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ACCOUNTABILITY OF INTERNATIONAL ORGANIZATIONS: SOME OBSERVATIONS

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I. INTRODUCTION

The discussion here will be limited to intergovernmental organizations. The topic is timely, for there remain ambiguities regarding the accountability of such organizations to their members or third parties, or the accountability of the members of these organizations and third parties to the organizations, and the necessary mechanisms and procedures to ensure such accountability.

The issues this topic raises have been subjected to recent scrutiny and debate by international lawyers,[1] but more scholarly analysis is needed to clarify the issues further and provide firm guidelines for action. First, however, we must distinguish between accountability, responsibility, and legal liability. The definitions are not clear. Second, as the mandate and the role of international organizations (IOs), and thus the range and scope of their activities, differ among them, these variables must be considered in determining their accountability. Third, we must answer broadly the question, "accountability to whom?" Those addressed should include IOs and their staff, both member-states and non-members, international and domestic courts, national parliaments, nongovernmental organizations (NGOs) and private parties (including legal persons). Fourth, we need to further explore the existing mechanisms and procedures for holding international organizations accountable and, as required, new mechanisms and procedures should be fashioned. And, finally, we need to consider perhaps the most difficult issue: who can and should determine the question of the validity of the U.N. Security Council's actions? And, assuming the action is deemed to have exceeded the Security Council's mandate and powers, can it be invalidated—by whom and with what outcomes?

Let me illustrate the controversies and ambiguities that abound as we study this subject. Questions have arisen about the accountability, responsibility, and legal liability of the United Nations or its constituent organs, such as the Security Council, the U.N. member states, and individuals for alleged violations of human rights and humanitarian law regarding U.N. peacekeeping, peace enforcement, and peace-building operations, as well as economic sanctions imposed by the Security

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1. Recent studies have been undertaken by the International Law Association and the American Society of International Law, and the International Law Commission has the topic on its agenda for consideration.

Council. Who is responsible and to what extent for tortious acts? Privileges and immunities accorded to the United Nations are implicated. However, normally, prior to the commencement of such operations, the United Nations also negotiates a more comprehensive agreement on privileges and immunities directly with each host state.

Similar questions have been raised concerning alleged ordinary tort and breach of contract claims as well as claims related to alleged human rights violations against other IOs. Also, critics of globalization continue to demonstrate and shout that there is a lack of openness and transparency in World Trade Organization (WTO) decisionmaking, especially its dispute resolution mechanisms, which they find undemocratic and unacceptable. The arbitration process and its outcomes in investor disputes in the North American Free Trade Agreement (NAFTA) setting under its chapter 11, which have been subjects of discussion in several recent international law conferences, have been similarly denounced for the lack of transparency in NAFTA's decisionmaking, especially its dispute resolution processes.

In this address, I will confine my remarks first to addressing briefly the U.N. issues pertaining to peacekeeping, peace-enforcement, peace-building, and economic sanctions; next, to commenting on the accountability of other international organizations; and finally, to reporting on the recently concluded study of the International Law Association on the subject.

II. THE U.N.-RELATED ACTIVITIES

A. U.N. Peacekeeping and Enforcement Operations

In the aftermath of the Cold War, as the U.N. peacekeeping operations expanded in size, scope, and diversity of functions they perform, the application of international humanitarian law to such operations is increasingly recognized as necessary and important. The United Nations acknowledged this necessity by entering into status of forces agreement with the host state Rwanda in 1993, *Agreement on the Status of the United Nations Assistance Mission for Rwanda*, under which the "principles and spirit" of the pertinent international human rights instruments, *inter alia,* the four Geneva Conventions of 1949, the two Additional Protocols of 1977 to these conventions, and the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict of 1954 are to be fully respected by U.N. forces.[2]

