

UN-Apologetic: International Organization Accountability and Apologies for Human Rights Violations

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ABSTRACT

As the number of international organizations (“IOs”) expands worldwide, so too does their footprint—not just in terms of positive human rights, development, and humanitarian deliverables, but also of widespread and systematic human rights violations. Indeed, some beneficiaries of IO activities have alleged multiple violations attributable to IOs, including sexual exploitation and abuse, forced labor, and environmental contamination. Taking the United Nations and its specialized agencies as the emblematic case, this Article argues that there is a glaring accountability gap facing victims and survivors of IO abuses. After setting out the legal personality and obligations of IOs under public international law, as well as a snapshot of documented IO violations, this Article enumerates two key obstacles to remedy and reparation: IO immunities pursuant to treaty and statutory law and structural shortcomings in existing internal accountability mechanisms. This Article argues that, amidst such limitations, one vector of accountability continues to be overlooked: the apology. It explains the normative value and significance of the apology and finds that IO apologies to date have often fallen into a trap of “pseudo-apology,” marred by denials and deflections, intentional ambiguity, and perfunctory delivery. Drawing from the political science and transitional justice literature, this Article sets out three prerequisites for a meaningful apology: a victim- and survivor-centered approach in substance and procedure; full, unequivocal, and specific acknowledgement of IO wrongdoing and harms; and a commitment to non-repetition and institutional reform. Only with meaningful apology—and hopefully, over time, forgiveness—will IOs begin to restore public trust in the multilateral system.

INTRODUCTION

There are currently six hundred international organizations (“IOs”) operating worldwide and counting.¹ As IOs and their activities continue to expand,

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1. PIERRE SCHMITT, ACCESS TO JUSTICE AND INTERNATIONAL ORGANIZATIONS: THE CASE OF INDIVIDUAL VICTIMS OF HUMAN RIGHTS VIOLATIONS 1 (2017). This Article focuses on the practices and

so too does their footprint—not just in terms of positive human rights, development, and humanitarian deliverables,² but also in terms of widespread and systematic human rights violations and serious violations of international law. Indeed, in recent years some beneficiaries of IO activities have allegedly fallen victim to abuses attributable to the United Nations (“U.N.”), its specialized agencies, and other IOs.³ By way of example, from 2019 to 2023, the U.N. received nearly 350 allegations of sexual exploitation and abuse by U.N. peacekeeping personnel.⁴ Other allegations of IO responsibility for and complicity in human rights abuse include the U.N. Stabilization Mission in Haiti’s role in starting a widespread cholera outbreak, which continues to ravage the country; the Pan American Health Organization’s facilitation of forced labor and human trafficking of Cuban doctors as part of a medical assistance program in Brazil;⁵ the International Organization for Migration’s failure to ensure adequate living conditions in migrant camps across Central and Eastern Europe; and the International Finance Corporation’s investments and complicity in the ongoing genocide against Uyghur and other predominantly Muslim ethnic minorities in Xinjiang, China.⁶

Such allegations of human rights abuse squarely contravene the stated mandates and obligations of these IOs, including as a matter of public international law.⁷ Yet victims and survivors of IO violations have limited recourse available to them. In particular, a significant human rights accountability gap festers due to the breadth of IO immunities and discretion recognized under public international law and by national courts. For instance, in the United States, far from the predicted “flood of foreign-plaintiff litigation {against IOs} into U.S. courts”⁸ in the aftermath of the U.S. Supreme Court’s seminal decision in *Jam v. International Finance Corporation*—which tethered the statutory immunity of IOs to the more restrictive immunity of foreign sovereigns—expansive IO

accountability of international organizations, defined as an organization established by a treaty or other international law instrument and possessing unique international legal personality. See Int’l L. Comm’n [hereinafter ILC], Draft Articles on the Responsibility of International Organizations, with Commentaries Art. 2, U.N. Doc. A/66/10, 2 Y.B. INT’L L. COMM’N (2011) [hereinafter DARIO]. It does not address treaty organs, international non-governmental organizations, private multinational entities, and other supranational organizations lacking such attributes.

2. The author recognizes the immense scale and wide range of IO beneficiaries globally and the positive—indeed, irreplaceable—accomplishments of U.N. and other IO activities. This Article focuses only on the subset of evidenced abuse, recognizing that improvements there strengthen the international system writ large.

3. See *infra* Part II.

4. *Conduct in UN Field Missions, Sexual Exploitation and Abuse*, UNITED NATIONS (July 2023), <https://conduct.unmissions.org/sea-data-introduction> [<https://perma.cc/54XV-WRHF>] (documenting the total number of allegations reported since 2007).

5. The Pan American Health Organization serves concurrently as the specialized health agency of the Inter-American System and the Regional Office for the Americas of the World Health Organization, a UN specialized agency.

6. See *infra* Part II (setting out the reporting on each of these allegations, among others).

7. See *infra* Part I.

8. *Jam v. Int’l Fin. Corp.*, 139 S. Ct. 759, 771 (2019).

immunities have been repeatedly upheld in the intervening years, including in cases involving allegations of serious human rights violations.⁹

Recognizing the accountability vacuum facing countless victims and survivors of IO rights violations, this Article explores the potential positive value of one oft-neglected vector of reparation and accountability: the apology. Although it focuses on the U.N. and its specialized agencies throughout, the argument resonates with the practices, accountability, and apologies of other IOs beyond the U.N. sphere. At its most basic level, this Article defines a public apology as a verbal statement by an official representative on behalf of an entity to a collective of victims and survivors for injustices and wrongdoing committed by the entity's officials or members.¹⁰ Despite recent decades being characterized as an “age of apology,”¹¹ there has been limited assessment of the importance of apologies on the part of IOs to date. This Article argues that a fulsome and meaningful apology can play a crucial role in a victim-centered and human rights-based approach to accountability—recognizing accountability as broader and more multifaceted than the narrow legal notion of IO liability.¹² As psychiatrist Aaron Lazare noted in his seminal book *On Apology*, apologies are “[o]ne of the most profound human interactions” and “have the power to heal humiliations and grudges, remove the desire for vengeance, and generate forgiveness on the part of the offended parties.”¹³ Looking forward, the only way for IO operations to be sustainable and effective—especially in country settings of past institutional abuse—is to rebuild trust in the good-will and safety of their engagement.¹⁴ A genuine apology is a necessary first step.

This Article proceeds in three parts. Part I explores the doctrine of IO responsibility. After affirming the international legal personality of IOs, this Part sets

9. See, e.g., *Jam v. Int'l Fin. Corp.*, No. 20-7092 (D.C. Cir. July 6, 2021) (upholding the IFC's immunity due to inadequate U.S. conduct); *Kling v. World Health Org.*, No. 7:2020cv03124 (S.D.N.Y. 2021) (dismissing class action lawsuit on the basis of absolute immunity pursuant to the World Health Organization Constitution); *Rosenkrantz v. Inter-Am. Dev. Bank*, 35 F.4th 854, 868 (D.C. Cir. 2022) (upholding the Inter-American Development Bank's immunity from suits challenging its sanctions debarment actions); *Omari v. Int'l Crim. Police Org.*, No. 21-1458-cv (2d. Cir. May 24, 2022) (upholding Interpol's immunity from claims of due process violations in “red notice” listing); *but see Rodriguez et al. v. Pan Am. Health Org.*, Case No. 20-7114 (D.C. Cir. Mar. 29, 2022) (affirming the district court's judgment denying the motion to dismiss the claim that the IO acted as a financial intermediary under the commercial activities exception).

10. Marieke Zoodtsma & Juliette Schaafsma, *Examining the 'Age of Apology': Insights from the Political Apology Database*, 59 J. PEACE RSCH. 436, 438 (2022) (citing Janna Thompson, *Apology, Justice, and Respect: A Critical Defense of Political Apology*, in *THE AGE OF APOLOGY: FACING UP TO THE PAST* 31–44 (Mark Gibney et al. eds., 2008)).

11. See, e.g., Fabian Salvioli (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence), *Eighteenth Report on the promotion of truth, justice, reparation, and guarantees of non-recurrence*, ¶ 4, U.N. Doc. A/74/147 (July 12, 2019); Anne-Marie McAlinden, *Apologies as 'Shame Management': The Politics of Remorse in the Aftermath of Historical Abuse*, 42 LEGAL STUD. 137, 138 (2022).

12. Kristen E. Boon & Frédéric Mégret, *New Approaches to the Accountability of International Organizations*, 16 INT'L ORGS. L. REV. 1, 5 (2019).

13. AARON LAZARE, *ON APOLOGY* 1 (2004).

14. See *id.* at 44 (setting out a range of psychological needs on the part of the aggrieved, including those named above).

out their human rights obligations—using the U.N. and its specialized agencies as a proxy for broader IO legal analysis—pursuant to customary international law, general principles, and the IOs’ respective constitutive documents. Part II provides a snapshot of the range of serious violations of international law and human rights violations attributable to IOs to date, in violation of the obligations and norms set out in Part I. This Part provides a non-exhaustive categorization of IO violations by type of abuse: atrocity crimes, sexual abuse and exploitation, and fundamental violations of social, cultural, economic, civil, and political rights, as well as refugee and migrant rights. Part III sets out the accountability gap that makes remedy and reparation for victims and survivors exceedingly difficult. This is largely due to the expansive immunities generally enjoyed by IOs, as well as the structural and political limitations of existing internal accountability mechanisms, such as the U.N. Office of Internal Oversight Services. Finally, Part IV argues that public apologies have been an underutilized reparative tool by IOs. This Part elucidates the development of public apologies under international law and sets out the key elements of a meaningful and effective apology: a victim- and survivor-centered approach in substance and procedure; full, unequivocal, and specific acknowledgement of IO wrongdoing and harms; and a commitment to non-repetition and institutional reform. It then assesses IO apologies to date, finding that several veer into “non-apology” or “pseudo-apology” territory. Only with meaningful apology—and hopefully, over time, forgiveness—can IOs begin to restore public trust in their ability to deliver on their mandates to promote and protect human rights, the rule of law, peace and security, development, and the other mutually reinforcing objectives of the multilateral system.

In enumerating the parameters of effective apologies and emphasizing their normative value, this Article draws significant inspiration from the transitional justice literature,¹⁵ as official public apologies have long served as part of the reparative process in the transitional justice context. Of course, there are obvious distinctions between a transitional justice setting and the aftermath of human rights violations perpetrated or facilitated by IOs, but there are nonetheless key lessons in methodology and approach, as well as similarities in the objectives to break with past historical institutional abuses, signal genuine remorse, and demonstrate genuine commitment to institutional reforms going forward.¹⁶

15. See generally Melissa Nobles, *The Long View of Transitional Justice: Apologies and History*, 87 SOC. RSCH. 943 (2020); INT’L CTR. FOR TRANSITIONAL JUST., *More Than Words: Apologies as a Form of Reparation* (2015), <https://www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf> [<https://perma.cc/FV9M-GARE>]; Jean-Marc Coicaud, *Apology and the Question of Reconciliation*, 87 SOC. RSCH. 863 (2020); PUBLIC APOLOGY BETWEEN RITUAL AND REGRET: SYMBOLIC EXCUSES ON FALSE PRETENSES OR TRUE RECONCILIATION OUT OF SINCERE REGRET? (Daniel Guypers et al. eds., 2013).

16. See, e.g., Rosa Freedman, *UNaccountable: A New Approach to Peacekeepers and Sexual Abuse*, 29 EUR. J. INT’L L. 961, 978 (2018) (stating that many aspects of truth-seeking methodology “can and should be incorporated into the lens through which UN accountability laws are framed and implemented”); McAlinden, *supra* note 11, at 143 (2022) (observing how “the ‘exceptional’ nature of [transitional justice (TJ)] is thought to be over-stated and the explicit use of TJ frameworks to deal with the legacy of [historical institutional abuse] is testament to its resonance for transitions from abusive regimes in consolidated democracies”).

The Article posits that the same rationale of enhanced transformative potential arguably applies to apologies in settings where IOs seek to continue operating after widespread institutional wrongdoing, thus “breaking” from their past and restoring credibility.

I. IO LEGAL PERSONALITY AND HUMAN RIGHTS OBLIGATIONS

International law recognizes that IOs enjoy some measure of legal personality. The corresponding scope and application of IO responsibility and accountability, however, remain subject to ongoing academic debate.¹⁷ This Part first affirms the international legal personality of IOs and then turns to the thornier question of IO responsibility. After synthesizing the academic debate on the theoretical bases for IO responsibility,¹⁸ this Part argues that a combination of overlapping obligations stemming from customary international law, international human rights law, international humanitarian law, as well as IO constituent documents, comprises the scope of IO responsibility under international law.

A. *International Legal Personality of IOs*

The International Court of Justice (“ICJ”) first confirmed that IOs may enjoy significant international legal personality—i.e., the capacity of being a subject of legal rights and duties—in its 1949 advisory opinion on *Reparation for Injuries Suffered in the Service of the United Nations*.¹⁹ There, the Court determined whether the U.N. had the capacity to bring an international claim against the state responsible for the assassination of a U.N. mediator in Palestine, in order to obtain reparation for damage caused both to the organization and the victim. The Court voted in the affirmative, finding that the U.N. had legal personality and competence to bring international claims, regardless of whether the responsible state was a member of the U.N. or whether the damage was to the organization or to the victim.²⁰ The Court reasoned that the U.N.’s functions and operations necessitated some measure of international legal personality.²¹ It concluded that the U.N. is an “international

17. See Jan Wouters, Eva Brems, Stefaan Smis & Pierre Schmitt, *Accountability for Human Rights Violations by International Organisations: Introductory Remarks*, in ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS BY INTERNATIONAL ORGANISATIONS 3 (Jan Wouters et al. eds., 2010); SCHMITT, *supra* note 1, at 8.

18. See, e.g., Freedman, *supra* note 16, at 975 (describing Frédéric Mégret and Florian Hoffmann’s three conceptions for how the U.N. may be bound by human rights obligations: the internal conception, the external conception, and the hybrid conception; Noelle Quenivet’s treaty-based interpretation; Tom Dannenbaum’s focus on the U.N.’s legal personality as a basis for customary international law; and Olivier de Schutter’s “sliding scales” theory) (internal citations omitted).

19. *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. Rep. 174, 187–88 (Apr. 11) [hereinafter U.N. Reparations Advisory Opinion].

20. *Id.* at 187–88.

21. *Id.* at 179.

person” with rights and duties.²² The International Law Commission (“ILC”) has since affirmed the legal personality of IOs. Indeed, it defines an “international organization” as an organization “established by a treaty or other instrument governed by international law and *possessing its own international legal personality*.”²³

The international legal personality of IOs arguably stems from their vast and growing powers and functions, including policymaking, programming, financing, and technical assistance. Regardless of their specific mandates and thematic areas, IOs wield independent decision-making powers, complex internal bureaucracies with administrative and financial heft, and the power to adopt binding decisions with (quasi-)legislative character.²⁴ Although member states may design, mandate, and empower IOs, IOs are not per se a proxy or long-arm for the sum of their constituent members. Rather, their powers and activities often transcend the collective will of member states.²⁵ Their legal personality lies in this undeniable reality of autonomy.

B. *Human Rights Obligations of IOs*

By virtue of their international legal personality and evolving functions, IOs not only wield rights but also duties and obligations under international law. The ICJ thus recognized the general principle of IO responsibility in its 1999 advisory opinion on the *Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, acknowledging that the U.N. “may be required to *bear responsibility* for the damage arising from [its] acts” or those of its agents acting in their official capacity.²⁶ There, although the Court confirmed the relevant Special Rapporteur’s immunity from Malaysian court proceedings, it left the door open for the U.N.’s responsibility under the “appropriate modes of settlement” pursuant to the Convention on the Privileges and Immunities of the United Nations.²⁷

The ICJ has not further adjudicated the issue and scope of IO responsibility and obligations, but shortly after the foregoing *Immunity from Legal Process* case,

22. *Id.*

23. DARIO, *supra* note 1, Art. 2 (emphasis added).

24. See Kirsten Schmalenbach, *International Organizations or Institutions, General Aspects*, in MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW (Rüdiger Wolfrum ed., 2020).

25. See also GUGLIELMO VERDIRAME, THE UN AND HUMAN RIGHTS: WHO GUARDS THE GUARDIANS? 60 (2011) (explaining how IOs “operate as discrete institutional agents rather than as the long arm of their most powerful member states; that they are bureaucracies and not simply sounding boards for states; that their true social and political nature is much more than the sum of the wills of their member states”).

26. Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, 1999 I.C.J. Rep. 62, ¶ 66 (Apr. 29) (emphasis added).

27. *Id.* But see also VERDIRAME, *supra* note 25, 64–66 (2011) (explaining the circularity inherent in the notion that international organizations’ legal personality can be inferred from the same rights and duties on which such personality is surmised).

the ILC notably decided to address the topic, formally adding IO responsibility to its program of work in 2002.²⁸ In its 2011 Draft Articles on Responsibility of International Organizations (“DARIO” or the “Draft Articles”), the ILC stipulated as the basic premise that “[e]very internationally wrongful act of an international organization entails the international responsibility of that organization.”²⁹ In other words, for every action, there is a corresponding duty. To find otherwise would allow blatant IO misconduct without consequence. Without delving into a normative and legal assessment of the Draft Articles,³⁰ their arguable foundation—general international law, comprising customary international law and general principles of law—is indicative in this regard.³¹ Although scholars continue to dispute whether and to what extent general international law binds IOs, this Article affirms at minimum the ICJ’s dictum in its advisory opinion in the *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*: IOs are “subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.”³²

Of course, specifying the precise scope of IO responsibility remains a challenging and everchanging exercise. This Article posits that the widespread adoption of the Universal Declaration of Human Rights (“UDHR”) at the national level,³³ as well as the ongoing affirmation of the rights therein

28. DARIO, *supra* note 1, General Commentary, ¶ 5.

29. *Id.* Art. 3.

30. The Draft Articles have been subject to extensive dispute, with prominent commentators suggesting it is not an accurate statement of international law and is at best a preemptive, progressive development of law rather than codification of practice, wrongly tethering IOs to states by using as the baseline the Draft Articles on State Responsibility. See, e.g., Mirka Moldner, *Responsibility of International Organizations – Introducing the ILC’s DARIO*, 16 MAX PLANCK Y.B. U.N. L. 282, 288 (2012); SCHMITT, *supra* note 1, at 12–17; Ellen Campbell, Elizabeth Dominic, Snezhana Stadnik & Yuanzhou Wu, *Due Diligence Obligations of International Organizations under International Law*, 50 N.Y.U. J. INT’L L. & POL. 541, 546 n.12 (2018). But see generally Kristina Daugirdas, *Reputation and the Responsibility of International Organizations*, 25 EUR. J. INT’L L. 991 (2015) (arguing that despite some skeptical responses, the Draft Articles still have significant and positive practical effect).

