
**THE BLACK BOX OF INTERNATIONAL CIVIL SERVANT
ACCOUNTABILITY: SEARCHING FOR ORDER IN THE
DISORDERED UNITED NATIONS SYSTEM**

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ABSTRACT

The United Nations employs roughly 44,000 of people from every corner of the globe. In hiring, the Secretary-General, the chief administrative officer, seeks to secure the “highest standards of efficiency, competence, and integrity” in its staff, and to recruit on “as wide a geographical basis as possible.”¹ To effectively execute the many missions of the organization, these employees are required to affirm loyalty to the U.N. and assert their independence from their country of origin. This independence from national influence is seen

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¹ U.N. Charter art. 97 (“The Secretariat shall comprise a Secretary General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.”); U.N. Charter art. 101, ¶. 3 (“The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.”).

as imperative for the operations of the U.N. Secretariat; as its objectives can sometimes contradict the expressed will of certain Member-States. This level of removal from the Member-States requires that the United Nations and its employees receive certain privileges and immunities. One of these immunities is a jurisdictional bar to prosecution arising from acts taken in their official capacity. The Secretary-General acts as the gatekeeper for accused employees. He determines if, when, and how immunity will be waived. His office ultimately determines what avenue of accountability is appropriate and which courts should have jurisdiction in the situation. Due to privacy and due process concerns, these decisions are seldom made transparently, and the Secretary-General's decision is largely left unchecked. This paper will discuss the need for an independent international civil service and acknowledge the need for certain privileges and immunities. It will then outline the current legal framework for individual accountability in the United Nations and explain the role of the Secretary-General in this process. Understanding the basic infrastructure, it will then highlight some of the inconsistencies in practice and consider the merits and flaws with some of the current and proposed accountability avenues. The author will then offer two recommendations for a more consistent and transparent system.

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1. INDEPENDENCE

The origins of the international bureaucracy trace back to the League of Nations, which required its officials to act only for the organization.² The founders modeled the new system on the American and British government administrations, which require their national civil servants to refrain from overt displays of, and participation in, national or party politics. At the national level, bureaucrats are tasked with separating their role in the national government from their personal political and policy preferences. At the international level a civil servant's independence necessitates a prioritization of the international organization over an allegiance to the individual's home country.³

The U.N. Staff Regulations reaffirm the message found in those of the League of Nations, stating: "Staff members are international civil servants. Their responsibilities as staff members are not national but exclusively international."⁴ International civil servants are required to declare that they will "regulate [their] conduct with the interests of the United Nations only in view."⁵

From its inception, scholars acknowledged that true independence could create "a potential rivalry between the ties of an official with his institution and the ties of an official with his State."⁶ To preempt this conflict of interest, the International Civil Service Commission Standards of Conduct for the International Civil Service states: "[I]nternational civil servants must remain independent of any authority outside their organization. . . they should not seek nor

² Dag Hammarskjöld, *The International Civil Servant in Law and in Fact*, 26 Issue 3 EUR. J. INT'L L. 747, 750 (2015) ("The international civil service has its genesis in the League of Nations. . .").

³ Padma G. Shahani, *The International Civil Servants*, 27.2 THE INDIAN J. OF POL. SCI., 12, 12-25 (Apr.-June, 1966) ("The Secretariat being an international organization, its members owe their loyalty to that organization and not to their own states to which they belong.").

⁴ U.N. Secretary-General, *Secretary-General's bulletin: Staff Rules and Staff Regulations of the United Nations*, U.N. Doc. ST/SGB/2014/1 Regulation 1.1 (a) (Jan. 1, 2014).

⁵ U.N. Secretary-General, *Secretary-General's bulletin: Staff Rules and Staff Regulations of the United Nations*, U.N. Doc. ST/SGB/2014/1 Regulation 1.1 (b) (Jan. 1, 2014).

⁶ L.C. Green, *The International Civil Servant, His Employer and His State*, 40 Transactions of the Grotius Society 147, 147-148 (1954) ("Inherent in this idea of a totally independent service is a potential rivalry between the ties of an official with his institution and the ties of an official with his.").

should they accept instructions from any Government, person or entity external to the organization. . . International civil servants should be constantly aware that, through their allegiance to the Charter and the corresponding instruments of each organization, member States and their representatives are committed to respect their independent status.”⁷ True independence means freedom from the influence of all governments, not just that of the individual’s nation of origin.