2. Agreement on the Status of the United Nations Assistance Mission for Rwanda, Nov. 5, 1993, U.N.-Rwanda, 1748 U.N.T.S. 3. The four conventions are: Convention [I] For the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Convention [II] For the Amelioration of the Condition of Wounded, Sick or Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Convention [III] Relative to the Treatment of Prisoners of War, Aug, 12, 1949, 6 U.S.T. 3116, 75 U.N.T.S. 135; Convention [IV] Relative to the Protection of Civilian Persons in Times of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. The two Protocols are: Protocol Additional to the Geneva Conventions of 12 Aug 1949 and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3; and Protocol Additional to the Geneva Conventions of 12 Aug 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 1125

The United Nations entered into similar status of forces agreements in its subsequent peacekeeping and peace-enforcement operations. This broad statement, that of fully respecting the "principles and spirit" of the norms, needed further elaboration since there were no guidelines on how to translate it to address practical issues such as the legal status of combatants and other detainees by U.N. forces, the kind of weapons permissible and prohibited to use, and the legal status of U.N. forces who might be taken as hostages. In 1995, the International Committee of the Red Cross (ICRC) brought together experts to address these challenges and presented to the U.N. Secretariat a draft of basic norms of international humanitarian law to be applied to peacekeeping and enforcement activities.

Based upon the ICRC work, the U.N. Secretary-General issued the *Bulletin on the Observance by United Nations Forces of International Humanitarian Law* on August 6, 1999, which came into force six days later.[3] The Bulletin is "applicable to United Nations forces conducting operations under Untied Nations command and control,"[4] and specifies provisions of international humanitarian law that would be respected by the United Nations. Its principles apply to U.N. forces when they are actively engaged in situations of armed conflicts as combatants "to the extent and for the duration of their engagement," and engaged in "enforcement actions, or in peace-keeping operations when the use of force is permitted in self-defense."[5]

There are still ambiguities in the application of these guidelines. For example, the Bulletin does not differentiate between U.N. operations undertaken in peacekeeping activities and those in enforcement. Also, it does not differentiate between the peacekeepers' status "as civilians" and "as combatants." Even more important, as the Bulletin applies to forces under U.N. command and control, they are not applicable to U.N. "Associated Personnel," or those operations authorized by the United Nations but conducted under national or regional command. In the latter setting, the concerned states or regional organizations responsible for the operations are to ensure that international humanitarian law is applied.

As to the remedies available to the one seeking damages arising out of the U.N. peacekeeping or peace-enforcement operations, or post-conflict U.N. operations aimed at peace-building, it should first be noted, that the United Nations and its officials working in official capacity are granted "functional immunity" from legal process. The Convention on the Privileges and Immunities of the United Nations[6] limits the privileges and immunities of the U.N. officials to those "necessary for the independent exercise of their functions in connection with the Organization." However, under one of the provisions of the Convention, when the

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U.N.T.S. 609.

3. *Secretary-General's Bulletin, Observance by United Nations Forces of International Humanitarian Law*, U.N. Doc. ST/SGB/1999/13 (1999), *reprinted in* 38 I.L.M. 1656 (1999).

4. *Id.* § 1.2.

5. *Id.* § 1.1.

6. U.N. Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, 21 U.S.T. 1418, 1 U.N.T.S. 16.

United Nations or one of its officials enjoying immunity is a party to a dispute of a private-law character, the United Nations is obliged to provide for appropriate means of settlement in such a dispute.[7]

As the United Nations undertook an expanded role for peacekeeping and enforcement operations, the need to limit U.N. financial obligations arose. The triggering event was a claim by Bosnia and Herzegovina against the United Nations for $70 million, most of it for damage caused by U.N. vehicles for the normal use of roads and bridges, etc. Concerned about the impact of such claims on the financial health of the organization, the General Assembly adopted a resolution calling upon the Secretary-General to explore ways to limit U.N. liability *vis-a-vis* third parties.[8] The limitations established were both financial and temporal.[9] Regarding financial limitation, compensation for personal injury, illness or death must not exceed the amount of fifty-thousand dollars. Compensation for property loss or damage was also set at a reasonable level to be measured by costs of repair or replacement of the property damaged, or fair rental value or repair costs.[10] However, the United Nations is entitled to seek reimbursement from the members of the force or from the state contributing troops.[11] Also, the host country in whose territory a peacekeeping operation is undertaken gives consent for such an operation and is hence assumed to share with the United Nations the burden of financial claims the U.N. peacekeepers' presence may cause. The temporal limit was set at six months.