31. Moldner, *supra* note 30, at 286.

32. Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt, Advisory Opinion, 1980 I.C.J. Rep. 72, ¶ 37 (Dec. 20); see also Kristina Daugirdas, *How and Why International Law Binds International Organizations*, 57 HARV. INT’L L.J. 325, 332–33 n.34 (2016) (internal citations omitted) (providing examples of preeminent scholars, such as Olivier De Schutter, Eyal Benvenisti, and August Reinisch, who have affirmed that international law binds IOs, albeit disagreeing with the reliance on the ICJ’s advisory opinion to come to this conclusion); see also Statute of the International Court of Justice, Art. 38 (listing international conventions, international custom, and general principles as primary sources of international law).

33. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR]; see also *Signatories for Universal Declaration of Human Rights*, DANISH INST. FOR HUM. RTS., <https://sdg.humanrights.dk/en/instrument/signees/24> [<https://perma.cc/4VG9-WZP4>] (last visited Apr. 1, 2024).

through treaties,³⁴ U.N. resolutions,³⁵ and other stakeholder commitments and practice,³⁶ renders those rights binding on IOs as a matter of both customary international law and general principles of law.³⁷ This comports with the ICJ's increasingly expansive approach to customary international law—taking into account not just state practice and *opinio juris*, but also multilateral conventions and U.N. resolutions, among other sources. It also comports with the ICJ's approach to general principles of law, including as enshrined in the U.N. Charter and as derived from national legal systems, such as evidentiary principles and minimum procedural guarantees.³⁸ Accordingly, the Court has looked to principles of the U.N. Charter and UDHR in determining international human rights law compliance.³⁹ To date, it is well-settled that human rights norms protected under customary international law and general principles include the prohibition of torture,⁴⁰ the principle of “equality of arms” of parties in judicial disputes,⁴¹ and the requirement of environmental impact

34. See, e.g., International Convention on the Elimination of All Forms of Racial Discrimination pmb. ¶ 2, Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter ICERD]; International Covenant on Civil and Political Rights pmb. ¶ 3, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights pmb. ¶ 3, Dec. 16, 1966, 993 U.N.T.S. 3 (Dec. 16, 1966) [hereinafter ICESCR]. Furthermore, at least one IO (the European Union) has directly entered human rights treaties (the U.N. Convention on the Rights of Persons with Disabilities), thus introducing the potential extension of international human rights treaty obligations to IOs. See Olivier De Schutter, *Human Rights and the Rise of International Organizations: The Logic of Sliding Scales in the Law of International Responsibility*, at 53–60 (Interdisc. Rsch. Cell in Hum. Rts. Working Paper, 2010); SARAH BAYANI, INTERNATIONAL LEGAL RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS IN THE ILC DRAFT ARTICLES AND BEYOND 86 (2022); Campbell et al., *supra* note 30, at 548–50; Ludovica Poli, *The Duty of Care as a Corollary of International Organizations*, in DUTY OF CARE OF INTERNATIONAL ORGANIZATIONS TOWARDS THEIR CIVILIAN PERSONNEL 409, 416 (Andrea de Guttry et al. eds., 2018). This Article does not address the more contested argument that IOs are further obliged to comply with international human rights treaties due to obligations derivative from states parties, i.e., stemming from the overlap between treaty states parties and IO member states. *Id.* at 414–15 (setting out these academic theories and their potential shortcomings); de Schutter, *supra* note 34, at 9–18 (finding the derivative argument based on preexisting obligations of member states “fails on practical grounds”).

35. See, e.g., UDHR, *supra* note 33; G.A. Res. 423 (V), Human Rights Day, U.N. Doc. A/RES/423 (V) (Dec. 4, 1950); G.A. Res. 60/1, 2005 World Summit Outcome, ¶ 120, U.N. Doc. A/RES/60/1 (Oct. 24, 2005); G.A. Res. 60/251, Human Rights Council, pmb. ¶ 2, U.N. Doc. A/RES/60/251 (Apr. 3, 2006).

36. See, e.g., António Guterres (U.N. Secretary-General), *The Highest Aspiration: A Call to Action for Human Rights*, at 2 (2020); *Human Rights 75 Initiative*, OFF. U.N. HIGH COMM'R FOR HUM. RTS. [hereinafter U.N. OHCHR], <https://www.ohchr.org/en/human-rights-75> [<https://perma.cc/R3VT-WE2F>] (last visited Apr. 16, 2024).

37. For an in-depth discussion of the applicability of human rights law obligations to IOs as a matter of both customary international law and general principles of international law, see, e.g., VERDIRAME, *supra* note 25, at 71; Wouters et al., *supra* note 17, at 6–7; De Schutter, *supra* note 34, at 18–22.

38. See H.E. Mr. Abdulqawi Ahmed Yusuf (President of the International Court of Justice), *The International Court of Justice and Unwritten Sources of International Law*, Statement Before the Sixth Committee of the General Assembly, ¶¶ 6, 35 (Nov. 1, 2019) (explaining the evolution of the Court's approach to both sources of law and using the procedural principle of *res judicata* as an example).

39. United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Judgment, 1980 I.C.J. Rep. 3, 42 (May 24) (determining in the context of Iranian hostage-taking that “to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship” would be “manifestly incompatible” with these sources).

40. Questions relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. Rep. 422, ¶ 99 (July 20).

41. See Yusuf, *supra* note 38, ¶ 35 (also stipulating that the Court has recognized the admissibility of indirect evidence, the principle of *res judicata*, and other general principles of international procedural law).

assessments.⁴² Further, even if some may argue that the full scope of the rights stipulated in the UDHR has not reached the status of customary law or general principles, at minimum, the *jus cogens* norms apply in full force to IOs as subjects of international law, just as they apply to states.⁴³ These norms include the prohibition of aggression, genocide, crimes against humanity, slavery, torture, and racial discrimination and apartheid, as well as the right of self-determination and the basic rules of international humanitarian law.⁴⁴ Indeed, there has historically been consensus among IOs themselves that at least *jus cogens* rules bind them by default, subject only to exceptions expressly stipulated in the respective IO's constituent documents.⁴⁵

In addition to the foregoing obligations under general international law, the constituent documents of IOs separately stipulate certain purposes and functions and thereby rights and duties specific to each IO, including obligations under international human rights law. As the ICJ explained in its 1949 advisory opinion in *Reparation for Injuries Suffered in the Service of the United Nations*, the scope of the U.N.'s rights and duties "must depend upon [the Organization's] purposes and functions as specified or implied in its constituent documents and developed in practice."⁴⁶ Indeed, starting with the United Nations, the Charter clearly demonstrates that, from inception, one of its founding purposes was human rights promotion.⁴⁷ Corresponding human rights duties arguably flow from this purpose.

For example, Article 1 of the U.N. Charter states the purposes of the United Nations as maintaining international peace and security and achieving "international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in *promoting and encouraging respect for human rights and for fundamental freedoms* for all without distinction as to race, sex, language or religion."⁴⁸ Article 55(c) further provides that the U.N. "*shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms* for all without distinction as to race, sex, language, or religion."⁴⁹

42. *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Judgment, 2010 I.C.J. Rep. 14, ¶ 204 (Apr. 20). For an in-depth exploration of the customary norms of international human rights law, see generally WILLIAM SCHABAS, *THE CUSTOMARY INTERNATIONAL LAW OF HUMAN RIGHTS* (2021).

43. See Wouters et al., *supra* note 17, at 7; See generally Daugirdas, *supra* note 32 (concluding that IOs, like states, are bound by general international law at least as a default).

44. Sean D. Murphy, *Peremptory Norms of General International Law (Jus Cogens) and Other Topics: The Seventy-First Session of the International Law Commission*, 114 AM. J. INT'L L. 68, 71 (2020) (citing the International Law Commission Report Annex).

45. Daugirdas, *supra* note 32, at 329.

46. U.N. Reparations Advisory Opinion, *supra* note 19, at 180.

47. Wouters et al., *supra* note 17, at 2; SCHMITT, *supra* note 1, at 55.

48. U.N. Charter, Arts. 1(2)–(3) (emphasis added).

49. *Id.* Art. 55(c) (emphasis added).

Several organs of the U.N., including the General Assembly,⁵⁰ the Commission on Human Rights and subsequently the Human Rights Council,⁵¹ the Economic and Social Council,⁵² and the trusteeship system⁵³ have human rights functions and obligations pursuant to the U.N. Charter. Other U.N. policies, such as the Human Rights Due Diligence Policy and Do No Harm Principle, confirm the applicability of international law, including human rights law, humanitarian law, and refugee law, at least to certain U.N. activities.⁵⁴

There is debate as to whether the human rights provisions in the U.N. Charter extend beyond member states to the U.N. as an organization, including to subsidiary organs that do not have human rights promotion expressly listed among their purposes and functions.⁵⁵ Indeed, some scholars note that although the U.N. Charter and other governing instruments may refer to an obligation to promote human rights, these instruments do not expressly oblige the organization to respect human rights in its own activities.⁵⁶ In fact, in 2010, the U.N. Dispute Tribunal interpreted Article 55 of the U.N. Charter as defining the organization's "goals and competences" rather than stipulating "a commitment of the United Nations Organization itself towards individuals."⁵⁷

50. See *id.* Art. 3 ("The General Assembly shall initiate studies and make recommendations for the purpose of . . . promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."); see also *id.* Art. 10 (empowering the General Assembly to "discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter").

51. G.A. Res. 60/251, *supra* note 35, ¶¶ 2–3 (establishing the Human Rights Council to "promot[e] universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner and to "address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon").

52. U.N. Charter, Arts. 62(2), 68 (providing that the Economic and Social Council "may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all" and "shall set up commissions in economic and social fields and for the promotion of human rights").

53. See *id.* Arts. 76(a), (c) (stipulating that the basic objectives of the U.N. trusteeship "in accordance with the Purposes of the United Nations" shall be to "further international peace and security" and "encourage respect for human rights and for fundamental freedoms").

54. See generally United Nations, *Human Rights Due Diligence Policy on United Nations Support to Non-United Nations Security Forces, Guidance Notes and Text of the Policy* (2015) (applying to U.N. support to non-U.N. security forces) (last visited Apr. 16, 2023); *Standards of Conduct Zero Tolerance Policy on Sexual Exploitation and Abuse*, U.N. PEACEKEEPING, <https://peacekeeping.un.org/en/standards-of-conduct> [perma.cc/8U8T-HWQ]; *Humanitarian Principles*, ¶ 2, U.N. HIGH COMM'R FOR REFUGEES, <https://emergency.unhcr.org/protection/protection-principles/humanitarian-principles> [perma.cc/E8PU-CXGW] (last visited Apr. 1, 2024) (recognizing the "do no harm" principle requiring, for instance, the U.N. High Commissioner of Human Rights "to prevent and alleviate any adverse consequences of its actions on the affected populations").

55. See, e.g., SCHMITT, *supra* note 1, at 55 (citing, e.g., John Cerone, *Minding the Gap: Outlining KFOR Accountability in Post-conflict Kosovo*, 12 EUR. J. INT'L L. 469, 473 (2001); Zenon Stavrinides, *Human Rights Obligations under the United Nations Charter*, 3 INT'L J. HUM. RTS. 38, 42 (1999)).

56. *Id.*

57. *Id.*

However, the implied powers in the U.N. Charter, as well as the U.N.'s functions as “developed in practice”⁵⁸ very clearly point to the applicability of international human rights law obligations to the U.N. as an organization, including its organs. This is the case notwithstanding the potential subsidiary attribution to and co-responsibility of a breach of the organization's member states.⁵⁹ As the ICJ has clarified, reviewing only the explicit provisions of an IO's charter and constituent documents is too limiting.⁶⁰ Rather, the breadth of U.N. functions as evolved over time renders corresponding human rights obligations more necessary than ever before. Notably, the Terms of Reference for Resident Coordinators adopted in 2008 affirm that the U.N. Charter governs all U.N. entities.⁶¹ The 2005 World Summit Outcome Document also provides guidance, committing to human rights mainstreaming throughout the U.N. system and underscoring the U.N.'s responsibility to use appropriate diplomatic, humanitarian, and other peaceful means to protect against atrocity crimes.⁶²

Although dispute remains as to whether the U.N. Charter imbues the U.N.'s specialized agencies with the same obligations (the agencies are technically distinct entities)⁶³—at least some agencies have analogous human rights and international law obligations either expressly or implicitly stipulated in their governing documents.⁶⁴ The following list provides an illustrative snapshot of the specific purposes, functions, and obligations of U.N. specialized agencies that may implicate international human rights law, embedded in their basic instruments:

- The International Labour Organization has the “solemn obligation” to further programming that will achieve “full employment and the raising of standards of living,” “adequate protection for the life and health of workers in all occupations,” and the “provision for child welfare and maternity protection.”⁶⁵ These duties no doubt implicate and necessitate respect for the rights to work, the right to an adequate standard of living, and the right to the

58. See U.N. Reparations Advisory Opinion, *supra* note 19, at 180.

59. See Matthias Hartwig, *International Organizations or Institutions: Responsibility and Liability*, in MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW ¶ 21 (Rüdiger Wolfrum ed., 2011).

60. U.N. Reparations Advisory Opinion, *supra* note 19, at 180.

61. U.N. Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka, *Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka*, at 108 n.2, U.N. Doc. ST(02)/R425/Sri Lanka (Nov. 2012) [hereinafter Sri Lanka Report].

62. 2005 World Summit Outcome, *supra* note 35, ¶¶ 126, 139.

63. U.N. Charter, Arts. 57, 63 (specialized agencies are “brought into relationship with the United Nations” through agreements with the U.N. Economic and Social Council); see Stadnik & Wu, *supra* note 30, at 553–54.

64. See U.N. Charter, Art. 57 (stipulating “wide international responsibilities, as defined in [the specialized agencies'] basic instrument”).

65. International Labour Organization [hereinafter ILO], Constitution of the International Labour Organization, Annex Arts. III, III(a), (g), (h), Apr. 1, 1919 (amended Oct. 8, 2015); see also ILO, *Declaration on Fundamental Principles and Rights at Work*, 6 (amended 2022).

enjoyment of the highest attainable standard of physical and mental health, as well as child rights under international human rights law.⁶⁶

- The World Health Organization’s (“WHO”) primary objective is the “attainment by all peoples of the highest possible level of health,” with constituent functions including “to furnish appropriate technical assistance” at the request of governments and the United Nations; “to promote . . . the improvement of nutrition, housing, sanitation, recreation, economic or working conditions and other aspects of environmental hygiene”; and to “promote maternal and child health and welfare.”⁶⁷ These functions implicate the right to health as recognized under international human rights law, including in terms of availability, accessibility, acceptability, quality, and participation, as well as inter-related social, economic, and other rights.⁶⁸
- The International Organization for Migration is obliged to “make arrangements for the organized transfer of migrants, for whom existing facilities are inadequate or who would not otherwise be able to move without special assistance, to countries offering opportunities for orderly migration,” in compliance with the laws, regulations, and policies of the states concerned.⁶⁹ Subsequent agreements and internal policies have further confirmed the obligation to act in accordance with the U.N. Charter and international law, including international human rights law.⁷⁰ Although the scope of the Organization’s work and normative character is disputed,⁷¹ its activities plainly implicate the rights of

66. See, e.g., UDHR, *supra* note 33, Art. 25; ICESCR, *supra* note 34, Arts. 6–7; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. [hereinafter CRC].

67. Constitution of the World Health Organization Arts. 1, 2(d), (e), (i), (l), July 22, 1946, 14 U.N.T.S. 185.

68. See UDHR, *supra* note 33, Art. 25; ICESCR, *supra* note 34, Art. 12; See generally Comm. Econ. Soc. & Cultural Rts., *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12), U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000); OHCHR and *the Right to Health*, U.N. OHCHR, <https://www.ohchr.org/en/health>. [https://perma.cc/JS6Q-BZKD].

69. International Organization for Migration [hereinafter IOM], Constitution and Basic Texts Arts. 1(a), 3 (3d ed. 2021).

70. See G.A. Res. 70/296, Agreement concerning the Relationship between the United Nations and the International Organization for Migration Art. 2(5), U.N. Doc. A/RES/70/296 (Aug. 5, 2016); IOM Res. 1150 (XCIII), IOM Strategy, Annex (June 7, 2007) (cited in IOM, *The Human Rights of Migrants: IOM Policy and Activities*, ¶ 5, MC/INF/298 (Nov. 12, 2009)).

71. See Elspeth Guild et al., *Unfinished Business: The IOM and Migrants’ Human Rights*, in THE INTERNATIONAL ORGANIZATION FOR MIGRATION 29–51 (Martin Geiger & Antoine Pecoud eds., 2020) (arguing that the current “supportive” migrant protection and migrant rights policy is inadequate, and a clearer legal protection mandate is urgently needed); Helmut Philipp Aust & Lena Riemer, *A Human Rights Due Diligence Policy for IOM?*, in IOM UNBOUND? OBLIGATIONS AND ACCOUNTABILITY OF THE INTERNATIONAL ORGANIZATION FOR MIGRATION IN AN ERA OF EXPANSION 137, 142 (Megan Bradley et al. eds., 2023) (describing a normative framework of a “non-normative nature” and the expansion of

migrants, including fundamental civil and political rights like the rights to freedom from arbitrary detention and minimum procedural guarantees; economic, social and cultural rights like the rights to health and education;⁷² and fundamental protections under customary international refugee law.⁷³

- The World Bank comprises five organizations, including the International Bank for Reconstruction and Development (“IBRD”) and International Finance Corporation (“IFC”), each with their own Articles of Agreement that stipulate their respective functions.⁷⁴ Such functions include promoting “the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment . . . thereby assisting in raising productivity, *the standard of living and conditions of labor* in their territories,”⁷⁵ and to “supplement[] the activities of the [IBRD]” “by encouraging the growth of productive private enterprise in member countries.”⁷⁶ Although these government documents do not mention human rights, the former World Bank general counsel previously acknowledged that “human rights and international human rights law have become increasingly relevant to helping the Bank achieve its mission and fulfill its purposes” and that “human rights are an intrinsic part of the Bank’s mission.”⁷⁷ The World Bank also has Safeguard Policies in place that require, among other stipulations, environmental and social impact assessments.⁷⁸

IOM’s services including data collection, humanitarian programming and coordination and facilitation of migration).

72. See *International Migration Law*, IOM, <https://www.iom.int/international-migration-law> (describing the International Migration Law Unit of IOM that promotes migration governance in line with international law “and primarily international human rights”) [<https://perma.cc/R6N8-8RCP>]; *OHCHR and Migration*, U.N. OHCHR <https://www.ohchr.org/en/migration> [<https://perma.cc/8VE4-CWFH>].

73. See generally Hélène Lambert, *Customary Refugee Law*, in *OXFORD HANDBOOK OF INTERNATIONAL REFUGEE LAW* (Cathryn Costello, Michelle Foster & Jane McAdam eds., 2021) (setting out non-refoulement, temporary refuge, and the right to be granted asylum as rules, or at least emerging rules, of customary law).

74. *Articles of Agreement*, WORLD BANK, <https://www.worldbank.org/en/about/articles-of-agreement> [<https://perma.cc/63PY-LT6G>] (last visited Apr. 1, 2024).

75. International Bank for Reconstruction and Development Articles of Agreement, Art. I(iii) (amended June 27, 2012) (emphasis added).

