, his work is fully scholarly in the sense of being well researched and based in both institutional practice and legal doctrine. He does not condemn international institutions but accepts the reality that the nature of their work means that they exercise direct power over individuals who are not part of the organisation and who are thus exposed to the risk of human rights violations from this source. What he does ask is that the weakening of state authority through the expansion of international organisations (both numerically and functionally) is not unequivocally accepted as beneficial for

human rights protection. Like states, international organisations can and do act abusively, but the development of (albeit limited) avenues of redress for victims of state human rights abuse have not yet been extended in the case of international organisations. Those who have had their human rights violated by UN peacekeeping forces, in UNHCR refugee camps, or by UN bodies bringing relief to afflicted areas remain unlikely to obtain any form of just satisfaction. Professor Verdirame reflects on the various administrative, quasi-judicial and judicial controls that are beginning to be introduced, and sees merit in particular in the legal construct of 'equivalent' protection. Nevertheless he concludes that it remains the case that the liberal democratic state offers the best means for the advancement of human rights. In light of the work of the International Law Commission on the responsibility of international organisations and recent case law, including that of the European Court of Human Rights, I welcome this book as a timely and challenging study of the relationship between states, international organisations and individuals and of the importance of accountability in the international arena, whoever the wrongdoer.

Christine Chinkin
LSE, 2011

Acknowledgements

Two people have shaped my thinking about the topic of this book: Barbara Harrell-Bond and Christine Chinkin. Barbara Harrell-Bond, whom I met while still an LLM student, directed me towards the study of human rights and refugee law. She made it possible for me to embark upon field research on refugees in East Africa for the Refugee Studies Centre at the University of Oxford. As a lawyer fresh from university and with hardly any social sciences training, I had the opportunity to learn how to conduct socio-legal research by working alongside a formidable anthropologist and to observe international organisations in action. Her self-abnegation in the commitment to the cause of refugees and human rights set a standard of moral aspiration, inadequate though it often made me feel. On my return from East Africa, I began a doctorate at the LSE under the supervision of Christine Chinkin, writing a thesis on the accountability of the UN for human rights violations. She, more than anyone else, helped me in the transition to the world of legal scholarship. The discussions we had as part of the supervisions, and those we have had since as colleagues and friends, invigorated me intellectually and charged me with renewed enthusiasm.

I began to think of international organisations as perpetrators of human rights violations during fieldwork in East Africa. If so many refugees had not had the patience to share with me some of their most private and traumatic experiences, I would have remained ignorant. I am grateful to the Ford Foundation, and its then human rights officer in Nairobi, Marguerite Garling, for funding that research, as well as to the colleagues with whom I worked, in particular Hannah Garry and Zachary Lomo. The findings of that research have been published in

Rights in Exile: Janus-Faced Humanitarianism, but Chapter 6 of this book still draws significantly from it.

Before moving to Cambridge, I spent three years as a junior research fellow at Merton College, Oxford. Junior research fellowships are dream jobs for a young academic, and Merton and Oxford offered the best possible intellectual environment. I am indebted to many in Oxford, but especially to Vaughan Lowe and Larry Siedentop: Vaughan for guiding me in my early years as a legal academic and for representing, in his unique effortless and self-effacing way, a model of clarity and intellectual rigour, combining adherence to principles and rules with a measure of healthy incredulity; and Larry for reigniting an interest in political philosophy and the history of ideas that had been left dormant for too long.

In Cambridge, James Crawford has been a great academic mentor. On many occasions I benefited from his legendary promptness at responding to requests for advice and for comments on drafts. No matter how clear I made it that I appreciated how busy he was and I really did not wish to impose on him, within twenty-four hours at most, a reply, which combined clarity, brevity and helpfulness, would arrive.

I have discussed aspects of this book with a great number of other colleagues over the years. With pre-emptive apologies to anyone I may leave out – a forgetfulness that I blame on the frantic pace that characterises the final weeks of work on a book – I would like to mention: the examiners of my PhD thesis, Nigel White and Patricia Tuitt; Mindy Chen-Wishart and Guy Goodwin-Gill in Oxford; Sir Elihu Lauterpacht and Amanda Perreau-Saussine in Cambridge; Jim Cavallaro, Ryan Goodman and Mindy Roseman at Harvard; Katja Peshke who provided me with useful material on Bosnia.