In case of "operational necessity," which is analogized to "military necessity," the United Nations assumes no tortious liability. Regarding the damage caused by gross negligence or willful misconduct on the part of the United Nations, the Organization assumes liability for full compensation.

B. Post-conflict U.N. Operations

It is generally accepted that the post-conflict U.N. operations in Bosnia and Herzegovina (Bosnia), Rwanda, Somalia, and Mozambique, among others, and territorial administrations from Cambodia to Kosovo and East Timor, have suffered from excesses and serious human rights violations and abuses allegedly committed by peacekeepers. Questions have been raised about the lack of U.N. accountability for such violations. The situations in Bosnia and Kosovo will be briefly mentioned here.

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7. *Id.* art. 29

8. *See* Gen. Ass. Res. 50/235, U.N. GAOR, 50th Sess., Supp. No. 49. Vol. 2, at 33, U.N. Doc. A/50/49 (1996); Gen. Ass. Res. 51/13 (1996).

9. For a detailed analysis, see Daphna Shraga, *CURRENT DEVELOPMENT: UN Peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility for Operations-Related damage*, 94 AM. J. INT'L L. 406, 410-12 (2000).

10. *See Report of the Secretary-General, Administrative and Budgetary Aspects of the Financing of the United Nations' Peacekeeping Operations: Financing of the United Nations' Peacekeeping Operations*, U.N. Doc. A/51/903 (1997), paras. 30-36.

11. For a Model Contribution Agreement between the U.N. and the state contributing resources to the U.N. peacekeeping operations, see Note by the Secretary-General, *Reform of the Procedures for Determining Reimbursement to Member States for Contingent-Owned Equipment*, U.N.Doc. A/50/995, annex (1996), art. 9.

In Bosnia the U.N. civilian police have been accused of participation in the trafficking of women—buying and selling women, conspiring with criminal groups to recruit and smuggle women into brothels, and patronizing brothels in which trafficked women were abused.[12] There was no accountability for these human rights violations on the part of individual peacekeepers, peacekeeper-contributing states, or the United Nations itself.[13]

Similarly, in Kosovo, the Special Representative of the Secretary-General allegedly abusing his authority was accused of continuing to use Executive Orders to unlawfully detain suspected criminals.[14] Although an ombudspersons' office, aimed at promoting and protecting "the rights and freedoms of individuals and legal entities,"[15] was established, it had limited jurisdiction over the U.N. Kosovo force and institutional checks were inadequate to ensure effective protection of human rights.[16] Accountability was lacking.

C. Economic Sanctions Imposed by the Security Council[17]

Economic sanctions are considered a blunt but nonetheless necessary instrument,[18] aimed at modifying the target state's behavior. However, as is evidenced by the adverse impact of economic sanctions on the vulnerable civilian population in Iraq—malnourishment and increased fatalities among children, women and the elderly—it is often not the regime, but those weakest in societies who suffer the most. This has led to deep concern about the use and impact of economic sanctions expressed by not only NGOs, especially human rights groups

12. *See* Jennifer Murray, *Note: Who Will Policy Peace-Builders? The failure to Establish Accountability for the Participation of U.N. Civilian Police in the Trafficking of Women in Post-Conflict Bosnia and Herzegovina,* 34 COLUM. HUM RTS. L. REV. 475, 477 and nn. 10-12, 503 nn. 150-58 (2003).

13. *See id. at* 505-06 and nn. 159-64.

14. *See* Elizabeth Abraham, *Comment: The Sins of the Savior: Holding the United Nations Accountable to International Human Rights Standards for Executive Order Detentions in its Mission in Kosovo,* 52 AM. U. L. REV. 1291, 1296 n. 17 (2003).

15. *See On the Establishment of Ombudsperson Institution in Kosovo,* UN MIK Regulation 2000/38, at 1.1 (June 30, 2000).

16. *See generally* Abraham, *supra* note 14, at 1322-37.