76. International Finance Corporation Articles of Agreement, Art. 1 (amended Apr. 16, 2020).

77. See Wouters et al., *supra* note 17, at 7 (citing Robert Dañino, Legal Opinion on Human Rights and the Work of the World Bank by the Senior Vice-President and General Counsel (Jan. 27, 2006)); *cf. id.* at 7 (explaining that the IMF by comparison has been understood to have no mandate to promote human rights) (internal citations omitted).

78. *Environmental and Social Policies*, WORLD BANK, <https://www.worldbank.org/en/projects-operations/environmental-and-social-policies> [<https://perma.cc/R9UR-6YLY>] (last visited Apr. 1, 2024).

IO functions as “developed in practice”⁷⁹ further point to the common applicability of international human rights law. Although some have argued that IO statements regarding their compliance with international law do not necessarily concede a legal obligation to do so,⁸⁰ it is difficult to reconcile the existence of IO rights without equally requiring IO duties and obligations. As evidenced by the above overview, IOs’ functions and institutional acts necessarily implicate a broad swathe of international human rights law.⁸¹ For instance, IO poverty alleviation and sustainable development work impacts the right to development; criminal justice work impacts due process and fair trial rights; peace work impacts the right to security as well as international humanitarian law; and repatriation and resettlement work implicates the core tenets of international refugee law. Arguably, IO activities necessarily imply an obligation to respect human rights. This is bolstered by the fact that the U.N.’s functions have “developed in practice”⁸² toward expansive, independent, and external activities—i.e., autonomy—beyond the initial conception of the U.N. as a forum or long-arm for member states.⁸³ As the U.N. and other IOs’ autonomy and functions have developed over time, so too have their impacts and, ultimately, the need for more robust accountability and apologies, as this Article addresses in turn.

II. ALLEGATIONS OF SERIOUS HUMAN RIGHTS VIOLATIONS BY THE U.N. SYSTEM

According to one estimate, as of 2017 there were at least six hundred IOs operating worldwide.⁸⁴ As IOs grow and their activities expand, the stakes for international law compliance have never been higher. Yet over a decade since Professor Guglielmo Verdirame published his groundbreaking book, *The UN and Human Rights: Who Guards the Guardians*, allegations of systematic and serious misconduct on the part of the U.N. and its specialized agencies, among other IOs, continue to surface, sowing wide distrust in the U.N. system and the multilateral project writ large. In his book, Verdirame sets out a typology of at least four categories of U.N. activities that are particularly vulnerable

79. U.N. Reparations Advisory Opinion, *supra* note 19, at 180.

80. Daugirdas, *supra* note 32, at 339 (“By nevertheless requiring peacekeepers to comply with international humanitarian law, the United Nations has kept debates about its legal obligations from coming to a head. This avoidance strategy is common among IOs; they often comply with international law norms without confirming that they have an obligation to do so.”).

81. See VERDIRAME, *supra* note 25, 75–86 (2011) (summarizing the international legal debate regarding IO obligations implied from functions and from institutional acts).

82. U.N. Reparations Advisory Opinion, *supra* note 19, at 180.

83. VERDIRAME, *supra* note 25, 59–61 (2011); *see also* Freedman, *supra* note 18, at 975 (“A straightforward reading of the Charter of the United Nations is that the UN must promote human rights (Articles 1(3), 55 and 56), but those provisions direct an organization that was intended to be a forum within which member states agree upon actions that must be taken. As the UN has developed, it is clear that the organization serves different purposes at different times. As such, there is significant scope for arguing that the Charter provisions indicate that the UN must also promote human rights when acting externally rather than as a forum.”).

84. SCHMITT, *supra* note 1, at 1.

to human rights abuses: relief and development operations, peacekeeping operations, international administration, and sanctions.⁸⁵ This Part provides a snapshot of the breadth of human rights abuses that continue to be reported, focusing on allegations of widespread violations that appear to raise systemic, institutional challenges. It categorizes them by specific types of violations rather than by entities and functions.

This Part is circumscribed in several key respects. First, recognizing the abundant literature already dedicated to the systematic challenge of sexual exploitation and abuse by U.N. peace work, this Part provides only an overview of recent allegations.⁸⁶ Second, this Part focuses on the direct actions or failure to act by IOs vis-à-vis intended beneficiaries and affected populations. It does not address internal affairs and challenges, such as employment and labor disputes within the organizations. Nor, due to spatial constraints, does it address the equally challenging and worrying human rights trend of IO technical assistance to states in the commission of internationally wrongful acts or to states that are notorious rights abusers, because such practices, although no doubt problematic, would require detailed assessment of IO complicity and secondary responsibility, as opposed to the more direct responsibility and harms set out below.⁸⁷

A. *Genocide*

Recognizing the *jus cogens* nature of the prohibition of genocide, this Part would be remiss not to start by recognizing among the well-documented and serious international law violations implicating the U.N. system, the U.N.'s failure to act and protect civilians from the 1994 genocide in Rwanda. There, an independent inquiry commissioned by the U.N. Secretary-General to investigate the U.N.'s role in the genocide identified the “failure by the United Nations to prevent, and subsequently, to stop the genocide in Rwanda”—notably, “a failure by the United Nations system as a whole,”⁸⁸ including by the U.N. Secretariat and the Secretary-General himself. The inquiry found that the U.N. mission in Rwanda was not only severely under-resourced due to the lack of political will among member states, but it had also made

85. See generally VERDIRAME, *supra* note 25, chs. 4–7; see also Christine M. Chinkin, *United Nations Accountability for Violations of International Human Rights Law*, 395 RECUEIL DES COURS 199, 214 *et seq.* (2019) (building on Verdirame’s cataloguing U.N. activities giving rise to alleged human rights violations).

86. See, e.g., Freedman, *supra* note 18, at 984; Amin R. Yacoub & Becky Briggs, *(UN)Accountable: Who Shall Hold the United Nations Accountable for Its Human Rights Breaches? International Arbitration and Insurance Coverage as Two Viable Solutions to the UN Accountability Dilemma*, 28 U.C. DAVIS J. INT’L L. & POL’Y 139, 140 (2022).

87. See DARIO, *supra* note 1, Art. 14; see generally Fionnuala Ní Aoláin (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism), *Rep. on Advancing human rights through the mainstreaming of human rights in counter-terrorism capacity-building and technical assistance at the national, regional and global levels*, U.N. Doc. A/76/261 (Aug. 3, 2021) (examining the complicity of IOs in counter-terrorism technical assistance to human rights abusing member states).

88. U.N. Secretary-General, Letter Dated 15 December 1999 from the Secretary-General Addressed to the President of the Security Council, Enclosure: Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda, at 3, U.N. Doc. S/1999/1257 (Dec. 16, 1999).

serious mistakes as to the allocation of existing resources.⁸⁹ Specifically, the inquiry found a “mistaken” and “insufficient political analysis” by the U.N. Secretariat’s Center for Human Rights and Department of Peacekeeping Operations in the inception of the assistance mission in Rwanda,⁹⁰ shortcomings by the mission and U.N. Headquarters in communicating critical information on the escalating situation and the rules of engagement,⁹¹ and the failure of the U.N. Department of Peacekeeping Operations to address the mission’s logistical problems.⁹²

U.N. peacekeeping forces were also implicated in the July 1995 Srebrenica massacres, also known as the Srebrenica Genocide.⁹³ There, the U.N. protection force had the mandate to “deter attacks” on Srebrenica and five safe areas in Bosnia and Herzegovina, yet up to twenty thousand people were killed in and around those areas, mostly from the Bosnian Muslim population.⁹⁴ In one report, the Secretary-General recognized “the Organization’s failures in implementing [its] mandate.”⁹⁵ Although he justified the U.N. forces’ decision to avoid armed confrontation, he identified other institutional challenges, including structural “command-and-control problems” and inadequate intelligence-sharing within the U.N. mission and U.N. system.⁹⁶ He found that the international community might have been able to respond quicker had there been swifter communications across the U.N. system and members.⁹⁷ The Secretary-General concluded, “[t]hrough error, misjudgement and an inability to recognize the scope of the evil confronting us, we failed to do our part to help save the people of Srebrenica from the Serb campaign of mass murder.”⁹⁸

B. *Sexual Abuse and Exploitation*

From its inception, the U.N. has undertaken an increasingly progressive approach to gender justice, recognizing gender-based violence as a particularly egregious violation of human rights. The UDHR reaffirmed the equal enjoyment and protection of the enumerated rights and freedoms to women, including the rights to liberty and security of the person, freedom from arbitrary detention, and freedom from torture and cruel, inhuman, or degrading treatment or punishment.⁹⁹ Since then, numerous treaties, U.N. resolutions,

89. *Id.* at 3.

90. *Id.* at 32.

91. *Id.* at 33–35.

92. *Id.* at 41.

93. Prosecutor v. Krstić, Case No. IT-98-33-T, Trial Judgement, ¶ 595 (I.C.T.Y. Aug. 2, 2001); *but see generally* Katherine G. Southwick, Note, *Srebrenica as Genocide? The Krstić Decision and the Language of the Unspeakable*, 8 YALE HUM. RTS. & DEV. L.J. 188–227 (2005) (disputing the genocide categorization).

94. U.N. Secretary-General, *Report of the Secretary-General pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica*, ¶ 3, U.N. Doc. A/54/549 (Nov. 15, 1999).

95. *Id.* ¶ 5.

96. *Id.* ¶¶ 471, 474.

97. *Id.* ¶ 474.

98. *Id.* ¶ 503.

99. UDHR, *supra* note 33, pmb. ¶ 5, Arts. 1–3, 5, 7, 9.

and U.N. and state practices have commonly treated gender-based violence as a serious violation of international human rights law and, in situations of armed conflict, of international humanitarian law.¹⁰⁰

Allegations of U.N.-perpetrated violence against women and girls, including sexual violence and exploitation by U.N. peacekeepers, date at least as far back as to the early 1990s. These include serious allegations of child prostitution, rape, and pornography by U.N. peacekeeping operations in Mozambique and the Congo.¹⁰¹ One statistic documents sexual abuse crimes at eleven of fifty-seven U.N. peacekeeping missions as of 2019.¹⁰² Despite ongoing U.N. efforts to protect against such sexual exploitation and abuse, including through a zero tolerance policy,¹⁰³ there has been little progress on these issues and growing evidence of retaliation against whistleblowers.¹⁰⁴ According to the U.N.'s own reporting, from 2010 to 2022, there were more than 1,200 reported allegations of sexual abuse in U.N. peacekeeping missions, across over thirty missions, including in the Democratic Republic of the Congo, Central African Republic, Haiti, and Liberia.¹⁰⁵ Recent allegations have also surfaced in South Sudan, where aid workers have been accused of sexual abuse and exploitation at a U.N.-led camp.¹⁰⁶ These allegations originally arose in 2015 but have only increased since—despite a U.N. task force mandated to address the problem.¹⁰⁷

100. See, e.g., Convention on the Elimination of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; G.A. Res. 48/104, Declaration on the Elimination of Violence against Women (Dec. 20, 1993); World Conference on Human Rights, Vienna Declaration and Programme of Action (June 25, 1993); CRC, *supra* note 66; U.N. Peacekeeping, *Standards of Conduct Zero Tolerance Policy on Sexual Exploitation and Abuse*, <https://peacekeeping.un.org/en/standards-of-conduct> [https://perma.cc/H33J-RKDE]; see also U.N. Committee on the Elimination of All Forms of Discrimination against Women [hereinafter CEDAW Committee], *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (1992)*, ¶ 2, U.N. Doc. CEDAW/C/GC/35 (July 26, 2017) (recognizing the prohibition of sexual and gender-based violence against women as a principle of customary international law); CEDAW Committee, *General Recommendations (Nos. 35 and 30) and Practice of the Committee on Conflict-Related Sexual Violence as Gender-Based Violence against Women and Girls*, ¶ 1 (explaining that sexual violence as part of the Women, Peace, and Security Agenda before the Security Council, citing Security Council resolutions 1325 et seq. drawing from the International Criminal Court definition), ¶ 13 (clarifying that the “international human rights framework on sexual violence is applicable in times of peace and conflict, and broader than the frameworks of international humanitarian law and international criminal law; therefore, they should be applied jointly in conflict contexts”), U.N. Doc. CEDAW/C/GC/35 (Sept. 1, 2022).

101. See VERDIRAME, *supra* note 25, 215–16 (internal citations omitted).

102. Yacoub & Briggs, *supra* note 86, at 143 (citing Sam Abrole, *United Nations' International Accountability: Peacekeeping Forces' Sexual Abuse Crimes*, at 5 (2019) (unpublished paper)).

103. U.N. Volunteers, *Zero Tolerance of Sexual Exploitation and Abuse* (last visited Apr. 2, 2024), [https://toolkit.unv.org/hosting/zero-tolerance-of-sexual-exploitation-and-abuse#:~:text=UNV%2C%20as%20part%20of%20the,Exploitation%20and%20Abuse%20\(PSEA\)](https://toolkit.unv.org/hosting/zero-tolerance-of-sexual-exploitation-and-abuse#:~:text=UNV%2C%20as%20part%20of%20the,Exploitation%20and%20Abuse%20(PSEA)) [https://perma.cc/B9SW-EA7V].

104. Boon & Mégret, *supra* note 12, at 3.

105. Audrey L. Comstock, *Report Exposes U.N. Camp Abuses, But Research Shows Justice Is Elusive*, WASH. POST (Sept. 28, 2022), <https://www.washingtonpost.com/politics/2022/09/28/un-camp-south-sudan-abuse/> [https://perma.cc/4RXQ-5R5E] (citing *Conduct in U.N. Field Missions, Sexual Exploitation and Abuse*, UNITED NATIONS, <https://conduct.unmissions.org/sea-data-introduction> [https://perma.cc/S92F-DCN6]).

106. Sam Mednick & Joshua Craze, *Sex Abuse Allegations against Aid Workers in South Sudan UN Camp*, AL JAZEERA (Sept. 22, 2022), <https://www.aljazeera.com/features/longform/2022/9/22/sex-abuse-allegations-against-aid-workers-in-south-sudan-un-camp> [https://perma.cc/9ZLS-SQ85].

107. *Id.*

Systematic and widespread allegations of sexual abuse have not been limited to U.N. peacekeeping work. For instance, an independent panel commissioned by the WHO reported on eighty-four alleged incidents of sexual exploitation and abuse linked to its response to the 2018 Ebola outbreak in the Democratic Republic of the Congo, including allegations against at least twenty-one employees, ranging from drivers to senior doctors and epidemiologists, with victims and survivors as young as thirteen years old.¹⁰⁸ These allegations also implicated the staff of the International Organization for Migration and U.N. Children's Fund.¹⁰⁹

C. *Social, Cultural, and Economic Rights*

The UDHR provides that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services,” the right to work, the right to freely participate in cultural life, and other social, economic, and cultural rights.¹¹⁰ Their precise parameters have been expanded upon by the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and its Committee, as well as a series of General Assembly and Human Rights Council resolutions.

Throughout the U.N.'s history, numerous local communities have alleged serious violations of core social and economic rights. Past allegations of U.N. responsibility for widespread violations of the right to an adequate standard of living include the allegedly punitive suspension of food distribution in Kenyan refugee camps run by the U.N. High Commissioner for Refugees (“UNHCR”) in the 1990s.¹¹¹

More recently, the U.N. was responsible for the 2010 cholera outbreak in Haiti, which led to thousands of deaths.¹¹² Despite a years-long dispute as to the origin of the outbreak, scientific experts have documented that the outbreak is attributable to the U.N. and its poorly constructed sanitation and waste management system.¹¹³ Within days of the arrival of Nepalese peacekeepers to the U.N. Stabilization Mission (“MINUSTAH”) in Mirebalais,

108. Emma Farge & Hereward Holland, *WHO employees took part in Congo sex abuse during Ebola crisis, report says*, REUTERS (Sept. 29, 2021), <https://www.reuters.com/world/africa/who-heartbroken-by-congo-sex-abuse-probe-findings-2021-09-28/>.

109. WHO, IOM and UNICEF *Promise Investigation of Sexual Abuse Allegations against Workers in DR Congo*, U.N. NEWS (Sept. 29, 2020), <https://news.un.org/en/story/2020/09/1074232> [<https://perma.cc/98R3-39TJ>].

110. UDHR, *supra* note 33, Arts. 23, 25, 27.

111. VERDIRAME, *supra* note 25, at 28–29.

112. Somini Sengupta, *U.N. Apologizes for Role in Haiti's 2010 Cholera Outbreak*, N.Y. TIMES (Dec. 1, 2016), <https://www.nytimes.com/2016/12/01/world/americas/united-nations-apology-haiti-cholera.html> [<https://perma.cc/3PDB-BEPZ>].

113. Philip Alston (Special Rapporteur on Extreme Poverty and Human Rights), *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, at 6–8, ¶ 18 U.N. Doc. A/71/367 (Aug. 26, 2016) (citing a report of the Office of Internal Oversight Services Internal Audit Division, which “found that the regulatory framework for effective waste management in MINUSTAH continued to be unsatisfactory, a rating that signified that ‘critical and/or pervasive important deficiencies’ existed”).

Haiti in October 2010, neighboring villagers drew water from a stream that had been infected by camp waste disposed there by a sanitation company under contract to the mission.¹¹⁴ Cholera had never been present in the entire country of Haiti until the U.N. peacekeepers arrived.¹¹⁵ The cholera outbreak caused nearly 10,000 deaths and sickened 820,000, and despite the country being declared cholera-free in February 2022, a new outbreak was reported in late September 2022.¹¹⁶ The U.N.'s role in the cholera outbreak not only involves blatant human rights violations, but also led to private tort claims for personal injury, illness, and death.¹¹⁷ According to U.N. audits, the U.N. continues to implement the same sanitation practices across many of their peacekeeping activities, thus posing an ongoing risk to the communities in which they operate.¹¹⁸ For instance, in August 2019, much like in Haiti, untreated wastewater from the U.N. peacekeeping mission in South Sudan contaminated the surrounding environment.¹¹⁹

The Haiti cholera outbreak is far from the first sanitation and contamination abuses stemming from U.N. activities. Following the Kosovo War in 1999, more than six hundred Roma, Ashkali, and Egyptian internally displaced persons were kept in camps constructed upon a toxic wasteland next to a large smelter and mining complex, which caused lead poisoning and posed a serious threat to public health, particularly for children and pregnant women.¹²⁰ This mass lead poisoning affected more than one hundred thousand people and was at the time considered by the World Health Organization to be “the worst environmental disaster for children in the whole of Europe.”¹²¹

Other U.N. and non-U.N. IO departments, offices, funds, and programs—particularly those entities with on-the-ground presence and programming—have received allegations of widespread and systematic rights violations. For instance, as thousands of migrants were pushed back from Croatia, Slovenia, and neighboring countries, the International Organization for Migration set up

114. *Id.* ¶ 14.

115. Sengupta, *supra* note 112.

116. See generally Daniel H. F. Rubin et al., Letter to the Editor, *Reemergence of Cholera in Haiti*, 387 *NEW ENG. J. MED.* 2387–89 (2022).

117. Alston, *supra* note 113, at 12.

118. Harv. L. Sch. Hum. Rts. Clinic, *Violations of the Right to Effective Remedy: The UN's Responsibility for Cholera in Haiti*, at 32 (Joint Submission to the U.N. Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence) (Oct. 2022).

