

The UN and Human Rights: Who Guards the Guardians?

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The UN and Human Rights: Who Guards the Guardians? by Guglielmo Verdirame, Cambridge: Cambridge University Press, 2011, ISBN 978-0-521-84190-0, 448 pages.

This topical treatise¹ addresses the thorny issue of the United Nations' (UN) accountability for human-rights violations. Does the UN violate human rights? If so, is it in any case bound to observe human-rights obligations? What are the measures placed to ensure the UN's accountability for human-rights violations? These are some of the key questions raised in this monograph.

After explaining in chapter one the concepts and legal definitions used in the book, Guglielmo Verdirame demonstrates in the second chapter that both the UN Charter and customary law bind the organization and its agencies to the observance of human rights law. The third chapter argues that, although the International Law Commission's draft articles on the responsibility of international organizations represent a step forward in configuring the legal framework for determining the responsibility of international organizations for human-rights violations, they do not solve the problem of the enforcement of the UN's human-rights obligations (p. 143).

The following chapters (four to seven) detail a consistent pattern of human-rights violations by the UN in four of its areas of work, namely humanitarian relief, peacekeeping operations, international administrations, and the implementation of sanctions. According to the author, these activities carry the greatest risk of human-rights abuses, because the UN exercises extensive and direct power over individuals (other than its own employees). Chapter four shows how, during the relief operations in Afghanistan, the UN ended up incorporating into its country assistance the regime of sexual apartheid put in place by the Taliban dictatorship. Likewise, chapter five gives an account of human rights violations in a number of peacekeeping operations.

In chapter six, Verdirame introduces a distinction between *de jure* international territorial administrations, established through a Security Council mandate, and *de facto* territorial administrations, most notably refugee camps, where the UN controls inhabited territory in the absence of such a mandate. In regards to *de jure* international administrations, he examines the cases of Kosovo, East Timor and Bosnia, and Herzegovina, arguing that the UN committed human-rights violations mostly by failing to prevent local actors from perpetrating crimes and by shielding the decisions of the UN authorities from any review by local courts (pp. 241–66).

The second part of the chapter (pp. 269–98), examines the United Nations High Commissioner for Refugees' (UNHCR) administration of refugee camps, arguing that those camps where refugees remain for a prolonged period of time, as opposed to temporary ones established as a "short term emergency response to a refugee crisis" (p. 240), are inherently illegal, because they necessarily entail a restriction of the freedom of movement of refugees. Verdirame further argues that other human-rights abuses by UNHCR in refugee camps are not infrequent (pp. 281–98).

Chapter seven analyzes the human rights impact of UN sanctions. The comprehensive sanctions regime, in use until the end of the Cold War, targeted a whole country indiscriminately, for

1. The views expressed herein are those of the author alone and do not represent the views of the United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo or of the United Nations

example, by blocking its trade, as in the 1990 embargo on Iraq. To avoid the disastrous humanitarian consequences these sanctions had on innocent people, the UN shifted to a regime of targeted sanctions addressing specific groups, individuals, or commodities (pp. 306–10). However, because listed individuals and entities are not accorded an effective and transparent appeals process against the decision of sanction committees, the author also argues that these sanctions undermine human rights, especially the right to a fair trial and due process (pp. 311–19).

The final chapter analyses the issue of accountability. The author observes that, in the face of such concrete risks of human rights violations, the prospects for victims of bringing a claim against the UN are minimal. Internal administrative controls are inadequate, patchy, and, generally, do not offer redress mechanisms for victims. Moreover the control exercised by other UN organs over Security Council decisions is scarce and, so far, UN member states have not scrutinized its decisions as much as they could (pp. 321–43).

Yet, Verdirame observes that certain domestic and international courts in Europe have developed ways of resisting the implementation of international organizations' decisions that breach the fundamental individual rights guaranteed in national constitutions. Indeed, according to the doctrine of equivalent protection, when the level of human rights protection offered by an international organization is inferior to the one available nationally, a domestic constitutional court can invalidate an act implementing a decision of an international organization. However, this remains only an indirect form of scrutiny, since the organization's breach itself does not come under examination (pp. 359–86). Verdirame concludes that the UN suffers from a serious accountability deficit. The expansion of UN authority has not been matched by a corresponding reflection on how to guarantee the rights of individuals affected by its behavior. Even though some progress has been made, the UN, the "guardian" mandated to protect human rights from state abuses, still needs to devise a credible and effective system to ensure accountability for its own violations.

Notwithstanding its relevance, studies on this subject are rare. This comprehensive, well-researched, and meticulous monograph is thus pioneering. It also is an eye-opener for all those practitioners and academics who are accustomed to think that, because of its noble principles, the UN is inherently virtuous. At a time when, with the establishment of an Intervention Brigade, the UN has stepped up its powers within the peacekeeping mission in the Democratic Republic of Congo, Verdirame's treaty acquires even greater significance.

This being said, the section on the UNHCR's de facto administration of refugee camps (pp. 269–98) can stimulate further discussion, underscoring the need for more comprehensive field research. Whereas the author's argument on the UNHCR's potential for human-rights violations over refugees is clear, many of the criticisms of the UN agency and examples of violations appear misplaced.

It is debatable that UNHCR, rather than the country of asylum, is responsible for restricting the freedom of movement of refugees in camps. It is also arguable that practices such as "head-counting" refugees constitute human-rights breaches (pp. 282–85). The author describes this process as a form of cruel and degrading treatment, among other things, because UNHCR "forces refugees in enclosures like cattle," where they are left to wait for many hours often "under a scorching sun," and because it practices body markings on refugees (p. 284, emphasis added). The process of registering refugees is a necessary procedure to streamline the provision of aid and identify vulnerable persons, ensuring that they receive adequate protection. In such cases, refugees may have to wait several hours to be registered, and the UN agency, partly due to its limited resources, may have to use temporary body markings to speed up the process. While not an ideal solution, it is hard to imagine how UNHCR could provide assistance often to thousands of refugees without having an exact idea of the composition of its population.

It is clear, in sum, that more critical thinking on the issue of the UN's accountability for human rights violations is needed. Professor Verdirame's monograph can stimulate further debate among academics, practitioners, and, hopefully, within the UN itself.