17. For an insightful analysis, see August Reinisch, *Note and Comment: Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions,* 95 AM. J. INT'L L. 851 (2001)

18. In his *Supplement to an Agenda for Peace,* Secretary-General Boutros Boutros-Ghali acknowledged that an economic sanction is a "blunt instrument," *Supplement to an Agenda for Peace,* U.N. Doc. A/50/60-S/1995/1, para. 66 (1995). Hence he called for providing humanitarian assistance to the potential victims of economic sanctions and, prior to the imposition of such sanctions, to undertake their impact assessment. *Id.* para. 70.

and human rights activists and scholars,[19] but by the United Nations, U.N. organs and U.N.-related agencies as well, arguing that economic sanctions adversely affect human rights of civilians in targeted states.

For example, the General Assembly had started adopting resolutions critical of "unilateral coercive economic measures" in 1989.[20] In 2000, the U.N. Human Rights Commission's Sub-Commission on the Promotion and Protection of Human Rights adopted a resolution suggesting that the Security Council permit the import of food, medical, and pharmaceutical supplies in Iraq.[21] The same year a working paper prepared for the Sub-Commission criticized the U.N. sanctions against Iraq as "unequivocally illegal" under existing international human rights law and humanitarian law.[22] Also, the monitoring body for the International Covenant on Economic, Social and Cultural Rights, its Committee on Economic, Social and Cultural Rights, has expressed concern in its general comments about the impact of economic sanctions on the enjoyment of human rights.[23]

The two pertinent questions for discussion here are: (1) while imposing economic sanctions, what is the accountability of the Security Council to comply with international human rights law and international humanitarian law? and (2) what remedies and what mechanisms for the settlements of disputes are available to the civilian victims of these sanctions?

Regarding the accountability of the Security Council, a literal interpretation of the U.N. Charter does not provide a clear answer to the question raised about the obligation of the Security Council to be bound by general international law while it takes action to maintain or restore international peace and security under its Chapter VII powers. While the Charter specifies no explicit limitations on the Security Council's powers acting under Chapter VII, one could argue that the activities undertaken by the Security Council must be in accord with the purposes and principles of the U.N. Charter as contained in Article I, combined with the human rights provisions in the Charter (Preamble, and Articles 1 and 55).

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19. *See, e.g.*, Felicia Swindlls, *Note: U.N. Sanctions in Haiti: A Contradiction under Articles 41 and 55 of the U.N. Charter*, 20 FORDHAM INT'L L. J. 1878 (1997); Joy K. Fausey, *COMMENT, Does the United Nations' Use of Economic Sanctions to Protect Human Rights Violate its own Human Rights Standards*, 10 CONN. J. INT'L L. 193 (1994); Rene Provost, *Starvation as a Weapon: Legal Implications of the United Nations Food Blockage Against Iraq and Kuwait*, 30 COLUM. J. TRANSNAT'L L. 577 (1992).

20. The first General Assembly resolution criticizing unilateral coercive economic measures was G.A. Res. 44/215, Dec 22, 1989.

21. *U.N. Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Human Rights and Humanitarian Consequences of Sanctions Including Embargoes*, U.N. Doc. E/CN.4/Sub.2/RES/2000/1 (2000).

22. *See U.N. Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights*, U.N. Doc. ECN.4/Sub.2/2000/33 para. 6 (2000). [hereinafter Working Paper].

23. *See U.N. Committee on Economic, Social and Economic Rights, The Relationship Between Economic Sanctions and Respect for Economic, Social and Cultural Rights, GENERAL COMMENT* 8, U.N. Doc. E/C.12-1997/8; *U.N. Committee on Economic, Social and Cultural Rights, The Right to the Highest Attainable Standard of Health, GENERAL COMMENT* 14, U.N. Doc. E/C.12/2000/4 (2000).