119. *Id.*

120. Nathalie Gunasekera, *The United Nations Must Deliver Long Overdue Remedies for the Roma, Ashkali, and Egyptian Victims of Lead Poisoning in Kosovo*, *HARV. HUM. RTS. J. ONLINE* (May 2021), <https://journals.law.harvard.edu/hrj/2021/05/the-united-nations-must-deliver-long-overdue-remedies-for-the-roma-ashkali-and-egyptian-victims-of-lead-poisoning-in-kosovo/> [<https://perma.cc/3BTP-EUH3>]; see also Chinkin, *supra* note 85, at 229 (recognizing the difficult circumstances and exigencies of UNMIK's involvement in Kosovo notwithstanding their failure to find safe and clean alternative sites quickly enough).

121. Nicholas Wood, *Displaced Gypsies at Risk from Lead in Kosovo Camps*, *N.Y. TIMES* (Feb. 5, 2006), <https://www.nytimes.com/2006/02/05/world/europe/displaced-gypsies-at-risk-from-lead-in-kosovo-camps.html> [<https://perma.cc/K98Y-ULX8>].

several migrant camps and shelters in which migrants alleged systematic violations of their rights to adequate water, sanitation, and medical treatment.¹²²

International financial institutions like the World Bank, the International Monetary Fund, and their regional counterparts have also allegedly contributed to human rights violations.¹²³ According to one study by the International Consortium of Investigative Journalists, at least 3.4 million people, especially indigenous peoples, have been displaced by projects funded by the World Bank, including as a direct result of the World Bank's waiver of its internal safeguard policy on indigenous rights.¹²⁴ For instance, in *Zhan v. World Bank*, a claimant on behalf of 252 villagers at Xiadun Village in China alleged that the World Bank helped the Chinese Government forcibly resettle villagers without compensation as part of a hydroelectric power project.¹²⁵ In recent years, Human Rights Watch has also documented systematic labor violations in World Bank-funded projects, including alleged child labor and lead poisoning in gold mining projects in Tanzania¹²⁶ and forced labor in cotton and other agricultural projects in Uzbekistan.¹²⁷

In the U.S. Supreme Court case *Jam v. International Finance Corporation*, local farmers and fishermen sued the IFC in 2015 for negligence, breach of contract, and several other causes of action stemming from their financing of a coal-fire power plant in Gujarat, India, which contaminated much of the surrounding air, land, and water. An internal audit determined that pollution from the plant stemmed from a failure of the loanee Coastal Gujarat to comply with the environmental and social action plan for constructing and operating the plant.¹²⁸ The IFC has also been accused of complicity in forced labor and

122. See, e.g., Amnesty Int'l, *Pushed to the Edge: Violence and Abuse against Refugees and Migrants along the Balkans Route*, at 28–30, EUR 05/9964/2019 (Mar. 13, 2019).

123. See, e.g., Juan Pablo Bohoslavsky (Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights), *Report on financial complicity: lending to States engaged in gross human rights violations*, ¶ 37, U.N. Doc. A/HRC/28/59 (Dec. 22, 2014); but see Francois Gianviti (General Counsel of the International Monetary Fund), *Economic, Social and Cultural Rights and the International Monetary Fund*, in CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW, Vol. 3, at 3, 8 (IMF ed., 2005) (denying the applicability of economic, social and cultural human rights pursuant to the ICESCR to the IMF).

124. Alfred de Zayas (Independent Expert on the Promotion of a Democratic and Equitable International Order), *Report of the Independent Expert on the Promotion of a Democratic and Equitable International Order*, ¶¶ 23–31, U.N. Doc. A/HRC/36/40 (July 20, 2017).

125. Renjie Zhan v. World Bank, No. 19-CV-1973 (DLF), 2019 WL 6173529 (D.D.C. Nov. 20, 2019), *aff'd sub nom.* Zhan v. World Bank, 828 F. App'x 723 (D.C. Cir. 2020) (dismissed for lack of subject-matter jurisdiction).

126. de Zayas, *supra* note 124, ¶ 32.

127. Hum. Rts. Watch & Uzbek-German Forum for Hum. Rts., 'We Can't Refuse to Pick Cotton': *Forced and Child Labor Linked to World Bank Group Investments in Uzbekistan* (Jun. 27, 2017), <https://www.hrw.org/report/2017/06/27/we-cant-refuse-pick-cotton/forced-and-child-labor-linked-world-bank-group> [<https://perma.cc/84SU-RTE8>].

128. *Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759, 767 (2019); see also Michelle Harrison, *Communities Harmed by IFC-Financed Tata Mundra Project Still Awaiting Remedy*, EARTH RTS. INT'L (Mar. 30, 2023), <https://earthrights.org/communities-harmed-by-ifc-financed-tata-mundra-project-still-awaiting-remedy/> [<https://perma.cc/K5CF-F2DP>] (finding that the IFC financed the project despite knowing it was "high risk" as an environmental and social matter).

displacement, as well as cultural erasure, of Uyghur and other ethnic and religious minorities in the Xinjiang Uyghur Autonomous Region of the People's Republic of China.¹²⁹ This complicity implicates the *jus cogens* prohibition of genocide, broader cultural and minority rights entrenched under international human rights law, and the rights to freedom from arbitrary detention, freedom of movement, and work.¹³⁰

In another ongoing U.S. lawsuit, a group of Cuban physicians residing in Florida filed a class-action lawsuit alleging that the Pan American Health Organization—a Regional Office for the Americas of the World Health Organization, as well as a specialized health agency in the Inter-American System—perpetrated forced labor and human trafficking violations by forcibly recruiting and coercing plaintiffs and other doctors to work in a Brazilian medical mission called “*Mais Medicos*” and by acting as a financial intermediary between Brazil and Cuba.¹³¹

D. Civil and Political Rights

International law has long protected fundamental fair trial rights and minimum procedural guarantees, both as general principles of procedural law¹³² and customary international law pursuant to the UDHR and other relevant norms, including those developed under the International Covenant on Civil and Political Rights (“ICCPR”). The UDHR and ICCPR provide for “full equality to a fair and public hearing by an independent and impartial tribunal” in criminal proceedings, the presumption of innocence until proven guilty, and freedom of movement.¹³³

Perhaps among the U.N. functions that most squarely affect these rights are the U.N. sanctions regimes stemming from Security Council resolutions, currently comprising fifteen active regimes focused on conflict settlement, nuclear non-proliferation, and counter-terrorism.¹³⁴ These regimes entail individual designations and administer travel bans, asset freezes, and arms embargos, which to varying degrees apply to terrorist groups such as ISIL (“Da’esh”), Al-Qaida, and the Taliban, as well as states such as the Central African Republic, the Democratic People’s Republic of Korea, Democratic Republic of the Congo, Guinea Bissau, Iraq, Lebanon, Libya, Mali, Somalia, South Sudan,

129. See generally Laura T. Murphy, Kendyl Salcito & Nyrola Elima, *Financing & Genocide: Development Finance and the Crisis in the Uyghur Region*, ATLANTIC COUNCIL (Feb. 2022).

130. See Michael R. Pompeo (U.S. Secretary of State), Dep’t of State, *Determination of the Secretary of State on Atrocities in Xinjiang*, Press Statement (Jan. 19, 2021), <https://2017-2021.state.gov/determination-of-the-secretary-of-state-on-atrocities-in-xinjiang/> [<https://perma.cc/6DTA-XBFT>]; see also ICCPR, *supra* note 34, Arts. 12, 27; ICESCR, *supra* note 34, Arts. 6, 15.

131. See generally Matos Rodriguez v. Pan Am. Health Org., 29 F.4th 706 (D.C. Cir. 2022).

132. See text accompanying *supra* note 41.

133. UDHR, *supra* note 33, Arts. 10, 11, 13; see also ICCPR, *supra* note 34, Arts. 13–14; Hum. Rts. Comm. [hereinafter HRC], *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007).

134. *Sanctions*, U.N. SEC. COUNCIL, <https://www.un.org/securitycouncil/sanctions/information> [<https://perma.cc/2R9Z-UYLZ>].

Sudan, and Yemen.¹³⁵ Notwithstanding the important objectives of these regimes, in practice individuals and entities designated for U.N. sanctions have frequently been denied minimum procedural guarantees including the right to due process. Indeed, national, regional, and international judicial bodies have repeatedly found violations of the requisite due process and fair trial rights in the implementation of U.N. sanctions regimes.¹³⁶ Moreover, in 2005, several member states formed the Like-Minded Group on U.N. Targeted Sanctions to enhance due process in the U.N. sanctions regimes.¹³⁷

The challenge of ensuring U.N. compliance with civil and political rights is also pertinent in the context of U.N. transitional authorities and missions. For instance, the U.N. Transitional Authority in Cambodia allegedly held its very first prisoners without habeas corpus and without trial.¹³⁸ In Kosovo, the U.N. mission was widely criticized for the deteriorating human rights situation under its stewardship, including for the failure to adequately investigate enforced disappearances and alleged extrajudicial killings.¹³⁹ Generally, situations where the U.N. deploys rotating police and law enforcement personnel from different jurisdictional backgrounds are particularly vulnerable to widespread deficiencies in prosecutorial oversight and judicial review.¹⁴⁰

Also vulnerable to civil and political rights abuses are the activities of other IOs, particularly those with quasi-judicial, legislative, and law enforcement powers. For instance, the International Criminal Police Organization (“INTERPOL”) is an IO mandated to facilitate international police cooperation.¹⁴¹ A core component of INTERPOL’s work is issuing red notices, which request law enforcement to provisionally arrest persons pending extradition, surrender, or other legal action.¹⁴² According to INTERPOL’s 2021 annual report, 1,270 notices were either rejected before being published or, perhaps

135. See Thomas Biersteker, Larissa van den Herik & Rebecca Brubaker, *Enhancing Due Process in UN Security Council Targeted Sanctions Regimes*, at 26, Table 1, SWISS CONFED. & GRAD. INST. GENEVA (Mar. 2021) (enumerating the type and number of U.N. sanctions designations).

136. See VERDIRAME, *supra* note 25, 306–19 (summarizing the vast human rights consequences of sanctions and related jurisprudence); see also Devika Hovell, *Due Process in the United Nations*, 110 AM. J. INT’L L. 1, 1 (2016) (“In the targeted-sanctions context, litigation in over thirty national and regional courts over due process deficiencies has had a ‘significant impact on the regime,’ placing it ‘at a legal crossroads.’”); Biersteker, *supra* note 135, at 3 (recognizing the Office of the Ombudsperson for the ISIL (Da’esh) and Al-Qida Sanctions Committee, discussed further in Part III, but finding that the “rights to due process continue to be denied for those designated under the remaining UN sanctions regimes”).

137. Switzerland Fed. Dep’t Foreign Aff., *Due Process and Respect for Human Rights in UN Counter-Terrorism Sanctions* (last visited Apr. 2, 2024), <https://www.eda.admin.ch/eda/en/dfa/foreign-policy/security-policy/new-challenges/countering-terrorism/protecting-human-rights.html>. [<https://perma.cc/MSR5-HDF3>].

138. VERDIRAME, *supra* note 25, at 144 (citing M.W. DOYLE, UN PEACE-KEEPING IN CAMBODIA: UNTAC’S CIVIL MANDATE 47 (1995)).

139. Amnesty Int’l, *Kosovo’s UNMIK Legacy: The Failure to Deliver Justice and Reparations to the Relatives of the Abducted*, at 5, EUR 70/009/2013 (2013); see also SCHMITT, *supra* note 1, at 209.

140. Chinkin, *supra* note 85, at 231.

141. *Legal Framework*, INTERPOL <https://www.interpol.int/en/Who-we-are/Legal-framework>. [<https://perma.cc/8JTQ-ND6A>].

142. *View Red Notices*, INTERPOL, <https://www.interpol.int/en/How-we-work/Notices/Red-Notices/View-Red-Notices> [<https://perma.cc/BV68-Y28C>].

more significantly, cancelled following their publication the prior year, including for non-compliance with the UDHR.¹⁴³ The notices published in 2020 and subsequently cancelled thereafter are significant in the area of IO responsibility as they implicate restrictions on freedom of movement and data privacy rights.¹⁴⁴ Although not technically a part of the U.N. system, INTERPOL often collaborates with the U.N., including through formal agreement, which may render the U.N. co-responsible for underlying rights violations.¹⁴⁵

E. *Refugee and Migrant Rights*

As mentioned in Part I, several protections of refugees and asylum seekers exist under customary international law. These include the “non-refoulement” principle, which guarantees that no one—regardless of migration status—will be returned to a country where there are substantial risks of irreparable harm, including persecution, torture, and cruel, inhuman or degrading treatment or punishment.¹⁴⁶ Other fundamental refugee rights protections under international law include, as stipulated in the UDHR, the right to seek and enjoy asylum from persecution and the right to nationality.¹⁴⁷

Recent allegations of U.N. activities impinging on these fundamental rights implicate the U.N.’s functions in making refugee status determinations, administering repatriation or resettlement, and administering refugee camps. For instance, the UNHCR in Pakistan was accused of complicity in the mass refoulement of Afghani refugees, including reportedly without their informed consent.¹⁴⁸ Along similar lines, the International Organization for Migration has been criticized for its purportedly “voluntary returns” of migrants—in what some commentators have described as “disguised deportations” or

143. Edward Grange, *Interpol Takes Baby Steps toward Transparency*, POLITICO (FEB. 1, 2023), <https://www.politico.eu/article/interpol-baby-steps-transparency-data-red-notice-wanted/> [https://perma.cc/WQ4M-6MUS]; Constitution of the International Criminal Police Organization-INTERPOL Art. 2, June 13, 1956 I/CONS/GA/1956.

144. See Ted R. Bromund & Jonathan Reich, *Abuse of Interpol for Transnational Repression: Assessing the FY22 NDAA’s Provisions for Prevention*, JUST SECURITY (Nov. 10, 2021), <https://www.justsecurity.org/79161/abuse-of-interpol-for-transnational-repression-assessing-the-fy22-ndaas-provisions-for-prevention/> [https://perma.cc/S6QW-62EY]; Ben Keith, *Interpol, Freedom of Movement and EU Data Protection Laws – Policing the World’s Police*, EURO NEWS (Aug. 28, 2019), <https://www.euronews.com/2019/08/28/interpol-freedom-of-movement-and-eu-data-protection-laws-policing-the-world-s-police-view> [https://perma.cc/YFJ9-GCYG].

145. *INTERPOL and the United Nations*, INTERPOL, <https://www.interpol.int/en/Our-partners/International-organization-partners/INTERPOL-and-the-United-Nations> [https://perma.cc/U93Q-UQYJ] (explaining the evolution in collaboration, including through the 1997 Cooperation Agreement and subsequent U.N. General Assembly and Security Council resolutions).

146. U.N. OHCHR, *The Principle of Non-Refoulement under International Human Rights Law*, at 1 (July 5, 2018) (explaining the basis of the principle under international human rights law, including as stipulated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance; see also *supra* Section I.B).

147. UDHR, *supra* note 33, Arts. 14–15.

148. *Pakistan Coercion, UN Complicity: The Mass Forced Return of Afghan Refugees*, HUM. RTS. WATCH (Feb. 13, 2017), <https://www.hrw.org/report/2017/02/13/pakistan-coercion-un-complicity/mass-forced-return-afghan-refugees> [https://perma.cc/7MKH-SH5K].

“coercive circumstances”—including from Libya and Australia to places with well-substantiated risks of ill treatment.¹⁴⁹ As mentioned above, the UNHCR has also been accused of violating the right to an adequate standard of living in the administration of refugee camps, and of systematic procedural deficiencies vis-à-vis refugee status determinations, including by failing to justify rejections, withholding evidence, and refusing independent review and appeals processes.¹⁵⁰ Such mistakes and failures can cost refugees and asylum-seekers their lives.

III. THE IO ACCOUNTABILITY GAP

The breadth of IO functions and activities, and corresponding documentations of human rights abuse and vulnerabilities, necessitate a robust accountability regime. Yet a drastic accountability gap continues to plague the IO regulatory space due to a combination of organizational immunities and insufficient internal accountability and reparative measures. This Part proceeds in two Sections. First, using the U.S. context as an example, it sets out the significant limitations of bringing IOs before national courts due to the expansive immunities under their constituent documents and further treaty and statutory protections. Second, it considers the range of internal oversight mechanisms that already exist within the U.N. system. Despite certain strides in strengthening these self-regulatory mechanisms—at least in discrete thematic or geographic-specific contexts—significant structural shortcomings remain.

A. Jurisdictional Immunities

In most jurisdictions where IOs operate, at least two sources of organizational immunity apply: (i) domestic statutes providing for IO immunity and (ii) the specific IO's constituent instruments as incorporated under domestic law. This Section sets out as an illustrative example the expansive nature of IO immunities recognized in the United States. This remains the case notwithstanding the so-called “flood” of lawsuits that some anticipated after the U.S. Supreme Court's newly restrictive approach to IO immunity in *Jam v. International Finance Corporation*.¹⁵¹

First, IOs may enjoy immunity under domestic immunity statutes. In the United States, the International Organizations Immunities Act (“IOIA”) provides for statutory immunity, at least for those IOs designated by executive

149. Aust & Riemer, *supra* note 71, at 144, 144 n.33 (internal citations omitted); *No Escape from Hell: EU Policies Contribute to Abuse of Migrants in Libya*, HUM. RTS. WATCH (Jan. 21, 2019), <https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya> [https://perma.cc/CZ37-KFWT].

150. Mark Pallis, *The Operation of UNHCR's Accountability Mechanisms*, 37 N.Y.U. J. INT'L L. POL. 869, 878 (2005).

151. *Jam*, 139 S. Ct. at 771–72.

order as a “public international organization.”¹⁵² In its landmark 2019 *Jam v. International Finance Corporation* decision, the Supreme Court found that IO immunity under the IOIA is coextensive with the immunities afforded to states under the Foreign Sovereign Immunities Act (“FSIA”), such that the International Finance Corporation enjoys only restrictive immunity, rather than absolute immunity as previously held.¹⁵³ The stipulated exceptions to IO statutory immunity therefore apply: pursuant to the IOIA, express waiver¹⁵⁴ and, pursuant to the FSIA, where the action is based on certain commercial activities, non-commercial torts, or expropriation with the requisite connections to the United States.¹⁵⁵ Although debate continues surrounding a *jus cogens* exemption to IO immunity, or whether *jus cogens* violations may constitute implied waiver, U.S. and ICJ jurisprudence to date indicates dismissal of this argument for the time being.¹⁵⁶

Despite widespread concerns that *Jam* would expose IOs to newfound liability—potentially taking up valuable resources and hampering their ability to exercise their core functions¹⁵⁷—in practice, IO immunity continues to preclude individual claims, including for alleged human rights violations.¹⁵⁸ Indeed, in *Jam*, the U.S. district court ruled, and appellate court affirmed, that they lacked subject-matter jurisdiction, finding that the claims were not “based upon” conduct performed in the United States and that the IFC had not waived its immunity to the lawsuit.¹⁵⁹

Second, IOs enjoy immunity concurrent with and separate from statutory immunity through their constituent instruments to the extent that such instruments have been incorporated under domestic law. Most relevant is the General Convention on Privileges and Immunities of the United Nations (“General Convention”), which stipulates that the U.N. enjoys “immunity

152. International Organizations Immunities Act § 1, 22 U.S.C. § 288.

153. *Jam*, 139 S. Ct. at 772.