2. FRAMEWORK FOR IMMUNITY

To remain outside of the influence of States and preserve the independence of the civil service, privileges and immunities are extended to both the international organization as a whole and the individuals who comprise it. These privileges and immunities are enshrined in Article 105 of the United Nations Charter, which says, “Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.”⁸ As diplomatic and functional immunity for international organization employees is not found in customary international law, only those States that consent through treaty or agreement are obligated to honor the dispensations given to international civil servants.⁹ The Secretary-General has the power to determine which groups of U.N. employees qualify for functional immunity, and has bestowed this privilege to “all members of the staff of the United Nations with the exception of those who are recruited locally and who are assigned to hourly rates.”¹⁰

These privileges and immunities include mechanisms to protect

⁷ U.N. International Civil Service Commission, *Standards of Conduct for the International Civil Service*, ¶8 (July, 2013), <http://icsc.un.org/resources/pdfs/general/standardsE.pdf>.

⁸ U.N. Charter, art. 105.

⁹ BENEDETTO CONFORTI AND CARLO FOCARELLI, *THE LAW AND PRACTICE OF THE UNITED NATIONS* 137 (5th ed. 2016) (“Since, as we have seen, no immunity is granted by customary international law, a non-Member State of the United Nations which is not bound by special treaty provisions, has no obligation to concede immunities or privileges to Secretariat officials.”).

¹⁰ U.N. Secretary-General, *Categories of Officials to which the Provisions of Article V and Article VII Shall Apply*, 1 U.N. Doc. A/16 (Oct. 16, 1946).

them from legal actions taken by the States.¹¹ Removing the organization and its employees from the sphere of the application of domestic law prevents them from being subject to the control of Member-States.¹² The United Nations employs staff from many different nationalities and assigns them to posts around the globe. This widely diverse geographic spread makes it likely that the civil servants will encounter a wide variety of domestic law. Granting them functional immunity from the purview of local courts and instead instituting internal policies may be seen as more uniform, consistent, and fair for the individual employees.¹³ Immunity must be affirmatively asserted; if not, the individual submits himself or herself to the jurisdiction of the court.¹⁴

However, immunity is nuanced; it is not a *carte blanche* to all civil servants for all illegal activities. International bureaucrats do not have full diplomatic immunity because the architects of the system viewed their role as being very different from that of a diplomat.¹⁵ The Convention on Privileges and Immunities states: "Officials of the United Nations shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity."¹⁶ It goes on to clarify, "Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the

¹¹ David R. Ruzie, *The Independence of International Civil Servants from Governments*, AUSIL INT'L L.J. 168, 169 (1998) ("The privileges and immunities should be used to assure the independence of the personnel by protecting them against legal actions or other measures that may be taken by member states of the organization against them.").

¹² CHITTHARANJAN AMERASINGHE, *PRINCIPLES OF THE INSTITUTIONAL LAW OF INTERNATIONAL ORGANIZATIONS* 272 (2nd ed. 2005) ("If the national law of the member states applied to relations between the organization and its staff, the courts of states would probably be competent to hear disputes. . . a situation which would have had drawbacks for the organization. It would then find itself subject to the control of members.").

¹³ *Id.* at 277.

¹⁴ *Id.* at 349.

¹⁵ Anthony J. Miller, *Privileges and Immunities of United Nations Officials*, 4 INT'L ORG. L. REV. 169, 178 (2007) ("It was therefore realized early on that the utilization of the full range of diplomatic immunity was problematic when applied automatically to the situation of an international civil servant whose role and functional needs were very different from that of a diplomat representing a particular State, under the control of which the diplomat remained.").

¹⁶ U.N. Convention on Privileges and Immunities, art. V section 18(a), adopted Feb. 13, 1946, 21 U.S.T. 1418 (entered into force Apr. 29, 1970).

immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.”¹⁷ It further pledges that “The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities, and facilities mentioned in this Article.”¹⁸

Ultimately the Secretary-General has the power to determine if the individual was performing in his or her official capacity, and if so, whether or not immunity should be waived. Immunity covers the individual’s functions “in connection with the Organization,”¹⁹ which includes more than just the official act itself; it includes all activities that are reasonably related to the official functions.²⁰ Some national courts disagree that the Secretary-General alone can make this determination, and they have held that domestic authorities may also determine if the accused official was acting within his or her sphere of employment.²¹ Immunity is not applicable to situations where the civil servant is acting in a private capacity. If the Secretary-General determines that the act in question was a private one, he will inform the investigators, claimant, or court that initially inquired about the immunity, that none exists.²² In theory, most criminal activities will not have a sufficient nexus to the individual’s role with the U.N., and no protections may be given, nor permission sought, from the organization for prosecution.

Immunity is granted for the benefit of the United Nations, not the individual.²³ Since the immunity is meant to protect the organi-

¹⁷ *Id.* at section 20.