Also, one could make a sound argument that as the United Nations is a subject of international law, one of its main organs, the Security Council, must itself be subject to international law, including customary international law and general principles. Granted that the United Nations, like other international organizations, is not bound by treaty law to comply with human rights and humanitarian law because none of these organizations is a party to any human rights law treaty or humanitarian law treaty. However, in imposing economic sanctions, the Security Council and its Sanctions Committee cannot derogate from those international law norms that have acquired the status of *jus cogens,* and must as well comply with customary international law and general principles, embodying human rights and humanitarian law norms.

Based upon these arguments, the Security Council must ensure that its imposition of economic sanctions does not adversely affect the enjoyment of human rights of people in the targeted states. For the Security Council and the Sanctions Committee which administers sanctions, specific human rights norms include the right to life, the right to health, and the right to an adequate standard of living, including the basic human needs such as food, clothing, housing, and medical care. These norms are contained in several human rights instruments, primarily among them the International Bill of Human Rights—the Universal Declaration of Human Rights and the two covenants, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

Regarding compliance with international humanitarian law, it should be noted at the onset that the instruments embodying the pertinent international humanitarian norms—the four Geneva Conventions of 1949 and the two Additional Protocols of 1977—apply only in the context of armed conflict and do not explicitly address economic sanctions. However, as the civilian population's protection underlies international humanitarian law, humanitarian law norms could be considered applicable to limit the use of economic sanctions.[24]

Discussion regarding compensation for damages caused by economic sanctions imposed by the Security Council have occurred only in the context of Article 50 of the U.N. Charter, under which any state "confronted with special economic problems arising from the carrying out of [preventive or enforcement measures taken by the Security Council] shall have the right to consult the Security Council with regard to a solution of those problems."[25] However, the working paper on sanctions mentioned above recommended that claims for damages be brought before national courts, U.N. or regional human rights organizations, or even the International Court of Justice.[26] Although there are procedural difficulties

24. For a detailed discussion of both the application of human rights and humanitarian norms, *see* Reinisch, *supra* note 17, at 860-63.

25. See *id.* at 864.

26. *See* Working Paper, *supra* note 22, para. 106

in invoking the jurisdiction of any of these bodies, especially the International Court of Justice, we need to explore all available alternatives including mediation and arbitration.[27] This recommendation applies equally to claims for damages caused by U.N. peacekeepers.

III. OTHER INTERNATIONAL ORGANIZATIONS

Just as the United Nations enjoys immunity from jurisdiction, most other international organizations enjoy similar immunity. I will illustrate this point by referring to arguments before the European Court of Human Rights that a domestic court had violated the European Convention on Human Rights by granting immunity from suit to an international organization, the European Space Agency (ESA).[28]

The applicants had brought the section before the European Court after their petition to the European Commission, based on the argument that the German courts had denied them access to a court to resolve their dispute with the ESA, which was their right under German labor law. They were actually employees of a number of British, Irish, French, and Italian companies who had been working for several years at the European Space Operation Center in Germany at the behest of their actual employers. Before the German courts they had sought recognition that pursuant to the applicable German labor laws, they had acquired the status of employees of the ESA. The German courts had dismissed their actions on the ground that ESA was immune from jurisdiction pursuant to the ESA Convention.

The European Court first interpreted the pertinent provision of the European Convention implicated, Article 6(1), which provides: "In the determination of his civil rights and obligations against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." The Court recognized that this article "embodied the right to a court" and went on to determine whether the German courts' decisions to dismiss their actions were sufficient to secure the applicants' right to a court.

The Court found no violation of Article 6(1) of the Convention, based upon its twin reasonings. Initially, it said that to ensure the proper functioning of international organizations so that they could be free from interference by individual governments, the immunity from suit enjoyed by international organizations was a legitimate purpose in restricting the right of access to court. Second, the Court held that "a material factor in determining whether granting ESA immunity from German jurisdiction is permissible" was whether "the applicants had available to them reasonable alternative means to protect effectively their rights under the Convention." Since the ESA Appeals Board, which has jurisdiction "to hear disputes relating to any explicit or implicit action taken by the

27. *See* Reinisch, *supra* note 17, at 863-69 for a thoughtful discussion on remedies for victims of U.N. sanctions.