154. International Organizations Immunities Act § 2(b), 22 U.S.C. § 288a(b).

155. Foreign Sovereign Immunities Act of 1976 § 4, 28 U.S.C. § 1605; *see also* National Defense Authorization Act for Fiscal Year 2008 § 1083, 28 U.S.C. § 1605A (setting out the terrorism exception, which only applies to U.S.-designated state sponsors of terrorism and therefore would not apply to the U.N. or other IOs directly).

156. *See, e.g.*, *Kling v. World Health Organization*, 432 F. Supp. 3d 141, 152–53 (S.D.N.Y. 2021) (recounting the Second Circuit’s rejection of the argument that *jus cogens* violations constituted implied waiver under the Foreign Sovereign Immunities Act) (citing *Smith v. Socialist People’s Libyan Arab Jamahiriya*, 101 F.3d 239, 245 (2d Cir. 1996)); *see also* *Jurisdictional Immunities of the State (Ger. v. Ita.)*, Judgment, 2012 I.C.J. Rep. 99, ¶ 93 (Feb. 3) (finding in the state immunity context that jurisdictional immunities “do not bear upon the question whether or not the conduct in respect of which the proceedings are brought was lawful or unlawful”); *but see* SCHMITT, *supra* note 1, at 239–42 (concluding that the existing international and regional jurisprudence does not preclude finding a *jus cogens* exception).

157. *See, e.g.*, *Jam*, 139 S. Ct. at 771 (summarizing the IFC’s concerns that the removal of absolute IO immunity “would bring a flood of foreign-plaintiff litigation into U.S. courts”); *id.* (Breyer, J., dissenting) at 779 (expressing concern that the majority’s interpretation would create broad exposure to liability, thus contravening the statutory objective of “weeding out lawsuits that are likely bar or harmful—those likely to produce rules of law that interfere with an international organization’s public interest tasks”).

158. *But see* *Wouters et al.*, *supra* note 17, at 11 (describing a recent evolution in jurisprudence in other countries “grounded on the human rights principle of access to courts to waive immunity and offer individuals a mechanism to challenge acts of international organisations”).

159. *Jam v. Int’l Fin. Corp.*, 3 F.4th 405, 411 (D.C. Cir. 2021).

from every form of legal process except insofar as in any particular case it has expressly waived its immunity.”¹⁶⁰ In other words, the U.N. enjoys absolute immunity absent express waiver. The applicability of the General Convention in national jurisdictions—and thus the applicability of jurisdictional immunity thereof—depends on whether the state is party to the treaty and has incorporated it under domestic law. The United States acceded to the treaty in April 1970 and, under U.S. law, the General Convention is a “self-executing treaty,” i.e., U.S. courts “must recognize the immunity it adopts in domestic litigation.”¹⁶¹ On this basis, the U.N. has prevailed in multiple suits in U.S. courts, including in claims alleging organizational wrongdoing, such as the U.N.’s responsibility for the cholera outbreak in Haiti.¹⁶²

As for the U.N.’s specialized agencies, the counterpart of the General Convention is the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations (“Special Convention”), which similarly stipulates absolute immunity absent express waiver.¹⁶³ Again, the applicability of such immunity under national jurisdictions will depend on whether the state is a party to the treaty (the United States is not) and has incorporated either the treaty or the constituent documents of the specialized agency under domestic law.¹⁶⁴ For instance, in *Sacks v. International Monetary Fund*, the D.C. Circuit Court recognized the IMF’s immunity pursuant to its Articles of Agreement—as incorporated under U.S. law through the Bretton Woods Agreements Act—which stipulates “immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.”¹⁶⁵

Interestingly, where both the IOIA and the constituent documents apply under domestic law, the immunities apply concurrently. In the United States, this means that absolute immunity stemming from IO constituent documents as incorporated under domestic law would trump the more restrictive functional immunity under the IOIA. Indeed, the Supreme Court in *Jam* recognized that the IOIA provides only “default rules” such that an IO’s “charter

160. Convention on the Privileges and Immunities of the United Nations Art. II, § 2, Feb. 13, 1946, 1 U.N.T.S. 15 (entered into force with respect to the United States, Apr. 29, 1970, 21 U.S.T. 1418).

161. *Brzak v. United Nations*, 597 F.3d 107, 111–13 (2d Cir. 2010).

162. *See, e.g.*, *Georges v. United Nations*, 834 F.3d 88, 98 (2d Cir. 2016) (affirming dismissal of claims against the U.N. and one of its arms due to immunity); *Hamdan v. United Nations Headquarters*, No. 1:22-CV-8746 (LTS), 2022 WL 17822579 at *3 (S.D.N.Y. Dec. 19, 2022) (affirming dismissal of claims against the United Nations Independent International Investigations Commission and its members); *Brzak*, 597 F.3d at 112 (holding that the General Convention “unequivocally grants the United Nations absolute immunity without exception”); *Van Aggelen v. United Nations*, 311 F. App’x 407, 409 (2d Cir. 2009) (“The United Nations enjoys absolute immunity” under the U.N. Charter, the General Convention, and the IOIA.).

163. Convention on the Privileges and Immunities of the Specialized Agencies Art. III, § 4, Nov. 21, 1947, 33 U.N.T.S. 261.

164. *See id.* Art. I, § 1(ii) (defining “specialized agencies” as those expressly listed, and any agency in relationship with the U.N. in accordance with Articles 57 and 63 of the U.N. Charter).

165. *Leonard A. Sacks & Assocs., P.C. v. Int’l Monetary Fund*, 26 F.4th 470, 474 (D.C. Cir. 2022) (citing Articles of Agreement of the International Monetary Fund Art. IX, § 3, Dec. 27, 1945, 2 U.N.T.S. 39) (emphasis added).

can always specify a different level of immunity.¹⁶⁶ Accordingly, the D.C. Circuit Court further clarified in *Sacks* that the IMF's absolute immunity pursuant to its Articles of Agreement is "more protective than the immunity afforded international organizations under the International Organizations Immunities Act."¹⁶⁷

The General Convention and Special Convention only stipulate *express* waiver as an exception to absolute immunity.¹⁶⁸ Unsurprisingly, IOs are reluctant to waive organizational immunity, particularly in the context of human rights violations.¹⁶⁹ Further, U.S. courts have narrowly interpreted these waiver provisions. For instance, they have interpreted the World Bank's waiver provision in its Articles of Agreement as waiving only immunity from suits by debtors, creditors, and bondholders.¹⁷⁰ The resulting shield of immunity raises serious challenges for human rights victims seeking remedy and reparation.¹⁷¹

Lastly, although some foreign jurisdictions, particularly in Europe, have elected not to recognize IO jurisdictional immunity in some instances,¹⁷² those cases have primarily involved internal employment disputes rather than disputes with external stakeholders and affected communities, as is the focus of this Article. For instance, the Belgian Court of Cassation rejected jurisdictional immunity claims in three cases involving employment disputes against the African, Caribbean and Pacific Group of States Secretariat, the Western European Union, and the African Development Bank, respectively, due to deficiencies of internal appeals mechanisms in contravention of the fair trial

166. *Jam*, 139 S. Ct. at 771.

167. *Sacks*, 26 F.4th at 474; *see also* *Nouinou v. Guterres*, No. 20-CV-8682 (LLS), 2020 WL 6275021 at *3 (S.D.N.Y. Oct. 23, 2020) (recognizing IOIA immunity "in addition" to absolute immunity pursuant to the General Convention).

168. *See, e.g.*, 22 U.S.C. § 288a(b) (providing for IO immunity "as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract"); General Convention, *supra* note 160, Art. II, § 2 ("The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity."); Special Convention, *supra* note 163, Art. III § 4 ("The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity.").

169. SCHMITT, *supra* note 1, at 246.

170. *Mendaro v. World Bank*, 717 F.2d 610, 615 (D.C. Cir. 1983); *see also, e.g.*, *Rosenkrantz v. Inter-American Development Bank*, 35 F.4th 854, 867 (D.C. Cir. 2022) (granting the IO's motion to dismiss including because the waiver exception did not apply vis-à-vis its Charter); *Omari v. Int'l Crim. Police Org. - Interpol*, No. 19CV1457 (SJ) (PK), 2021 WL 1924183, at *7 (E.D.N.Y. May 13, 2021) (rejecting the argument that an arbitration clause in the headquarters agreement constituted either an explicit or implicit immunity waiver), *aff'd sub nom.*, *El Omari v. Int'l Crim. Police Org.*, 35 F.4th 83 (2d Cir. 2022); *Sacks*, 26 F.4th at 475–76 (declining to infer the requisite waiver from a provision identifying the substantive law for arbitrators to apply in arbitral disputes where the stipulation expressly preserved immunity).

171. *See* Kristen E. Boon, *The United Nations as Good Samaritan: Immunity and Responsibility*, 16 *CHI. J. INT'L L.* 341, 364 (2016) (invoking absolute immunity against human rights violations as undermining the principle that victims have a right to a remedy where an organization has caused them harm through its negligence).

172. *See* Wouters et al., *supra* note 17, at 11 (describing a recent evolution in jurisprudence in other countries "grounded on the human rights principle of access to courts to waive immunity and offer individuals a mechanism to challenge acts of international organisations").

and access to justice rights under the European Convention on Human Rights (“ECHR”).¹⁷³ However, the European Court of Human Rights thereafter clarified that the ECHR’s fair trial rights cannot form a basis for denying U.N. jurisdictional immunity—at least as to the acts and omissions of the U.N. Security Council. In *Stichting Mothers of Srebrenica v. The Netherlands*, the relatives of victims of the Srebrenica massacre argued that the U.N.’s immunity should be overridden both due to their right to fair trial under the ECHR and the *jus cogens* prohibition of genocide. The European Court reasoned that extending domestic jurisdiction would risk interference with the effective fulfillment of the U.N.’s operations in the field.¹⁷⁴ The Canadian Supreme Court has similarly concluded that even without adequate alternative dispute resolution mechanisms, “it is the nature of an immunity to shield certain matters from the jurisdiction of the host State’s courts.”¹⁷⁵ Indeed, although domestic courts have started to pierce IO immunity in employment disputes and other discrete instances, these cases will likely come against a strong resistance from proponents who wish to protect the U.N. and other IOs from foreign interference.

B. Internal Accountability Mechanisms

Among the U.N. and its specialized agencies, several mechanisms aim to address external complaints of misconduct and ensure internal accountability. These range from the U.N.-wide Office of Internal Oversight Services (“OIOS”) to discrete efforts like the ombudspersons for peace operations, internal administration, and counter-terrorism sanctions.¹⁷⁶ This Section describes some of these existing accountability mechanisms, as well as their structural shortcomings—including due to inadequate independence, impartiality, and enforcement. These make it exceedingly difficult for victims and survivors to hold IOs accountable even for serious violations of international law and human rights. This Section does not address external dispute settlement mechanisms, such as the Permanent Court of Arbitration, International Tribunal for the Law of the Sea, and the World Trade Organization’s dispute settlement system, which could potentially be used to bring human rights complaints, but have not yet been tested in practice.¹⁷⁷

173. Edward Chukwueke Okeke, *The Tension between the Jurisdictional Immunity of International Organizations and the Right of Access to Court*, in *THE ROLE OF INTERNATIONAL ADMINISTRATIVE LAW AT INTERNATIONAL ORGANIZATIONS* 25, 35–37 (Peter Quayle ed., 2021) (internal citations omitted).

174. *Stichting Mothers of Srebrenica v. The Netherlands*, App. No. 65542/12, ¶ 154 (June 11, 2013), <https://hudoc.echr.coe.int/eng?i=001-122255> (internal citations omitted).

175. *Amaratunga v. Northwest Atlantic Fisheries Organization*, [2013] 3 S.C.R. 866, ¶ 63 (Can.) (cited in Okeke, *supra* note 173, at 40).

176. This Article does not address the U.N. Dispute Tribunal and other U.N. mechanisms that are limited to receiving complaints regarding internal affairs, such as employment claims by U.N. personnel.

177. See SCHMITT, *supra* note 1, at 137–38 (explaining that as a member of UNCLOS and the World Trade Organization, the European Union could theoretically be subject to their dispute settlement bodies); *id.* 147–50 (arguing that there is no reason for excluding human rights from the scope of the applicable law, even if arbitral cases to date have not dealt with it).

Most relevant among internal accountability mechanisms in the U.N. system is the OIOS, established in 1994 and tasked with internal audit, inspection, evaluation, and investigation,¹⁷⁸ in order to “deliver objective oversight results” that contribute to the vision of a “strong and accountable United Nations, fortified by world-class internal oversight.”¹⁷⁹ The OIOS has a confidential reporting mechanism where individuals—including those outside the U.N.—can report allegations of misconduct, including regarding waste, sexual abuse and exploitation, and fraud. The OIOS Investigations Division then determines whether to pursue these allegations.¹⁸⁰

Although a commendable starting point for internal accountability, the OIOS is marred by serious structural shortcomings that preclude a fulsome, victim- and survivor-centered approach to reparation. The OIOS lacks a mandate to mediate with affected communities, to recommend or take disciplinary action, or to provide any remedy to aggrieved victims. Rather, its role is limited to “administrative fact-finding,” typically focused on individual or third-party misconduct.¹⁸¹ Although the OIOS may assess systemic issues concurrent with the core investigations, it can only issue a non-binding advisory report.¹⁸² Moreover, there is no formal follow-up process once the OIOS refers a case to another U.N. organization or makes a criminal referral to U.N. member states.¹⁸³

Other mechanisms specific to U.N. entities also exist. For example, the UNHCR instituted the Inspector General’s Office, which like the OIOS has auditing, investigative, inspection, and program evaluation powers. Its purpose is to provide the High Commissioner with independent oversight of the organization’s activities, including by investigating alleged fraud and abuse, “contribut[ing] to the integrity of the organization and its accountability towards people of concern, host communities, donors and other stakeholders.”¹⁸⁴ Positively, the Office’s Investigation Service witnessed a twenty-six percent increase in misconduct complaints in the latest reporting period (June 2022 to June 2023), including related to sexual exploitation and abuse, refugee status determination and resettlement fraud, and financial fraud, some of which

178. See G.A. Res. 48/218 B, Review of the efficiency of the administrative and financial functioning of the United Nations, at 3–4 (Aug. 12, 1994); see Tim Balint, Sarah Schernbeck & Simone Schneider, *Performance Accountability in the UN Secretariat – The Conflictual Way Toward More Flexibility*, 29 PUB. ADMIN. DEV. 352, 356 (2009) (explaining the evolution of its functions, including the delegation of internal monitoring and performance reporting functions, to the U.N. Department of Management in late 2007).

179. *Internal Oversight*, U.N. OFF. INTERNAL OVERSIGHT SERV. [hereinafter U.N. OIOS] (last visited Apr. 2, 2024), <https://oios.un.org/> [https://perma.cc/BUA3-EBB8].

180. *Report Wrongdoing*, U.N. OIOS (last visited Apr. 2, 2024), <https://oios.un.org/report-wrongdoing> [https://perma.cc/5MSS-QNN9]; see also *Investigations*, U.N. OIOS (last visited Apr. 2, 2024) <https://oios.un.org/investigations> [https://perma.cc/H859-9UW8].

181. *Commonly-asked questions on investigations*, U.N. OIOS (last visited Apr. 2, 2024), https://oios.un.org/id-faq#question_investigation_22 [https://perma.cc/4W/DN-PMJT].

182. *Id.*

183. House of Commons, Int’l Dev. Comm., *Sexual Exploitation and Abuse in the Aid Sector, Eighth Report of Session 2017-19*, at 57 (July 23, 2018).

184. *Inspector General’s Office (IGO)*, UNHCR (last visited Apr. 1, 2024), <https://www.unhcr.org/about-unhcr/governance-and-oversight/inspector-generals-office-igo> [https://perma.cc/5W34-VS4Y].

resulted in disciplinary measures against staff members.¹⁸⁵ However, like the OIOS, it is unclear what follow-up and enforcement procedures are in place aside from annual reporting. Additionally, the ability to hold the office rather than individual personnel to account for institutional wrongdoing appears limited. Indeed, with regard to institutional accountability, the feedback and response systems required for all UNHCR operations have reportedly faced significant limitations in practice, with many delayed or not systematically established within affected communities.¹⁸⁶

With regard to peacekeeping operations, the U.N. established the Conduct and Discipline Service under the Administrative Law Division of the Office for Human Resources, responsible for overseeing the handling of allegations of misconduct lodged by individuals, together with the Under-Secretary-General for Management Strategy, Policy and Compliance.¹⁸⁷ The investigations may lead to repatriation of peacekeepers or a ban on the relevant U.N. personnel from future peacekeeping missions. Notably, from 2010 to 2019, the U.N. repatriated all military peacekeeping personnel involved in substantiated allegations of sexual exploitation and abuse.¹⁸⁸ However, its decisions are non-binding and cannot hold the U.N. organizationally responsible.

In some cases, the U.N. Secretary-General has instituted discrete investigations of specific peacekeeping operations. For instance, in November 1998, the General Assembly requested a report on the Srebrenica massacres, including the U.N.'s role therein, which the U.N. Secretary-General issued in November 1999.¹⁸⁹ In December 1999, the U.N. Secretary-General, with the approval of the Security Council, established an Independent Inquiry to investigate the U.N.'s actions and response from October 1993 to July 1994 during the genocide in Rwanda.¹⁹⁰ The resulting apologies are discussed in Part IV.C below. The U.N. also established the Human Rights Advisory Panel to examine alleged human rights violations by the U.N. Interim Administration in Kosovo—"an unprecedented development in the context of United Nations missions."¹⁹¹ Notwithstanding some contributions to human rights jurisprudence,¹⁹² however, the mechanism was criticized for the non-binding character of the recommendations as well as for significant tensions

185. UNHCR, *Report on activities of the Inspector General's Office*, ¶¶ 42, 48, U.N. Doc. A/AC.96/74/8 (July 31, 2023).

186. UNHCR, *UNHCR's Approach to Accountability to Affected People (AAP): Synthesis of Evaluative Evidence*, ¶¶ 7.1, 7.4, U.N. Doc. EVO/2022/14 (Nov. 2022); see also Pallis, *supra* note 150, at 869 (finding that existing accountability mechanisms within the High Commissioner's office "do not render the UNHCR accountable to refugees").

187. *Conduct in U.N. Field Missions, Who Is Involved*, U.N. MISSIONS (last visited Apr. 2, 2024), <https://conduct.unmissions.org/who-is-involved> [<https://perma.cc/J83Q-C7MA>].

188. Comstock, *supra* note 105.

189. U.N. Secretary-General, *supra* note 94.

190. Letter from the Secretary-General to the President of the Security Council, *supra* note 88, at 4; see also U.N. Secretary-General, *supra* note 94, ¶ XI(A) (on the role of the U.N. protection force in Srebrenica).