¹⁸ *Id.* at section 21.

¹⁹ U.N. Charter art. 105, ¶ 1.

²⁰ Miller, *supra* note 15 at 193.

²¹ *Id.* at 197; citing *Westchester County on Complaint of Donnelly v. Ranollo*, 13 I.L.R. 168, 67 N.Y.S.2d 31 (City Ct. New Rochelle 1946) (a United Nations driver went above the speed limit while chauffeuring the Secretary-General. The police wrote him a speeding ticket and the Court refused to grant him official immunity without a determination by the United States State Department that he was acting in an official capacity); See also *People v. Coumatos*, 32 Misc. 2d 1085 (General Sessions Court, 1962). The Court determined that an inventory clerk at the United Nations was not immune from the grand larceny charges even though the crimes took place at the U.N. headquarters.

²² Miller, *supra* note 15 at 245.

²³ Convention on Privileges and Immunities of the United Nations, section 20,

zation and not to shield individuals from justice, the Secretary-General does not need to consult with the accused individual about waiving his or her immunity.²⁴ He is able to make that decision unilaterally. The Convention on Privileges and Immunities imposes a duty on the Secretary-General to waive immunity when immunity "would impede the course of justice and can be waived without prejudice to the interests of the United Nations."²⁵ This strong language should be understood to limit both the discretion of the Secretary-General and the safe haven of functional immunity. If immunity does apply, and the Secretary-General finds that it cannot, or should not, be waived, the United Nations is still bound to create an alternative mechanism for accountability and reparations.²⁶

To assist the Secretary-General in making these important determinations, the General Assembly created the Office of Internal Oversight Services (OIOS) in 1994.²⁷ The Secretary-General nominates, and the General Assembly approves the appointment of, the head of OIOS, who is the Under-Secretary-General.²⁸ OIOS is comprised of the Internal Audit Division, the Inspections and Evaluation Division, and the Investigations Division. Each of these divisions has a Director, who reports to the Under-Secretary-General's office.²⁹ The Under-Secretary-General operates independently from the Secretary-General, but is held accountable by his office.³⁰ OIOS states that its mandate is to "[promote] responsible administration of resources, a culture of accountability and transparency, and improved programme performance."³¹ The Investigations Division is responsible for investigating U.N. employees who are accused of

(Feb. 13, 1946).

²⁴ Miller, *supra* note 15 at 238.

²⁵ Convention on Privileges and Immunities of the United Nations, *supra* note 23.

²⁶ *Id.* at section 29(b).

²⁷ G.A. Res. 48/218 B, P 5 (Dec. 23, 1993), U.N. Doc. A/RES/48/218 (Aug. 12, 1994) (This concerns oversight of UN employees in managerial positions).

²⁸ "About OIOS", OFFICE OF INTERNAL OVERSIGHT SERVICES (Nov. 29, 2016), <https://oios.un.org/page?slug=about-oios> [<https://perma.cc/X539-59ZR>].

²⁹ Tamara A. Shockley, *The Investigation Procedures of the United Nations Office of Internal Oversight Services and the Rights of the United Nations Staff Member: An Analysis of the United Nations Judicial Tribunal on Disciplinary Cases in the United Nations*, 27 PACE INT'L L. REV. 469, 475 (2015).

³⁰ *Id.* at 475.

³¹ OIOS Mission and Mandate, OFFICE OF INTERNAL OVERSIGHT SERVICES (Nov. 29, 2016), <https://oios.un.org/page?slug=mandate> [<https://perma.cc/2YXM-7N99>].

breaching their duties or committing a crime. This division employs independently and professionally trained investigators to handle matters relating to “serious fraud, cases involving loss of life to staff or others, sexual abuse, and substantial violations of U.N. regulations”, among other criminal activities.³²

OIOS’s power to initiate an investigation has been delegated to the office from the Secretary-General.³³ Referral to OIOS is not mandatory, and the agency has discretion to choose the matters it investigates.³⁴ If the agency chooses to accept a matter for investigation, it reports its findings and recommendations to the Under-Secretary-General.³⁵ If the investigation uncovered evidence of criminal activity, OIOS can notify the U.N. Office of Legal Affairs and recommend a referral to domestic law enforcement.³⁶ OIOS is not responsible for the discipline of a U.N. employee. Its report and recommendations may be instrumental in the decision, but all disciplinary decisions are made by the Secretary-General.³⁷ The standard for the burden of proof for an internal U.N. investigation leading to disciplinary action is less stringent than that of a criminal proceeding: only “clear and convincing evidence,” rather than “beyond a reasonable doubt.”³⁸ For internal disciplinary measures, termination of employment is the strongest sanction the Secretary-General can impose. His office cannot imprison or infringe on the liberties of an individual; that power remains with the Member-States.