Offering the same pre-emptive apology as above, I should also thank the following people who at various stages provided me with research assistance: Nimrod Avigal; Tomas Furlong; Jessie Hohmann; Rurik Jutting; Rob Miles; Qudsi Rasheed; and Henry Warwick. I am especially indebted to Sean Aughey, Ishaani Shrivastava and Michal Jorek whose help over the last few months was crucial.

On a personal note I should say that this was a very difficult book to complete. *Rights in Exile* and various personal vicissitudes delayed its writing. I would like to thank Nienke van Schaverbeke, Richard Woodham and especially Finola O'Sullivan at Cambridge University Press, not least for their patience.

The people who deserve my deepest gratitude are, in England, friends who have become like family, in particular the late Cornell Adams and Henry Newman; and, in Italy, my mother, my father, my brother and my niece. It is to my mother and my niece that this book is dedicated.

Abbreviations

AC	Appeal Cases
Admin. LR	Administrative Law Reports (Canada)
AFDI	<i>Annuaire Français de Droit International</i>
AJIL	<i>American Journal of International Law</i>
All ER	All England Law Reports
AOI	Arab Organisation for Industrialisation
Austral. YBIL	<i>Australian Year Book of International Law</i>
BSTDB	Black Sea Trade and Development Bank
BverfGE	Bundesverfassungsgericht (Federal Constitutional Court)
BYBIL	<i>British Year Book of International Law</i>
CARE	Co-operative for Assistance and Relief Everywhere
CDTs	Conduct and Discipline Units
CDU	(United Nations) Conduct Disciplinary Unit
CEDAW	Convention for the Elimination of All Forms of Discrimination Against Women
CMLR	<i>Common Market Law Reports</i>
CMRS	Center for Migration and Refugee Studies
CNRT	National Council of East Timorese Resistance
Com. Int.	Comunità Internazionale
CTS	Consolidated Treaty Series
DFID	Department for International Development
DHA	Department of Humanitarian Affairs
DLR	<i>Dominion Law Reports</i>
DPKO	(United Nations) Department of Peacekeeping Operations
EBRD	European Bank for Reconstruction and Development
EC	European Community

ECJ	European Court of Justice
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council
ECR	European Court Reports
ECtHR	European Court of Human Rights
EEC	European Economic Community
EFSF	European Financial Stability Facility
EHRLR	<i>European Human Rights Law Review</i>
EHRR	European Human Rights Reports
EJIL	<i>European Journal of International Law</i>
ELR	<i>European Law Review</i>
EPAU	Evaluation and Policy Analysis Unit
ESA	European Space Agency
EU	European Union
EUFOR	European Union Force
EULEX	European Union Rule of Law Mission in Kosovo
F.2d	Federal Reporter (Second Series)
F.3d	Federal Reporter (Third Series)
FAO	Food and Agriculture Organisation
FIDA	International Federation of Women Lawyers
FMR	Forced Migration Review (formerly Refugee Participation Network)
FRY	Federal Republic of Yugoslavia
F. Supp.	Federal Supplement
GA	General Assembly
GYBIL	<i>German Year Book of International Law</i>
Harv. HR J.	<i>Harvard Human Rights Journal</i>
Harv. Int. L. J.	<i>Harvard International Law Journal</i>
HRC	Human Rights Committee
Hum. Rts. Q.	<i>Human Rights Quarterly</i>
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organisation
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICJ Reports	Reports of the International Court of Justice

ICLQ	<i>International and Comparative Law Quarterly</i>
ICRC	International Committee of the Red Cross
IDA	International Development Association
IDPs	Internally displaced persons
IFOR	Implementation Force
IGAD	Inter-Governmental Authority on Development
IIC	Independent Inquiry Commission
IJRL	<i>International Journal of Refugee Law</i>
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
ILO	International Labour Organisation
ILOAT	International Labour Organisation Administrative Tribunal
ILR	<i>International Law Reports</i>
IMCO	Intergovernmental Maritime Consultative Organisation
IMF	International Monetary Fund
Indian J. Int. L.	<i>Indian Journal of International Law</i>
Int. Aff.	<i>International Affairs</i>
INTERFET	International Force for East Timor
Int. Org.	<i>International Organization</i>
Int. Rev. R.C.	<i>International Review of the Red Cross</i>
IPTF	International Police Task Force
IRO	International Refugee Organization
ITC	International Tin Council
J. Ref. St.	<i>Journal of Refugee Studies</i>
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
Leiden J. Int. L.	<i>Leiden Journal of International Law</i>
LNTS	League of Nations Treaty Series
LWF	Lutheran World Federation
MICAH	International Civilian Support Mission in Haiti
Mich. J.Int.L.	<i>Michigan Journal of International Law</i>
MIPONUH	United Nations Civilian Police Mission in Haiti
MINURCA	United Nations Mission in the Central African Republic
MINURCAT	United Nations Mission in the Central African Republic and Chad