191. Hum. Rts. Advisory Panel, *Human Rights Advisory Panel History and Legacy: Kosovo, 2007-2016*, ¶ 1 (June 30, 2016).

192. *Id.* ¶ 22.

with the local U.N. mission. More recently, the U.N. Secretary-General commissioned an internal review panel to assess the U.N.'s responsibilities and actions in the civil war in Sri Lanka in 2010, including its civilian protection and humanitarian action responsibilities under international human rights and humanitarian law.¹⁹³ The report unflinchingly depicted the failures of the U.N. Secretariat, agencies, and programs. However, its recommendations were largely ignored.¹⁹⁴

In the context of the cholera outbreak in Haiti, the U.N. Secretary-General similarly instituted an Independent Panel to identify the source of the 2010 outbreak. But the panel's reporting was widely challenged and scrutinized. Initially, its findings appeared intentionally ambiguous and deflective, stating that the outbreak was caused by contamination from human activity—but was “not the fault of, or deliberate action of, a group or individual.”¹⁹⁵ The scientific expert panel opinion waded into the legal question of liability in finding no fault by the United Nations—an approach that unsurprisingly attracted criticism.¹⁹⁶ The report obscured the truth and, as described further in Part IV.C below, gave the U.N. cover for years to deny any responsibility. The panel eventually issued a follow-up statement five years later, clarifying that the preponderance of evidence pointed to the Mirebalais MINUSTAH facility as “the most likely source of introduction of cholera into Haiti.”¹⁹⁷

As for individual private law claims including for monetary compensation, the U.N. Model Status of Forces Agreement notably stipulates a standing claims commission to settle private law disputes involving peacekeeping forces, at least where local courts lack jurisdiction due to U.N. immunities.¹⁹⁸ However, no such commission has been established.¹⁹⁹ For example, the Status of Forces Agreement signed between the U.N. and Haiti specifies that “third-party claims for personal injury, illness, or death arising from or directly attributed to MINUSTAH” that cannot be resolved directly shall be settled by an independent standing claims commission.²⁰⁰ On November 3, 2011, five thousand cholera victims attempted to obtain remedies through the internal claims process. After fifteen months, the U.N. rejected the claims as “not receivable” because it would require reviewing political and policy

193. Sri Lanka Report, *supra* note 61, ¶ 76.

194. *UN Again Admits It Failed on Sri Lanka during the War*, COLOMBO GAZETTE (Sept. 2, 2016), <https://colombogazette.com/2016/09/02/un-again-admits-it-failed-on-sri-lanka-during-the-war/> [https://perma.cc/PMV9-YMTH].

195. Indep. Panel of Experts on the Cholera Outbreak in Haiti, *Final Report of the Independent Panel of Experts on the Cholera Outbreak in Haiti*, at 4 (May 29, 2011), <https://reliefweb.int/report/haiti/final-report-independent-panel-experts-cholera-outbreak-haiti> [https://perma.cc/6XDE-2U7V].

196. Alston, *supra* note 113, ¶ 24.

197. *Id.*

198. U.N. Model Status-of-Forces Agreement for Peace-Keeping Operations Art. 51, U.N. Doc. A/45/594 (Oct. 9, 1990).

199. SCHMITT, *supra* note 1, at 186 (describing instead how such claims have been settled by local claims review boards).

200. See Harv. L. Sch. Hum. Rts. Clinic, *supra* note 118, at 15.

matters.²⁰¹ Third-party private law claims were similarly rejected as non-receivable in other cases involving allegations of organizational wrongdoing, including claims for damages resulting from lead contamination in the Kosovo camps and claims from victims of the Rwanda genocide and Srebrenica massacre.²⁰²

Although no standing claims commission has been established across these many serious allegations, several local claims review boards comprising three or more U.N. staff members have been established, particularly for U.N. peace operations.²⁰³ These mechanisms, however, have been criticized, including for inadequate independence and impartiality by board members, the opaque nature of the process, and the limitations of the mandate which preclude cases beyond straightforward private tort law claims.²⁰⁴ Indeed, it is unclear whether such bodies are equipped to deal with systematic and highly sensitive human rights claims. Moreover, the confidential nature of most private claims, including in the process and outcome,²⁰⁵ precludes the fulsome public acknowledgement and reckoning that many victims and survivors seek.

Discrete oversight and ombudsperson mechanisms with further judicial qualities have also been established in highly specialized circumstances. Perhaps one of the most theoretically promising examples of a U.N. ombudsperson with robust oversight functions, semi-judicial character, and further enforcement functions is the Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee, established by the Security Council in 2009 to assess de-listing requests from individuals and entities on the U.N. ISIL and Al-Qaida sanctions list.²⁰⁶ But in practice, this mandate suffers from fundamental structural deficiencies in terms of independence, due process and rule of law safeguards, and resourcing, including as corroborated by the former mandate-holder himself who resigned for these reasons.²⁰⁷ Moreover, regarding U.N. sanctions outside the ISIL (Da'esh) and Al-Qaida sanctions regime,

201. SCHMITT, *supra* note 1, at 188; Daugirdas, *supra* note 30, at 33; *see also* SCHMITT, *supra* note 1, at 187–89 (explaining how the cholera example constitutes private law torts claims even if they may also be interpreted as human rights violations).

202. Alston, *supra* note 113, at 11–12.

203. SCHMITT, *supra* note 1, at 190 (citing U.N. Secretary General, *Report of the U.N. Secretary-General, Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: financing of the United Nations peacekeeping operations*, ¶¶ 7–11, U.N. Doc. A/51/903, (May 21, 1997)); Report of the U.N. Secretary-General, *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*, ¶ 22, U.N. Doc. A/51/389 (Sept. 20, 1996).

204. SCHMITT, *supra* note 1, at 190–92 (internal citations omitted); *see also* Alston, *supra* note 113, ¶ 30 (recognizing “temporal, financial and other limitations” to the U.N.’s liability to third-party claims in the peacekeeping context).

205. Alston, *supra* note 113, ¶ 32.

206. S.C. Res. 1904 (Dec. 17, 2009).

207. U.N. Special Rapporteur on the promotion and protection of human rights while countering terrorism, *The Impact of Counter-Terrorism Targeted Sanctions on Human Rights*, at 4, 8 (2021), <https://www.ohchr.org/sites/default/files/2021-11/position-paper-unsrct-on-unsct-use-of-ct-targeted-sanctions.pdf> [<https://perma.cc/BE6Y-K6KL>].

it is problematic that a majority of individuals and entities designated by the Security Council lack access to an analogous ombudsman.²⁰⁸

With the exception of these discrete ombudsman mechanisms, the other abovementioned U.N. mechanisms, including the independent inquiries, due diligence policies, and internal review panels generally comport with what the International Law Association has categorized as “first level” accountability limited to monitoring, rather than further reparative accountability.²⁰⁹ Notably, continued calls for a U.N.-wide ombudsperson with further external dimensions—including technical independence from the U.N. and a semi-judicial character—have gone unheeded.²¹⁰

Lastly, several U.N. specialized agencies have set up further internal accountability mechanisms, but these also suffer from structural shortcomings. For instance, the World Bank has an ombudsman: the Inspection Panel for IBRD and IDA operations.²¹¹ The panel reports, however, are not legally binding and cannot by its very mandate address human rights violations per se, but may only consider internal compliance with operational policies and procedures.²¹² In this manner, the Inspection Panel is more focused on supervising the activities of the World Bank than providing remedies to the individuals, affected communities, and other private actors who submit complaints.²¹³ As a result, international civil society actors have questioned the panel’s effectiveness.²¹⁴

The lack of political will creates further obstacles to accountability. As Rekha Oleschak-Pillai explained in the context of the World Bank’s Urban Transport Project in Mumbai, India—which was financed by the IBRD and allegedly resulted in the mass and forcible displacement of around 77,000 people—“although the Bank’s experience with resettlement issues in India is poor, the Bank will not antagonize India, one of its largest borrowers.”²¹⁵

In sum, existing internal accountability mechanisms established by the U.N. and its agencies are inadequate, often due to insufficient independence and enforcement powers. Few mechanisms appear to be victim- and survivor-centered or human rights-based. Internal mechanisms suffer from structural deficits. With near-absolute immunity from litigation before national

208. Biersteker, Herik & Brubaker, *supra* note 135, at 3 (finding that 584 out of 934 individuals and entities lack access).

209. See Boon & Mégret, *supra* note 12, at 6 (“[O]rganizations have typically engaged in what the International Law Association (‘ILA’) has identified as ‘first level’ accountability, including monitoring and procedures, rather than ‘second’ or ‘third’ level work, such as establishing remedies for torts or breaches of international law and human rights.”).

210. *Id.*

211. See generally Int’l Fin. Corp., *IFC/MIGA Independent Accountability Mechanism Policy* (June 28, 2021), <https://www.ifc.org/content/dam/ifc/doc/2023/ifc-miga-independent-accountability-mechanism-cao-policy.pdf> [<https://perma.cc/8FLV-9DEG>] (stipulating a new policy for the International Finance Corporation and Multilateral Investment Guarantee Agency in response to an independent external review).

212. Rekha Oleschak-Pillai, *An Analysis of the World Bank’s Inspection Panel*, in ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS BY INTERNATIONAL ORGANISATIONS 401, 412–17, 428 (Jan Wouters et al. eds., 2010).

213. SCHMITT, *supra* note 1, at 220.

214. Oleschak-Pillai, *supra* note 212, at 412.

215. *Id.* at 401, 425–28.

courts, impunity reigns and opportunities for reparation dwindle. In the long term, innovation and openness to system-wide accountability efforts that are expressly mandated to tackle human rights and other international law violations by IOs are direly needed. Indeed, in the face of ongoing challenges to meaningful accountability for the U.N. and its specialized agencies, some scholars have proposed alternative avenues for fulsome IO accountability to fill the gap, including proposals for an insurance plan or lump-sum compensation mechanism.²¹⁶ However, in the near term, piecemeal and immediately practicable measures are required, including through reparative measures like meaningful IO apologies, as the next Part explains.

IV. APOLOGY AS AN INTEGRAL PART OF IO ACCOUNTABILITY

Although practitioners and scholars often view the apology as a supplementary or “fallback” remedy,²¹⁷ this Part underscores the vital normative role of public apologies in facilitating fulsome accountability. It recognizes that accountability must include both legal and non-legal forms.²¹⁸ Indeed, apologies serve a range of functions, including reconciliation, dispute management, trust rebuilding, normative recognition of applicable rules and obligations, and signaling a commitment to reforms. As evidenced by apologies in the transitional justice context, increasingly from world leaders apologizing on behalf of the state to victims of human rights abuses,²¹⁹ IOs ought not to underestimate the transformative power of the apology.

This Part proceeds in three Sections. First, it sets out the evolution of public apologies in international law, starting with the role of sovereign apologies in intra- and inter-state disputes. As a legal matter, public apologies play a key component in what the U.N. and International Law Commission have stipulated as satisfaction and reparation to victims of atrocity crimes and gross human rights violations.²²⁰ Second, this Part enumerates three key components of a meaningful, effective apology, drawing from existing state practice and the transitional justice context: a victim- and survivor-centered approach in substance and procedure; full, unequivocal, and specific acknowledgement of IO wrongdoing and harms; and a commitment to non-repetition and institutional reform. Finally, this Part assesses U.N. apologies to date, acknowledging both good practice and missed opportunities. In particular, recent U.N. apologies have been circumscribed in substance and process, marked by sympathy and

216. Yacoub & Briggs, *supra* note 86, at 167–68.

217. Richard Bilder, *The Role of Apology in International Law and Diplomacy*, 46 VA. J. INT'L L. 437, 453 (2006).

218. BAYANI, *supra* note 34, at 59 (citing ILA report on IO accountability, conceiving it “as a notion encompassing legal, political, administrative and financial forms of internal and external scrutiny and monitoring of activities and omissions of international organizations, of which liability and responsibility are important, but separate components”).

219. INT'L CTR. FOR TRANSITIONAL JUST., *supra* note 15, at 3–4.

220. Salvioli, *supra* note 11, ¶ 3.

charity rather than responsibility—thus exacerbating rather than mitigating public distrust and the perceived impunity of IOs.

A. *The Development of Apologies under International Law*

International law has long recognized apologies as a form of satisfaction, at least in the inter-state context.²²¹ Perhaps the earliest recognition can be traced to the 1933 *S.S. Im Alone* case between the United States and Canada, where the U.S. Coast Guard fired on and sank a Canadian liquor-smuggling vessel after it refused to stop for inspection.²²² Ultimately, an international arbitral commission ordered the United States to acknowledge its illegal act, formally apologize to the Canadian Government, and pay the sum of USD \$25,000.²²³

The ILC later affirmed the role of apology under international law—at least in the state responsibility context—in the 2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts (“ARSIWA”).²²⁴ Article 37 of ARSIWA obliges the state responsible for an internationally wrongful act to “give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation,” and specifies that such satisfaction may consist of “an acknowledgement of the breach, an expression of regret, a *formal apology* or another appropriate modality.”²²⁵ In its corresponding commentary, the ILC recognized that apology is a “common form of satisfaction . . . which may be given verbally or in writing by an appropriate official or even the head of State.”²²⁶ The ICJ has confirmed the ILC’s articulation, recognizing apology as a legitimate option for satisfaction and reparation.²²⁷

Notably, during the early 2000s—when the ILC adopted ARSIWA—there was an unprecedented rise in state apologies for both domestic and international misconduct, including World War II-related apologies by the governments of Switzerland, Austria, Belgium, and Japan; Britain’s apology for colonial and imperial abuses; and the United States’s apology for supporting military forces and intelligence units engaged in violent repression and

221. Bilder, *supra* note 217, at 450.

222. *S.S. “Im Alone”* (Can. v. U.S.), 3 R.I.A.A 1610, 1615–18 (1933 & 1935).

223. *Id.* at 1615, 1618; *see also* DARIO, *supra* note 1, Art. 37, cmt. 7 (citing *Kellett and Rainbow Warrior* cases) (internal citations omitted).

224. Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2 Y.B. INT’L L. COMM’N, U.N. Doc. A/56/10 (2001) [hereinafter ARSIWA].

225. *Id.* Art. 37(1)–(2) (emphasis added).

226. *Id.* Art. 37, cmt. 7.

227. *See, e.g.*, *Certain Iranian Assets* (Iran v. U.S.), Judgment, 2023 I.C.J. 164, ¶¶ 232–33 (Mar. 30) (recognizing formal apology as a form of satisfaction but finding it unnecessary in the present case and that the finding of the wrongful acts was adequate). States before the Court have also long demanded apologies from respondents. *See Corfu Channel* (U.K. v. Alb.), Judgment, 1948 I.C.J. 2, 25 (Apr. 9) (Albania arguing in its pleadings that it was entitled to apologies); *see also* DARIO, *supra* note 1, Art. 37, cmt. 7 (citing examples where responsible states also offered apologies). *But see Avena and Other Mexican Nationals* (Mex. v. U.S.), Judgment, 2004 I.C.J. 128, ¶ 120 (Mar. 31) (recognizing apology but finding it insufficient in the present case, citing *LaGrand* (Ger. v. U.S.), Judgment, 2001 I.C.J. 104, ¶ 125 (June 27)).

gross human rights violations in Guatemala.²²⁸ Commentators have coined this era of sovereign apologies as the “age of apology.”²²⁹ As the ILC noted in the commentary to ARISWA, “[r]equests for, or offers of, an apology are a quite frequent feature of diplomatic practice and the tender of a timely apology, where the circumstances justify it, can do much to resolve a dispute.”²³⁰ Indeed, over time, the ILC has cited numerous examples of official transnational state apologies, including for unlawful incidents involving attacks against diplomatic or consular representatives or premises, as well as attacks on private citizens of foreign states.²³¹

Around the same time, public apologies were formally recognized in the specific context of international human rights law on several occasions. Of particular note, the U.N. General Assembly adopted the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the “Basic Principles”), which stipulate that apologies comprise a key component of satisfaction. The Basic Principles describe such apologies as necessarily public and including “acknowledgement of the facts and acceptance of responsibility.”²³² The U.N. human rights treaty bodies further recognized public apologies as a potential reparative measure in their jurisprudence and guidance documents. The Human Rights Committee’s General Comment No. 31 explicitly recognizes public apologies as a potential measure of satisfaction for human rights violations.²³³ Apologies have also featured prominently in the work of the U.N. Special Procedures, with some mandate-holders finding that by helping to formally recognize victimhood and the transgression of norms, official apologies in the state responsibility context can be more effective than monetary compensation for victims of certain violent crimes like torture and sexual violence.²³⁴

228. See generally Ruti Teitel, *The Transitional Apology*, in *TAKING WRONGS SERIOUSLY: APOLOGIES AND RECONCILIATION* 101 (Elazar Barkan & Alexander Karn eds., 2006) (internal citations omitted); Marieke Zoodmsa & Juliette Schaafsma, *Examining the ‘Age of Apology’: Insights from the Political Apology Database*, 59 J. PEACE RSCH. 436–48 (2022) (for an empirical review of state political apologies for human rights violations); see also Mark Gibney & David Warner, *What Does It Mean to Say I’m Sorry*, 28 DENVER J. INT’L L. & POL’Y 223, 224 (2000) (describing the “enormous changes in the notion of ‘state sovereignty’” since World War II).

229. Bilder, *supra* note 217, n.a.1.

230. ARSIWA, *supra* note 224, Art. 37, cmt. 7. *But see id.* (recognizing that “[i]n other circumstances an apology may not be called for, e.g. where a case is settled on an *ex gratia* basis, or it may be insufficient”).

231. Bilder, *supra* note 217, at 440.

232. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law Art. 20(e), U.N. Doc. A/RES/60/147, (Mar. 21, 2006) [hereinafter Basic Principles on the Right to a Remedy].

233. HRC, *General Comment No. 31* (80), *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 16, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004).

234. Salvioli, *supra* note 11, ¶ 9.

Although the normative development and discourse surrounding official apologies under international law has generally been limited to the context of state responsibility, the ILC has similarly conceptualized apology as a form of satisfaction in the 2011 Draft Articles on the Responsibility of International Organizations (“DARIO”).²³⁵ The relevant provision is identical to that in AR-SIWA, recognizing apology as a potential modality of satisfaction for injury caused by an IO’s internationally wrongful act.²³⁶ As the ILC theorized when adopting this transposition, “[t]he modalities and conditions of satisfaction that concern States are applicable also to international organizations.”²³⁷ In the corresponding commentary, the Commission noted that IO practice confirmed the use of “apology or an expression of regret” as a form of satisfaction—with the qualification that, although IO apologies as documented in practice “do not expressly refer to the existence of a breach of an obligation under international law, they at least imply that an apology or an expression of regret by an international organization would be one of the appropriate legal consequences for such a breach.”²³⁸

Notwithstanding recognition in the DARIO, the normative value of IO versus state apologies, including in the context of IO human rights obligations, has received less attention.²³⁹ This may stem from the significant criticism of DARIO’s equivalency between states and IOs.²⁴⁰ But even if apologies have “softer,” less formal legal consequences in international law, they may nonetheless “harden” and shape the scope of customary international law over time.²⁴¹

B. *Elements of a Meaningful IO Apology*

This Article posits that where IOs perpetrate, facilitate, or are complicit in gross human rights violations and serious violations of international humanitarian law, they must be held to account. Apologies can play a vital function in the panoply of accountability options, especially given the limitations to holding IOs legally responsible as set out in Part III. Apologies can help restore the self-respect and dignity of victims and survivors; assure and publicly acknowledge that the offenses and harms were not their fault; and repair—or at least begin to rebuild—public trust in the safety and goodwill of IO engagement, particularly where the IO or its counterparts seek to continue operating

235. DARIO, *supra* note 1, Art. 37.

236. *Id.*

237. *Id.* cmt. 6.