3. CURRENT PRACTICE

The Secretary-General and his sub-agents exercise a great deal of discretion over the investigatory, reporting, and disciplinary phases after an allegation has been made. If there is sufficient and

³² Shockley, *supra* note 29 at 479. (cases that would be referred to OIOS. No direct quote as within sentence)

³³ *Id.* at 486–487 (decision to take action against staff is at discretion of Secretary-General).

³⁴ *Id.* at 482 (discretionary powers of Secretary-General).

³⁵ *Id.* (the kind of action/responsibility taken on by Under-Secretary-General).

³⁶ *Id.* (the case of criminality and its effects).

³⁷ U.N. Secretary-General, Staff Rules and Staff Regulations of the United Nations: Rep. of Secretary-General, Art. X, Reg. 10.1(a), U.N. Doc. ST/SGB/2011/1 (Jan. 1, 2011).

³⁸ Shockley, *supra* note 29 at 544–545. (the standard of proof in disciplinary cases)

compelling evidence of a criminal act, the Secretary-General also retains the discretion to consult, inform, or liaise with a Member-State on the case. If the local authorities of the host State are aware of the misconduct, initiate an investigation, and petition for the waiver of immunity, the Secretary-General should waive immunity, if it would not injure the organization, and cooperate with the local authorities in the interest of justice. The Secretary-General also has the option of taking the OIOS report, recommendations, and evidence to the home State of the perpetrator and officially referring the case.

To comply with General Assembly Resolution 59/287, which required the Secretary-General to inform the organization of common forms of misconduct and their punitive consequences, the Secretary-General publishes an annual circular describing the disciplinary actions taken in that year.³⁹ In the circular, the Secretary-General outlines the "administrative machinery with respect to disciplinary matters," including his role and the protections in place for due process and procedural fairness.⁴⁰ To protect the privacy concerns of the individuals involved, neither their names nor their nationalities are listed, and their job titles will only be disclosed if it is necessary for a clear description of the misconduct.⁴¹ Each circulation lists all of the possible disciplinary actions available to the U.N. as an employer, the most severe being summary dismissal.

When there is strong evidence that an employee has committed a crime in the course of his or her duties, a broad summary of the act is included in the circular which states that the employee was dismissed. However, the summary does not usually include whether the case has been referred to a State for prosecution. For example, in the circular for the period of July 1, 2014–June 30, 2015, two seri-

³⁹ G.A. Res. 59/287, ¶ 16 (Apr. 21, 2005) ("Re-emphasizes also that the Office of Internal Oversight Services is the internal body entrusted with investigation in the United Nations.").

⁴⁰ U.N. Doc. ST/IC/2015/22 (Sept. 22, 2015) ("Staff regulation 10.1 (a) provides that 'the Secretary-General may impose disciplinary measures on staff members who engage in misconduct'.") *See also* U.N. Doc. ST/IC/2004/28 (July 26, 2004) ("Where the head of office or other responsible officer believes, following an investigation, that misconduct may have occurred, he or she refers the matter to the Assistant Secretary General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case."); U.N. Doc. ST/IC/2002/25 (Apr. 29, 2002) ("The purpose of the present circular is to inform staff members of the practice of the Secretary-General in exercising his authority in disciplinary matters under article X of the United Nations Staff Regulations.").

⁴¹ *Id.*

ous crimes are noted, but buried with all of the other, more perfunctory, infractions:

“A staff member used an official vehicle of the Organization to transport approximately 173 kilograms of marijuana. *Disposition*: dismissal.”⁴²

“A staff member stored pornographic material, including pornography involving a minor, on the staff member’s United Nations computer, distributed other pornographic material through the Organization’s e-mail system and failed to report that another staff member had sent the staff member inappropriate material through the Organization’s e-mail system. *Disposition*: dismissal”⁴³

Transportation of 173 kilograms (381 pounds) of illicit substances and distribution of child pornography are felonies in the United States that carry substantial jail time and are similarly penalized in many countries around the world.⁴⁴ While the U.N. internal investigation process is not equivalent to a criminal investigation, and a finding of culpability sufficient to result in dismissal does not require the same standard as a criminal conviction, the report makes no mention of a referral to a competent agency or government. The report does not name the country in which the alleged crime took place, nor does it identify the country of origin of the accused individual. From the outside looking in, there is no clear way to learn what, if any, accountability measures or criminal investigations were implemented. From 2004–2016 the annual circulars reported at least ten dismissals for child pornography, twenty-two for sexual assaults, including the rape of minors, and at least thirty-five for physical assault.⁴⁵ Additionally, the circulars noted approximately

⁴² U.N. Doc. ST/IC/2015/22, ¶ 37 (Sept. 22, 2015).