MINUSTAH	United Nations Stabilisation Mission in Haiti
MONUSCO	United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo
MOU	Memorandum/a of Understanding
MSF	Médecins sans Frontières
NATO	North Atlantic Treaty Organisation
NDF	Nordic Development Fund
NGO	Non-governmental organisation
NIB	Nordic Investment Bank
N.Y.S.	New York Supplement
OAU	Organisation of African Unity
OIOS	Office of Internal Oversight Services
OLS	Operation Lifeline Sudan
ONUC	United Nations Operation in Congo
ONUMOZ	United Nations Operation in Mozambique
OSCE	Organisation for Security and Co-operation in Europe
RC	<i>Recueil des Cours de l'Académie de Droit International</i>
RGDIP	<i>Révue Générale de Droit International Public</i>
Riv. It. Dir. Int.	<i>Rivista Italiana di Diritto Internazionale</i>
SC	Security Council
SEA/VAM	Sexual Exploitation and Abuse Victim Assessment Mechanism
SFOR	Stabilisation Force in Bosnia and Herzegovina
SGBV	Sex- or gender-based violence
SIU	Special Investigation Unit
SOFAs	Status of Force Agreements
SPLA	Sudan People's Liberation Army
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UKTS	United Kingdom Treaty Series
UN	United Nations
UNAMET	United Nations Mission in East Timor
UNAMID	United Nations Mission in Darfur
UNAMIR	United Nations Assistant Mission for Rwanda
UNAMSIL	United Nations Mission in Sierra Leone
UNAVEM	United Nations Angola Verification Mission
UNAVEM III	United Nations Angola Verification Mission III
UNDP	United Nations Development Programme
UNEF	United Nations Emergency Force

UNESCO	United Nations Educational Scientific and Cultural Organisation
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organisation
UNIFIL	United Nations Interim Force in Lebanon
UNITAF	Unified Task Force
UN Jur. YB	<i>United Nations Juridical Yearbook</i>
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNMIH	United Nations Mission in Haiti
UNMIK	United Nations Mission in Kosovo
UNMIS	United Nations Mission in Sudan
UNMISSET	United Nations Mission of Support in East Timor
UNMIT	United Nations Integrated Mission in Timor-Leste
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNOCHA	United Nations Office for the Co-ordination of Humanitarian Affairs
UNOMSIL	United Nations Observer Mission in Sierra Leone
UNOPS	United Nations Office for Project Services
UNOSOM	United Nations Operation in Somalia
UNOSOM II	United Nations Operation in Somalia II
UNOTIL	United Nations Office in Timor Leste
UNPROFOR	United Nations Protection Force
UNRRA	United Nations Relief and Rehabilitation Administration
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Middle East
UNSMIH	United Nations Support Mission in Haiti
UNTAC	United Nations Transitional Authority in Cambodia
UNTAES	United Nations Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium
UNTAET	United Nations Temporary Administration in East Timor
UNTAG	United Nations Transitional Assistance Group
UNTEA	United Nations Temporary Administration in West Irian
UNTMIH	United Nations Transition Mission in Haiti
UNTS	United Nations Treaty Series

UNTSO	United Nations Truce Supervision Organisation
US	United States of America
U.S.	United States Supreme Court Reports
USCS	United States Code Service
USSR	Union of Soviet Socialist Republics
USTS	United States Treaty Series
Virg. J. Int. L.	<i>Virginia Journal of International Law</i>
WFP	World Food Programme
WHO	World Health Organisation
WTO	World Trade Organisation
Yale H. R. Dev. L. J.	<i>Yale Human Rights and Development Law Journal</i>
Yale J. Int. L.	<i>Yale Journal of International Law</i>
Yale L. J.	<i>Yale Law Journal</i>
YBILC	<i>Year Book of the International Law Commission</i>
YB Int. Humanit. L.	<i>Year Book of International Humanitarian Law</i>

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