238. *Id.* cmt. 1.

239. See, e.g., Mark Gibney & Erik Roxstrom, *The Status of State Apologies*, 23 HUM. RTS. Q. 911, 914 (2001) (arguing that state apologies could play a bigger role in the development of human rights norms and standards).

240. See *supra* note 30.

241. See Richard Bilder, *The Role of Apology in International Law and Diplomacy, in THE AGE OF APOLOGY: FACING UP TO THE PAST* 13, 23 (Mark Gibney et al., 2009) (“[E]ven if an apology is not of such a character as to entail formal legal consequences, it may arguably still have some normative effect in shaping expectations concerning state behavior.”).

in the affected communities.²⁴² Indeed, it is telling that victims of abuses by public authorities will often bring claims in court not necessarily or solely for monetary compensation but also because they want:

{F}aceless persons in an apparently insensitive, unresponsive and impenetrable bureaucratic labyrinth . . . to acknowledge that something has gone wrong, to provide them with an explanation, an apology and an assurance that steps have been taken to ensure (so far as possible in an imperfect world) that the same mistake will not happen again.²⁴³

The same rationale would also likely resonate with victims of the alleged atrocities, sexual abuse and exploitation, environmental pollution, forced labor and human trafficking, and other widespread and systematic rights violations set out in Part II as attributable to IOs.

Fulsome, meaningful, and effective apologies are rare. Indeed, although apologies have transformative potential, the art of the “non-apology” or “pseudo-apology”—i.e., an apology that fails to squarely address the facts of the responsible party’s acts or omissions and resultant harms—can also serve as “devious means to elicit forgiveness without acknowledging responsibility.”²⁴⁴ This Article posits that to effectively rebuild their legitimacy, IOs must engage in meaningful apologies that fully acknowledge wrongdoing and actually resonate with aggrieved victims and communities—even if they are not willing to accept legal responsibility through, for instance, national lawsuits or standing claims commissions. Apologies, when delivered effectively, can help ensure a victim- and survivor-centered and human rights-based approach to accountability in line with the right to remedy and reparation under international law and, at the most practical level, enhance the delivery of organizational activities in the aftermath of IO misconduct and wrongdoing.

So what does an effective IO apology require? Drawing from transitional justice literature,²⁴⁵ this Section posits at least three prerequisites: (i) a victim- and survivor-centered approach—in substance and procedure—from the highest levels of the organization, recognizing both their needs and their rights; (ii) full and public acknowledgement of IO wrongdoing and harms caused, with specificity and explanation; and (iii) commitment to non-repetition and reform through clear follow-up and oversight procedures. These elements are by no means exhaustive but serve as a starting point for IOs genuinely seeking to rebuild trust in the communities where they operate. The precise modalities and scope of an appropriate apology will of course always be context-dependent.

242. See LAZARE, *supra* note 13, at 44 (setting out a range of psychological needs on the part of the aggrieved, including those named above).

243. Hovell, *supra* note 136, at 42 (internal citation omitted).

244. LAZARE, *supra* note 13, at 99.

245. See *supra* note 15.

First, as with any reparative measures for gross violations of international law, the victims' rights, perspectives, and needs must be centered in both substance and form. The language of the apology must explicitly recognize the victims' fundamental rights and freedoms under international law, both the rights violated by the alleged IO wrongdoing and the rights to justice thereafter.²⁴⁶ Express recognition of wrongdoing is the first step in restoring trust, a prerequisite for future reparations and institutional reforms that fall in line with the international human right to remedy.²⁴⁷

To effectively craft and deliver an apology, the IO should not only center the rights of victims, but meaningfully consult with victims, survivors, and affected communities before, during, and after the apology.²⁴⁸ Indeed, apologies in the transitional justice context have been more effective and better received where victims had the opportunity to participate in the planning of the apology.²⁴⁹ As the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence has observed:

[A]pologies cannot be used to obviate or otherwise interfere with the rights of victims to justice, truth or reparations, but should instead be viewed as one route to the delivery of those rights, including by enabling victims to exercise their agency in the preparation and delivery of apologies.²⁵⁰

At minimum, in its engagement with victims and survivors, IOs should apply the standards in the U.N. Basic Principles and Guidelines on the Right to a Remedy and Reparation, treating victims "with humanity and respect for their dignity and human rights, and appropriate measures . . . to ensure their safety, physical and psychological well-being and privacy, as well as those of their families."²⁵¹ Victims' participation requires their informed consent and fully voluntary participation, and careful consideration of potential reprisal risks either by the IO itself or the state where it operates. At the U.N. this means fully utilizing existing guidance and procedures, including through coordination with the Assistant Secretary-General within the Office of the High Commissioner for Human Rights tasked with leading system-wide efforts to tackle

246. See, e.g., Coicaud, *supra* note 15, at 865 (underscoring an apology's acknowledgment of rights that were violated).

247. Basic Principles on the Right to a Remedy, *supra* note 232, ¶ 11.

248. See Brandon Hamber & Patricia Lundy, *Lessons from Transitional Justice? Toward a New Framing of a Victim-Centered Approach in the Case of Historical Institutional Abuse*, 15 *VICTIMS & OFFENDERS* 744, 747–51 (2020) (recognizing the importance of a victim participation in transitional justice discourse but acknowledging the shortcomings of victim-centered transitional justice approaches in addressing victims' needs).

249. INT'L CTR. TRANSITIONAL JUST., *supra* note 15, at 17.

250. Salvioli, *supra* note 11, ¶ 6.

251. Basic Principles on the Right to a Remedy, *supra* note 232, pmb1. ¶ 4, ¶ 24.

intimidation and reprisals against those coordinating with the U.N.²⁵² Of course, enabling such meaningful participation of victims, survivors, and affected communities is by no means a straightforward task: victim groups of systematic rights violations like those discussed in this Article will often be fragmented, under-resourced, and further marginalized by the state where the IO operates.²⁵³ But respectful, knowledgeable, and transparent engagement is crucial in ensuring a meaningful and effective apology. Indeed, the failure to meaningfully engage with victims' communities and civil society prior to delivering an IO apology may risk secondary victimization and marginalization. Transparency and publicity are particularly important given that one of the key objectives of an apology is the public declaration of the offense "for the record."²⁵⁴

To demonstrate genuine commitment and remorse, engagement should come from the highest levels of the IO, with the eventual apology delivered by the most senior officials.²⁵⁵ In the U.N. Secretariat, which has over thirty thousand staff officials,²⁵⁶ the apology should be issued directly by the Secretary-General who wields exclusively international responsibilities as the "chief administrative officer."²⁵⁷ As evidenced in the context of inter-state apologies, where an apology is issued in writing through a spokesperson or legal office, there is no real sense that the ultimate offender—and the entity at large—is sincere.²⁵⁸

Crucially, IOs should not approach community participation as a tick-box exercise. Rather, IOs should identify a representative cross-section of victims, survivors, and civil society representatives through a "mixed strategy of smaller and larger representative channels."²⁵⁹ Such engagement must be timely, but an apology takes time and should not be rushed.²⁶⁰ That said, there is a key distinction between deferring an apology as further independent investigations are pursued, and sidestepping responsibility altogether.

252. OHCHR and *Intimidation and Reprisals for Cooperation with the United Nations in the Field of Human Rights*, U.N. OHCHR (last visited Apr. 2, 2024), <https://www.ohchr.org/en/reprisals>.

253. Cristián Correa, Julie Guillerot & Lisa Magarrell, *Reparations and Victim Participation: A Look at the Truth Commission Experience*, INT'L CTR. TRANSITIONAL JUST., at 4 (2009).

254. LAZARE, *supra* note 13, at 39.

255. See, e.g., Mark Gibney, *State Apologies and International Law*, 2 GLOB. STUD. Q. 1, 1 (2022) (recognizing in the context of transnational state apologies that the apology comes from a high-ranking official of the state); INT'L CTR. TRANSITIONAL JUST., *supra* note 15, at 13 ("In general, for apologies that acknowledge state responsibility for acts by state agents or for the state's failure to exercise due diligence in preventing violations, the head of state or government—even if not personally responsible—is the individual who is most appropriate to make such apologies.")

256. *How Many People Work for the United Nations Secretariat?*, U.N. LIBRARY (Feb. 19, 2024), <https://ask.un.org/faq/14626#:~:text=The%20total%20population%20of%20the,the%20staff%20of%20the%20Secretariat> [<https://perma.cc/64LJ-K8ZY>].

257. U.N. Charter, Arts. 97–101.

258. LAZARE, *supra* note 13, at 211 (describing how, in a U.S. commander's apology issued through his lawyer's office, one victim's brother said, "[w]e don't know even if he wrote it . . . We can't see him and we don't hear him").

259. See, e.g., Correa, Guillerot & Magarrell, *supra* note 253, at 8.

260. Salvioli, *supra* note 11, ¶ 21.

Effective and meaningful engagement with victims' representatives requires substantive and procedural components. This engagement should identify the harms caused by IO wrongful acts and omissions under international law, including international human rights law, and then formulate an appropriate apology, including by "choosing the words,"²⁶¹ as well as the procedural components of delivery, such as the apology's style and setting.²⁶²

State practice and judicial decisions are instructive in this regard. Agreement on the scope and modalities of the apology with victims is crucial, as the Inter-American Court of Human Rights has encouraged in its jurisprudence, emphasizing that public apologies must be publicly accessible, including in the victims' language. For example, in the case of the *Plan de Sánchez Massacre* where over 250 people, mostly from the Maya Achi people, were killed by the army and paramilitary allies, the Court ordered the Guatemalan Government to implement a range of reparative measures, including a public apology, and required the state to translate the apology and Court judgments into Maya-Achi.²⁶³ The Court has also advised that any apology must be made at the place where the human rights violations were perpetrated.²⁶⁴ The state may pair verbal or written apologies with larger rituals or acts of public memorialization, such as the naming of streets or schools in honor of victims, as the Inter-American Court has often ordered.²⁶⁵ The mode of delivery should account for cultural norms.²⁶⁶ This can be seen in the historical inter-state apology delivered by U.S. officials for sinking a Japanese fishing boat and killing four teenage high school students and five crew members. There, Japanese victims specifically demanded direct personal apologies from the officer-in-charge in full dress uniform and delivered to each victim's families at their homes. They thus found the officer's twenty-two-month late apology in civilian clothes wholly inadequate.²⁶⁷

Second, in addition to the "who" of apology, equally important is the delicate question of "what" exactly is being apologized for—particularly the linkage between misconduct and the systematic harms to victims. The combination of these two components of "who" and "what" comprise what some commentators describe as "naming" and "reckoning." "Naming" identifies the victims and the audience, while "reckoning" entails "the unequivocal acknowledgement of

261. *Id.* ¶ 6

262. *Id.*

263. *Plan de Sanchez Massacre v. Guatemala, Reparations Judgment*, Inter-Am. Ct. H.R. (ser. C) No. 126, ¶ 100 (Nov. 19, 2004).

264. Salvioli, *supra* note 11, ¶ 14 n.23.

265. Judith Schönsteiner, *Dissuasive Measures and the 'Society as a Whole': A Working Theory of Reparations in the Inter-American Court of Human Rights*, 23 AM. UNIV. INT'L L. REV. 127, 154–55 (2011); INT'L CTR. TRANSITIONAL JUST., *supra* note 15, at 9.

266. See Elazar Barkan & Alexander Karn, *An Ethical Imperative: Group Apology and the Practice of Justice*, in TAKING WRONGS SERIOUSLY: APOLOGIES AND RECONCILIATION 3, 15 (Elazar Barkan & Alexander Karn eds., 2006) ("Cultural specificity clearly shapes the terms of reconciliation and negotiation.").

267. LAZARE, *supra* note 13, at 210–12.

events.”²⁶⁸ The “naming” often calls for investigative work, ideally from an independent assessment of the conduct and circumstances in question.²⁶⁹ As evidenced in the transitional justice context, “[a]pology acts in a vacuum if there is no investigative underpinning to anchor and support such contrition.”²⁷⁰ Truth-telling and public acknowledgement are a core component of reparation and satisfaction, and also arguably derive from the right to investigation and truth, recognized under international human rights law.²⁷¹ As the Basic Principles and Guidelines on the Right to a Remedy and Reparation stipulate, victims of gross human rights violations must have “access to relevant information concerning violations and reparation mechanisms,” including “information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations.”²⁷² Such accounts in the IO context can build on the investigative work of independent internal investigations and fact-finding mechanisms like those described in Part III.

The apology must not just confirm and formally acknowledge certain facts and harms, but also communicate that these realities are “not ethically neutral” but rather linked to the IO’s specific wrongdoing. Emphatic apologies of sincere regret without communicating such wrongdoing and responsibility risk being “condescending, patronizing statements of superiority.”²⁷³ Such pseudo-apology risks generating more resentment than reconciliation. In particular, passive voice is untenable when recognizing wrongdoing and risks offending victims, survivors, and affected communities as it conveniently eludes the issue of responsibility.²⁷⁴ Segmenting components of an apology, such as recognition of harms without attribution to causal acts can prove counterproductive in the longer term as the “[l]ack of forthrightness at the outset can prolong the acknowledgement stage, leading people to question to the validity of the subsequent apology.”²⁷⁵ And where affected stakeholders question the legitimacy of an IO’s apology, distrust would likely pervade, with acute impacts on the reception of future IO activities.

The IO’s fears of potential liability often drive overly circumscribed and weakened public apologies. Indeed, as discussed below, in the case of Haiti, the

268. Salvioli, *supra* note 11, ¶ 21; Int’l Comm’n Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners Guide*, at 211 (Rev. ed. 2018), <https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf> [<https://perma.cc/K7MS-KS8V>].

269. INT’L CTR. FOR TRANSITIONAL JUST., *supra* note 15, at 7.

270. Robert I. Rotberg, *Apology, Truth Commissions, and Intrastate Conflict*, in *TAKING WRONGS SERIOUSLY: APOLOGIES AND RECONCILIATION* 33, 47 (Elazar Barkan & Alexander Karn eds., 2006)

271. Int’l Comm’n Jurists, *supra* note 268, at 209.

272. Basic Principles on the Right to a Remedy, *supra* note 232, pmb1. ¶¶ 4, 24.

273. LAZARE, *supra* note 13, at 99.

274. *Id.* at 85–106.

275. *Id.* at 77.

U.N. adopted the pseudo-apology with the “narrowest legalistic approach”²⁷⁶ seemingly out of fear of conceding legal responsibility and potentially waiving its jurisdictional immunity. However, this Article posits that an explicit reference to IO human rights duties would not in itself comprise the express waiver exception to immunity under most IO constituent documents or under the IOIA in the United States. As the ILC has noted, IO apologies to date “do not expressly refer to the existence of a breach of an obligation under international law” but still “imply that an apology or an expression of regret by an international organization would be one of the appropriate legal consequences for such a breach.”²⁷⁷ The further express reference to, for instance, the U.N.’s obligation to respect and protect human rights, would not move the IO into the arena of express waiver. Indeed, the Secretary-General or other IO official issuing an apology could still reaffirm the applicability of the General Convention, Special Convention, or other applicable immunities in national jurisdictions, whilst acknowledging unequivocally its wrongdoing and failure to meet a core obligation. The IO could even open up to private law claims under arbitration while maintaining jurisdictional immunity from domestic courts. As Philip Alston stated in the context of the private claims submitted regarding the cholera outbreak in Haiti, “acceptance of responsibility can protect rather than undermine the Organization’s immunity.”²⁷⁸

A victim- and survivor-centered approach to apology that includes a full reckoning and naming seems like the bare minimum that an IO should undertake in starting to rebuild public trust—even if they are (wrongly) dead-set on maintaining their organizational immunities in court. As the former U.N. High Commissioner for Human Rights explained:

Reparations . . . must be driven by a recognition of responsibility and an honest and true acknowledgement that rights have been violated. Any measure falling short of these baseline standards will not truly be experienced as justice, and it will never be able to fully repair the harm which has been suffered.²⁷⁹

The stakes of falling short of this baseline cannot be overstated. Amid a broad decline in support for the U.N. and other IOs more generally,²⁸⁰ restoring

276. Anastasia Moloney, *A Decade after U.N.-Linked Cholera Outbreak, Haitians Demand Justice*, REUTERS (Oct. 22, 2020), <https://www.reuters.com/article/idUSKBN2772RL/> [<https://perma.cc/Q94R-2NJR>].

277. DARIO, *supra* note 1, Art. 37, cmt. 1.

278. Alston, *supra* note 113, ¶ 10.

279. Michelle Bachelet (U.N. High Commissioner for Human Rights), Statement, 15th Anniversary of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ‘The Catalytic Power of Reparations’, U.N. OHCHR (Dec. 17, 2020), <https://www.ohchr.org/en/statements/2020/12/15th-anniversary-basic-principles-and-guidelines-right-remedy-and-reparation>.

280. Albert Trithart & Olivia Case, *Do People Trust the UN? A Look at the Data*, IPI GLOB. OBS. (Feb. 22, 2023), <https://theglobalobservatory.org/2023/02/do-people-trust-the-un-a-look-at-the-data/> [<https://perma.cc/Y7ZC-A925>].

public trust and confidence is vital to ensuring the effective implementation of field programming and other core IO functions.

Third, an apology is not just an expression of wrongdoing and remorse, but it equally requires a continuing commitment to change behavior.²⁸¹ In this manner, for an apology to be meaningful and effective, the IO must demonstrate a willingness to practically address the damage, including through institutional acts and reforms. The apology must therefore be a part of a broader justice and accountability effort.²⁸² As explained in the Basic Principles and Guidelines on the Right to a Remedy and Reparation, apology is but one of many facets of reparation, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.²⁸³ Where possible, apologies should from the outset recognize these other modalities, including compensation, particularly where private claims may be viable or institutional reforms are planned in line with the guarantee of non-repetition. As an institutional prerogative, the guarantee of non-repetition is particularly vital as part of any apology as it conveys to victims, survivors, and affected communities a sincere commitment on the part of the IO to institutional reforms that prevent future abuse and protect the population going forward.