28. *See* August Reinisch, *INTERNATIONAL DECISION: Waite and Kennedy v. Germany Application No. 26083/94; Beer and Regan v. Germany, Application No 28934/945. European Court of Human Rights, Feb. 18, 1999*, 93 AM. J. INT'L L. 933 (1999). For a detailed discussion, see *id. at* 933-38.

Agency and arising between it and staff members," provided an adequate alternative forum, the Court found that the test of proportionality, that is, that there be a reasonable relationship between the means employed and the goal sought to be accomplished, was met.

IV. 2004 REPORT OF THE ILA COMMITTEE ON THE ACCOUNTABILITY OF INTERNATIONAL ORGANIZATIONS[29]

In May 1996, the ILA established a committee with the mandate: "to consider what measures (legal, administrative or otherwise) should be adopted to ensure the accountability of public international organizations to their members and to third parties, and of members and third parties to such organizations."[30] After eight years of work the committee presented its final report in 2004 at the ILA's Berlin Conference, in which it discussed IOs at three levels:

> [*First level*] the extent to which international organizations, in the fulfillment of their functions as established in their constituent instruments, are and should be subject to, or should exercise, forms of internal and external scrutiny and monitoring, irrespective of potential and subsequent liability and/or responsibility;
>
> [*Second level*] tortious liability for injurious consequences arising out of acts or omissions not involving a breach of any rule of international and/or institutional law (e.g. environmental damage as a result of lawful nuclear or space activities);
>
> [*Third level*] responsibility arising out of acts or omissions which do constitute a breach of a rule of international and/or institutional law (e.g. violations of human rights, or humanitarian law, breach of contract, gross negligence, or as far as institutional law is concerned acts of organs which are *ultra vires* or violate the law of employment relations).[31]

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29. The report, presented at the 2004 Berlin Conference of the ILA, can be found at http://www.ila-hq.org/html/layout_committee.htm. Members of the Committee were: Chair Sir Franklin Berman (UK), Co-Rapporteur Professor Malcolm Shaw (UK), Co-Rapporteur Professor Karel Wellens (Netherlands), Mr. Dapo Akande (UK), Mr. Tal Becker (Israel), Dr. Niels Blokker (Netherlands), Mr. Daniel B. Bradlow (USA), Judge Carl-August Fleischhauer (Germany), Professor Vera Gowland-Debbas (UK), Dr. Gavan Griffith (Australia), Judge P.H. Kooijmans (Netherlands), Dr. Edward Kwakwa (HQ), Professor Tiya Maluwa (HQ), Professor Ved P. Nanda (USA), Professor Ki-Gab Park (Korea), Dr. Mieczyslaw Paszkowski (Poland), Professor August Reinisch (Austria), Professor David Ruzie (France), Dan Sarooshi (UK), Professor Sabine Schlemmer-Schulte (Germany), Professor Erik Suy (Belgium-Luxembourg), Professor Jerzy Sztucki (Sweden), Professor Toshiya Ueki (Japan), and Dr. Eduardo Valencia-Ospina (HQ). Alternates: Ms. Rae Lindsay, Dr. Wolfgang Munch, and Professor N.D. White.

The Committee had earlier presented its reports in 1998 at the Taipei ILA Conference, in 2000 at its London Conference, and in 2002 at its New Delhi Conference. *See id.* at 4.

30. *Id.*

31. *Id.* at 5-6.

The format the committee used to present its report was to provide a set of "Recommended Rules and Practices" (RRPs) accompanied by commentaries. It noted at the outset that the RRPs "do not necessarily reflect a legal obligation for each IO. They are derived from common principles, objectives and notions related to the accountability of IOs and reflect considerable practice."[32]

On the first level, RRPs common to all IOs include: the principle of good governance (characterized by, *inter alia*, transparency in both the decision-making process and the implementation of institutional and operational decisions, participatory decision-making process, access to information, a well functioning international civil service, sound financial management, and appropriate reporting and evaluation mechanisms), the principle of good faith, the principles of constitutionality and institutional balance, the principle of supervision and control, the principle of stating the reasons for decisions for a particular course of action, the principle of procedural regularity, the principle of objectivity and impartiality, and the principle of due diligence.[33] RRPs on the relationship between IOs and NGOs include establishing appropriate relationships by the IOs with NGOs active within their field of competence, including establishing an NGO liaison service and holding briefings with their representatives.[34]