The transitional justice context may offer key lessons learned for future guarantees of non-repetition. There, generally the effectiveness of an apology and its broader transformative potential vis-à-vis affected victims depends on whether the apology is part of a broader transitional justice agenda, including not just reparation, but also the equal components of justice, truth, and guarantees of non-recurrence.²⁸⁴ In this vein, IOs should also commit to—including in the statement of apology—full investigations and concrete follow-up procedures to monitor and enforce any commitments made in the apology. Indeed, as evidenced in the accountability gap described in Part III.B, the failure to follow-up or ensure ongoing oversight is a continued structural shortcoming in existing internal accountability measures. Finally, further measures by IOs beyond institutional reforms might include memorialization and truth commissions to ensure non-recurrence.²⁸⁵

C. *An Assessment of IO Apologies to Date*

Despite the existing documentation of widespread and systematic human rights abuses by IOs, formal IO apologies have been rare and, especially recently, so cautiously and legalistically calibrated so as not to fully meet the elements set out above.

281. LAZARE, *supra* note 13, at 263.

282. Coicaud, *supra* note 15, at 866; *see also* Hamber & Lundy, *supra* note 248, at 758 (“Victims strongly expressed the view that apologies had little worth if there was no commitment to other justice measures and needs, again echoing the TJ literature.”); INT’L CTR. FOR TRANSITIONAL JUST., *supra* note 15, at 8 (explaining how “apologies usually have a stronger reparative impact when linked to concrete measures or policy changes”).

283. Basic Principles on the Right to a Remedy, *supra* note 232, Arts. 19–23.

284. INT’L CTR. FOR TRANSITIONAL JUST., *supra* note 15, at 3.

285. Salvioli, *supra* note 11, ¶ 21.

Perhaps the most well-known official U.N. apology to date is that of the U.N. Secretary-General regarding the U.N.'s failure to prevent and protect the civilian population against the genocide in Rwanda. The Secretary-General issued this apology after the Independent Inquiry clearly found that the "responsibility for the failings of the United Nations to prevent and stop the genocide in Rwanda . . . is one which warrants a clear apology by the Organization and by Member States concerned to the Rwandese people."²⁸⁶ The Independent Inquiry report further stipulated that the U.N. as an organization "should have apologized more clearly, more frankly, and much earlier."²⁸⁷ In December 1999, Secretary-General Kofi Annan communicated in an oral statement:

The United Nations was founded at the end of a war during which genocide had been committed on a horrific scale. Its prime objective was to prevent such a conflict from ever happening again. Three years later, the General Assembly adopted a Convention under which States accepted an obligation to "prevent and punish" this most heinous of crimes. In 1994, the whole international community—the United Nations and its Members States—failed to honour that obligation. Approximately 800,000 Rwandans were slaughtered by their fellow countrymen and women, for no other reason than that they belonged to a particular ethnic group. That is genocide in its purest and most evil form. All of us must bitterly regret that we did not do more to prevent it. There was a United Nations force in the country at the time, but it was neither mandated nor equipped for the kind of forceful action which would have been needed to prevent or halt the genocide. On behalf of the United Nations, I acknowledge this failure and express my deep remorse.²⁸⁸

This statement is perhaps the most robust apology delivered by the U.N. to date because of the severity of genocide, the prevention of which falls squarely within the first enumerated purpose of the U.N. Charter,²⁸⁹ and the unequivocal acknowledgement of an institutional failure. Of particular note is Secretary-General Annan's explicit reference to the organization's "*obligation*" to prevent genocide and "fail[ure] to honour that obligation." In other words, the Secretary-General did not just express moral sympathy and his personal "remorse," but rather framed the apology as an institutional failing,

286. Letter from the Secretary-General to the President of the Security Council, *supra* note 88, at 30, 51.

287. *Id.*

288. Press Release, U.N. Secretary General, Kofi Annan Emphasizes Commitment to Enabling U.N. Never Again to Fail in Protecting Civilian Population from Genocide or Mass Slaughter, U.N. Press Release SG/SM/7263 (Dec. 16, 1999), <https://press.un.org/en/1999/19991216.sgm7263.doc.html> [<https://perma.cc/U6GS-J7TL>].

289. *See* U.N. Charter, Art. 1(1) ("To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.").

by failing to meet a “prime objective” and “obligation” of the institution. Further, by reminding the world of the eight-hundred thousand Rwandans who were killed, the Secretary-General acknowledged the full consequences of this failure, including the failure to “do more to prevent it.” Although the apology may appear diluted for attributing the failure to act to mandate and resource limitations—thus ultimately, a matter of *member state* responsibility—this language is still among the strongest, most robust apologies communicated by the U.N.

The Secretary-General adopted similar language in the context of the Srebrenica massacres, where he conceded: “[t]hrough error, misjudgement and an inability to recognize the scope of the evil confronting us, we failed to do our part to help save the people of Srebrenica from the Serb campaign of mass murder.”²⁹⁰ In line with the apology formulated in the Rwandan genocide context, this statement recognized the “failure” and “inability” of the U.N. It also recognized explicitly the U.N.’s “error” and “misjudgment,” i.e., the organization’s acts as opposed to omissions. In line with the elements set out in the prior section, this is an important component of full, complete acknowledgement of responsibility for harms caused by the organization.

In recent years, however, U.N. apologies pertaining to alleged *human rights* violations—as opposed to complicity in or failure to prevent atrocity *crimes*—have not recognized formal human rights obligations, despite their provision in the U.N. Charter and constituent documents. Perhaps most indicative of this trend is the U.N. Secretary-General’s apology in response to the cholera epidemic in Haiti. This followed repeated requests by victims, experts, and other U.N. stakeholders calling for a public apology.²⁹¹ It also followed persistent denials of accountability by the United Nations.²⁹² For instance, the Under-Secretary-General for Legal Affairs issued a statement in 2013 seemingly attributing the cholera outbreak to the preceding earthquake and resulting vulnerabilities.²⁹³ Indeed, for years, the U.N. adopted a deflective approach “under the watchful eye of the Office of Legal Affairs,”²⁹⁴ denying all legal responsibility. The former Special Rapporteur on extreme poverty and human rights described the U.N.’s approach as “morally unconscionable, legally indefensible and politically self-defeating.”²⁹⁵ He called for a new approach by the U.N., including a formal apology.²⁹⁶

290. U.N. Secretary-General, *supra* note 94, ¶ 503.

291. See, e.g., Alston, *supra* note 113, ¶ 28 (citing petition on behalf of five thousand victims to MINUSTAH demanding public acknowledgement of the U.N.’s responsibility and a public apology).

292. Harv. L. Sch. Hum. Rts. Clinic, *supra* note 118, at 17; Alston, *supra* note 113, ¶¶ 1, 40 (explaining how the U.N. “systematically sidestepped” the question of its responsibility for bringing cholera to Haiti and citing criticism amongst the global media).

293. Alston, *supra* note 113, ¶ 28 (citing Letter dated February 21, 2013 from the Under-Secretary-General for Legal Affairs, Patricia O’Brien, addressed to Brian Concannon, Director, Institute for Justice and Democracy in Haiti and asserting the U.N.’s absolute immunity under the General Convention on the Privileges and Immunities of the United Nations.).

294. *Id.* ¶ 38.

295. *Id.* ¶¶ 3, 75.

296. *Id.*

Finally, after more than five years of side-stepping the issue, Secretary-General Ban Ki Moon told the General Assembly in December 2016, one month before leaving office:

On behalf of the United Nations, I want to say very clearly: we apologise to the Haitian people. We simply did not do enough with regard to the cholera outbreak and its spread in Haiti. We are profoundly sorry for our role. . . . Eliminating cholera from Haiti, and living up to our moral responsibility to those who have been most directly affected, will require the full commitment of the international community and, crucially, the resources necessary. The United Nations should seize this opportunity to address a tragedy that also has damaged our reputation and global mission. That criticism will persist unless we do what is right for those affected. In short, U.N. action requires Member State action.²⁹⁷

Despite marking a key pivot in the U.N.'s position regarding the cholera outbreak and the Haitian people, the apology was vague and incomplete—what Professor Richard Bilder has labeled a “pseudo-apology,” identified as an “insincere,” “partial,” or “grudging” apology.²⁹⁸ Among other shortcomings, the apology failed to meet the second element of a full and public acknowledgement of wrongdoings and harms. It was limited to an acknowledgement of the U.N.'s failure to “do enough with regard to the cholera outbreak and its spread.” The apology neither explicitly addressed the origin of the cholera outbreak nor the U.N.'s waste management and sanitation practices. This inherent ambiguity as to the U.N.'s “role”—focusing only on the aftermath—weakened the effectiveness of the apology. Further, the reference to “moral responsibility” rendered any assistance thereafter more akin to charity, untethered from any fundamental responsibility towards the community's rights, including as a form of reparation given the U.N.'s original wrongdoing. Indeed, the statement sidestepped any concession that the promotion of and respect for human rights and fundamental freedoms, including the social and economic rights threatened by the cholera epidemic, as well as the principle of “do no harm,” are embedded in the U.N.'s origin and DNA. Rather, the concluding reference to “Member State action” effectively deflected blame, implying that the wrongdoing was attributable to UN members rather than the organization itself.

At the same time as the public apology, the U.N. Secretary-General released the report on the matter, *A New Approach to Cholera in Haiti*, comprising a USD \$400 million assistance package seeking to improve water, sanitation, and health systems. Although this initiative might at first glance pair the apology with clear institutional reforms, the financial package has

297. Sengupta, *supra* note 112.

298. Bilder, *supra* note 217, at 439; see also LAZARE, *supra* note 13, at 85–106 (2004) (describing elements of “pseudo-apologies” or apologies that are insincere, partial, or grudging due to incomplete acknowledgement of wrongdoing, the passive voice, conditionality or minimization of the offense, and questioning whether victims were injured).

since been criticized, including for failing to treat the victim communities as rights-holders,²⁹⁹ thus contravening the first element of an effective apology: a victim- and survivor-centered consultative approach. Notably, the U.N. adopted the New Approach the Cholera in Haiti “seemingly without carrying out consultations or producing a feasibility assessment,” and without involving survivors in the design and delivery of projects.³⁰⁰ The New Approach has also been criticized for the failure to institute a monitoring and evaluation system for implementation and for leaving remedies vulnerable to “the vagaries of international politics.”³⁰¹ Remarkably, four years after the assistance package, only five percent of the USD \$400 million promised had been raised, with fourteen independent human rights experts warning of “serious shortfalls in funding and expenditures.”³⁰²

Moreover, despite the U.N.’s commission of the Independent Panel of Experts on the Cholera Outbreak, it markedly never undertook further investigations of the individuals responsible for sanitation mismanagement and the U.N.’s response—at least not according to publicly available information.³⁰³ Although the U.N. updated its pre-deployment medical protocols, critics have argued that the changes made—i.e., requiring mandatory vaccinations of peacekeepers—do not call for screening and prophylactic antibiotics, which have a significantly higher efficacy rate.³⁰⁴ It is also necessary to provide clear guidance for immediate treatment when infections arise; remarkably, a study found that the U.N. could have prevented the introduction of cholera in Haiti by merely investing USD \$2,000 in treatment for the infected soldiers.³⁰⁵ It is highly unfortunate that implementation of the Independent Panel’s recommendations for non-recurrence have been inconsistent at best, with systematic waste mismanagement reportedly continuing on U.N. bases across the globe, including in Lebanon, Liberia, Sudan, Côte d’Ivoire, the Democratic Republic of the Congo, and the Central African Republic, thus posing an ongoing risk of future human rights harms.³⁰⁶

Ultimately, although some Haitian civil society members responded positively to the U.N.’s apology and response to the cholera outbreak, the former Special Rapporteur on extreme poverty and human rights, Philip Alston, and former Assistant Secretary-General for Human Rights, Andrew Gilmour,

299. Harv. L. Sch. Hum. Rts. Clinic, *supra* note 118, at 17.

300. Press Release, U.N. Special Procedures, UN Inaction Denies Justice for Haiti Cholera Victims, Says UN Experts (Apr. 30, 2020), <https://www.ohchr.org/en/press-releases/2020/04/un-inaction-denies-justice-haiti-cholera-victims-say-un-experts?LangID=E&NewsID=25851> [<https://perma.cc/J32T-QJHW>].

301. Harv. L. Sch. Hum. Rts. Clinic, *supra* note 118, at 17.

302. U.N. Special Procedures, *supra* note 300.

303. Harv. L. Sch. Hum. Rts. Clinic, *supra* note 118, at 31.

304. *Id.* at 31–32 (finding a 90% efficacy rate for prophylaxis antibiotics and screening, versus a 60% efficacy rate for vaccinations).

305. *Id.* at 7.

306. *Id.* at 32.

described it as “shameful.”³⁰⁷ Gilmour claimed that the U.N.’s legal personnel had driven the resistance to any attempt to accept moral responsibility and issue a more sincere apology.³⁰⁸ In a 2020 interview, Loubean Jean, a Haitian survivor whose father died from cholera in 2011 and whose mother continues to suffer from the ongoing effects of cholera today, expressed with frustration that “[t]he U.N. is an organisation for the defence and promotion of human rights. It cannot violate its own laws, its own charters,” urging the U.N. to “right the wrongs done.”³⁰⁹

The fear of resulting liability was no doubt a driving factor for the pseudo-apology. But as Philip Alston reflected, “[t]here was a deep split within the [U.N.] secretariat” in issuing the ultimate pseudo-apology and, in fact, a sizeable number of personnel felt that the U.N.’s refusal to accept liability was “legally nonsense.”³¹⁰ As explained in the prior section, however, the Secretary-General could have recognized the applicability of the General Convention and other jurisdictional immunities, while more squarely acknowledging its wrongdoing. In fact, had the Secretary-General directly acknowledged the U.N.’s responsibility for introducing cholera into Haiti in its public statement, he could have unlocked material assistance for its New Approach to Cholera through regular budget apportionments rather than voluntary contributions that barely came into fruition.³¹¹

The U.N. adopted similar pseudo-apology language in its apology for the lead poisoning of Roma populations in Kosovo. There, a spokesperson of the Secretary-General expressed “the Organization’s profound regret for the suffering endured by all individuals living in the IDP camps.”³¹² Although the statement acknowledged that the Human Rights Advisory Panel had identified the organization’s “failures to uphold human rights standards,” the statement failed to reaffirm and endorse this language of failure and U.N. human rights duties on the part of the Secretary-General. Rather, the statement twice referred to “regret for the suffering endured,” without reference to concrete acts and omissions that contributed to such suffering. At most, it referred to the “shared duty” looking forward “to support the Roma, Ashkali and Egyptian communities in Kosovo and ensure that they receive the assistance that they need.”³¹³ Lastly, as a matter of procedure, the apology delivered by the Secretary-General’s spokesperson from the U.N. headquarters in New York

307. Jason Beaubien, *U.N. Finally Apologizes for Cholera in Haiti ... But Omits One Point*, NPR (Dec. 2, 2016), <https://www.npr.org/sections/goatsandsoda/2016/12/02/504173541/u-n-finally-apologizes-for-cholera-in-haiti-but-omits-one-point> [https://perma.cc/9WS7-QU27]; Moloney, *supra* note 276.

308. Moloney, *supra* note 276.

309. *Id.*

310. *Id.*; Beaubien, *supra* note 307.

311. Kristen E. Boon, *UN Apologizes for Role in Cholera Outbreak*, OPINIOJURIS (July 12, 2016), <https://opiniojuris.org/2016/12/07/un-apologizes-for-role-in-cholera-outbreak/> [https://perma.cc/2FJF-L96H].

312. U.N. Secretary-General, Statement Attributable to the Spokesman for the Secretary-General on the Human Rights Advisory Panel’s Recommendations on Kosovo (May 26, 2017), <https://www.un.org/sg/en/content/sg/statement/2017-05-26/statement-attributable-spokesman-secretary-general-human-rights> [https://perma.cc/5TZG-FZF5].

313. *Id.*

was completely disconnected from the site of extensive harms and was thus far from victim- and survivor-centered. This approach arguably minimized the perceived sincerity of the apology, conveying a lack of full commitment and remorse by the organization's highest leadership.

In the context of Kosovo, it is also worth noting the Human Rights Advisory Panel's recommendation that the U.N. Mission in Kosovo publicly apologize to the victims and families of missing and murdered persons for failing to investigate and to comply with human rights standards, which caused the lead contamination in the IDP camps, adverse health conditions, and other harms.³¹⁴ Instead of recognizing this or other concrete harms in the spokesperson's public statement cited above, the Special Representative of the Secretary-General sent a boiler-plate, depersonalized letter to families, expressing "deep[] regret that there was a lack of an effective investigation into the abduction and death of [their loved one] which has caused you additional distress and mental suffering."³¹⁵ Unsurprisingly, the Panel criticized this letter for only expressing "regret" and found that it did not reflect a meaningful apology.³¹⁶ Notably, in a similar situation where the fact-finding commission investigated the U.N.'s role in the civil war in Sri Lanka, the U.N. Secretary-General acknowledged the commission's findings but failed to publicly apologize for the U.N.'s responsibility to protect those victims missing or dead.³¹⁷

As evidenced by the above examples, when the U.N. has eventually issued public apologies for organizational failings and wrongdoing, especially in recent years, the apologies have often been marred by years of denials and deflections. In some cases, the apologies were so lacking in the three prerequisites set out in the prior section that they comprised a pseudo- or non-apology. Interestingly, in a comprehensive assessment of U.N. apologies and responses to allegations of transgression up to 2009, one study found that documented concessions—i.e., where a U.N. official takes responsibility for an event, often through preemptive resignation—though common, were frequently followed by public denials of responsibility, claiming mitigating circumstances, seeking horizontal or vertical diffusion of responsibility, or simply pleading ignorance.³¹⁸ As the authors of the study described, this sequential strategy of concession and denial is a "crisis management strategy, whereby the official makes a relatively small sacrifice by resigning his/her post in order to appease the audience, but then denies the negative nature of the act and the responsibility that comes with it, in an attempt to save face in the long run."³¹⁹ Indeed, at the organizational level, denials are apparently the most favored "second account" whereby the U.N. portrays an "image of due diligence," at least first

314. Hum. Rts. Advisory Panel, *supra* note 191, ¶¶ 65, 236.

315. *Id.* ¶ 65.

316. *Id.*

317. COLOMBO GAZETTE, *supra* note 194.

318. Tereza Capelos & Johannes Wurzer, *United Front: Blame Management and Scandal Response Tactics of the United Nations*, 17 J. CONTINGENCIES & CRISIS MGMT. 75, 79 (2009).

319. *Id.*

acknowledging a serious problem that must be investigated, but thereafter circumscribing the scope and controlling the story and information flow.³²⁰ It is thus evident that the U.N. has a long way to go in meeting the requisite elements of an effective and meaningful apology.

CONCLUSION

As IOs continue to expand in number and function, so too does the serious risk of IO perpetration of and complicity in gross human rights violations. Indeed, the recent rise of other intergovernmental non-IO organizations of nebulous legal character opens the door to further vulnerabilities to human rights abuse and newfound challenges for accountability efforts.³²¹ Although we may no longer be in the peak of the age of sovereign apologies, the moral, political, and legal value of apology remains ripe and underexplored in the IO context. Meaningful and fulsome IO apologies are an invaluable first step for turning the page and rebuilding trust with affected beneficiaries and communities, and ultimately, instilling broader faith in the multilateral system at large.

320. *Id.*

321. *See generally* Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Report on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, U.N. Doc. A/74/335 (Aug. 29, 2019).