On the second level of accountability, addressing liability and responsibility issues, the Committee noted first the International Court of Justice's advisory opinion, which stated that: "international organizations are subjects of international law, and as such are bound by any obligations incumbent on them under general rules of international law."[35] The Committee also stated:

> A transfer of powers to an IO cannot remove acts of the IO from the ambit of control mechanisms established by particular treaties nor can it exclude the responsibility of States who transferred power to an IO. States should "make provision that a potential jurisdictional gap concerning the control of the exercise of such transferred powers do not arise."[36]

The Committee stated that where an IO's acts caused personal injury to state officials or damage to state property, international law governs the tortious liability of the IO. As to personal injury to a non-state party or damage to such a party's property, local law is to govern unless the activity constitutes a breach by the organization of an applicable rule of international law.[37] The international organization "should assess the potential damage" which its activities may cause; the IO should also take appropriate precautionary measures to prevent unnecessary damage and should use precautionary principles before undertaking operational activities involving a risk of causing significant harm to the environment.[38] In the

32. *Id.* at 9.

33. *Id.* at 9-18.

34. *Id.* at 20.

35. *Id.* at 21 (quoting Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980, at 73, 90).

36. *Id.* at 22 (citations omitted).

37. *Id.* at 25.

38. *Id.* at 25-27.

Committee's RRP stating that IOs "should comply with basic human rights obligations," the commentary adds that IOs should observe basic human rights obligations in their decisions such as "designing structural adjustment programmes and development projects," and that in their decisions "concerning the use of force, temporary administration of territory, imposition of coercive measures, launching of peacekeeping or peace-enforcement operations IOs should observe basic human rights obligations and applicable principles and rules of international humanitarian law."[39]

On the third level of accountability, the Committee noted the current state of international law, which presents dilemmas in establishing a responsibility regime for IOs.[40] However, it does provide guidelines on the international legal responsibility of IOs.[41] It also discusses attribution of wrongful acts to IOs and responsibilities of states for defaults or wrongful acts of an IO and such attribution and responsibility in situations of delegation and authorization.[42]

The Committee provides detailed RRPs on remedies against international organizations. It moves from general features of remedies and the pertinent question, "remedial action against whom?" to the potential outcome of remedial action.[43] It then discusses the procedural aspects of remedial action against IOs—by states, staff members, and private claimants, including contractual liability claims and tort liability claims—and claims against officials and experts.[44] It specifically states that IOs should establish an insurance mechanism to address third-party liability claims.[45] It also addresses the issue of jurisdictional immunity of IOs and states that IOs' duties entail "an obligation to disclose information and documents directly held by it."[46]

The Committee discusses substantive outcomes of remedial actions by IOs and provides guidelines on non-judicial remedial action and judicial remedial action, specifically detailing the role of international administrative tribunals, domestic courts, and arbitration proceedings.[47] The only issue on which the Committee was not unanimous was the role for the International Court of Justice (ICJ).

While some members were strongly in favor of the ICJ having a role to ensure accountability, others did not consider it to be practical or even desirable.[48] Thus, the Committee included the proposals on the ICJ in the appendix.[49]

39. *Id.* at 27-28.
40. *Id.* at 31-33.
41. *Id.* at 33-34.
42. *Id.* at 34-38
43. *Id.* at 40-44.
44. *Id* at 45-49.
45. *Id.* at 48.
46. *Id.* at 51.
47. *Id.* at 53-59.
48. *Id.* at 59-60.
49. *Id.* 61-63.

V. CONCLUSION

The last few years have witnessed an increasing demand and some movement toward ensuring that IOs take concrete steps to ensure their accountability. The work of professional and scholarly organizations such as the International Law Association and the American Society of International Law has provided valuable guidance on the difficult issues implicated in the accountability debate. The next important step will be for the U.N. International Law Commission to provide a detailed study on the subject.