⁴³ *Id.* at ¶ 46.

⁴⁴ Drug Enforcement Administration, *Federal Trafficking Penalties* (2016); U.S. Department of Justice, *Citizen’s Guide to U.S. Federal Law on Child Pornography* (2016); Open Government License, *Drug Penalties* (2016); The Crown Prosecution Service, *Prohibited Images of Children* (2016); European Monitoring Centre for Drugs and Drug Addiction, *Penalties for drug law offences in Europe at a glance*, (2016) (Illustrating restricted behaviors and penalties in regard to drugs and child pornography).

⁴⁵ See U.N. Doc. ST/IC/2005/51 (Aug. 30, 2005); U.N. Doc. ST/IC/2006/48 (July 31, 2006); U.N. Doc. ST/IC/2007/47 (Aug. 31, 2007); U.N. Doc. ST/IC/2008/41 (Aug. 15, 2008); U.N. Doc. ST/IC/2009/30 (Aug. 19, 2009); U.N. Doc. ST/IC/2010/26 (Sept. 7, 2010); U.N. Doc. ST/IC/2011/20 (July 27, 2011); U.N. Doc. ST/IC/2012/19 (Sept. 6, 2012); U.N. Doc. ST/IC/2013/29 (Sept. 18, 2013);

101 case referrals to national governments but did not offer sufficient details on the cases referred or the recipient State.⁴⁶

As these annual circulars are publicly available, the press sometimes acts as an investigatory watchdog. After the Under-Secretary General published the 2015 circular, multiple press agencies reported on the content and contacted the U.N. for further clarification on the subsequent criminal investigations of the allegations of drug trafficking and distribution of child pornography.⁴⁷ When asked to comment, the U.N. spokesman Farhan Haq disclosed that the five individuals had been dismissed and repatriated with the intention that their host countries would investigate and prosecute. When asked further about accountability, he said, "While the United Nations can and does follow up with Member States, the national authorities concerned have the sole prerogative in determining what, if any, investigations or proceedings are initiated against the individuals."⁴⁸ He also admitted that after the referral is made, it is up to the State to communicate any updates to the United Nations.⁴⁹

Unfortunately, these stories are not unique; there have been a total of eight employees who have been listed as dismissed for similar offenses relating to child pornography since 2007, and there have been no reports detailing any criminal investigations initiated by any of the States.⁵⁰ The Under-Secretary report from July 1, 2007–June 30, 2008 detailed an account of an employee who downloaded child pornography to his work-issued computer and "persisted in such conduct even after being formally warned for misusing U.N.

U.N. Doc. ST/IC/2014/26 (Oct. 15, 2014); U.N. Doc. ST/IC/2015/22 (Sept. 22, 2015) (Illustrating cases of staff member sexual misconduct).

⁴⁶ *Id.*

⁴⁷ *Child Porn and Drugs Sees Five UN Staff Fired*, BBC NEWS (Oct. 30, 2015), <http://www.bbc.com/news/world-34683472> [<https://perma.cc/Z3U-C9XE>]; Joe Sandler Clarke, *UN Staff Circulated Child Abuse Images on Work Emails*, THE GUARDIAN (Oct. 29, 2015), <https://www.theguardian.com/global-development-professionals-network/2015/oct/29/un-staff-circulated-child-abuse-images-on-work-emails> [<https://perma.cc/MTT4-WBK5>]; Reuters Staff, *U.N. Staff Fired Over Child Porn, Moving Drugs in U.N. Vehicle*, REUTERS (Oct. 30, 2015), <http://www.reuters.com/article/us-un-crime-idUSKCN0SO24J20151030> [<https://perma.cc/26DK-D4AB>] (Illustrating cases that were reported by the press).

⁴⁸ Reuters Staff, *supra* note 47.

⁴⁹ *Id.*

⁵⁰ Clarke, *supra* note 47.

property.”⁵¹ There is no indication in the report as to why this individual received a warning about his pornographic viewing behavior before his ultimate termination and the others did not. Similarly, there is no indication as to whether the home State of this individual initiated an investigation or brought charges.

Watching and distributing child pornography through U.N. channels is egregious enough conduct to warrant outrage and cries for accountability from the outside world, but these are not the only crimes of a sexual nature outlined in the report. Credible allegations of sexual assault have plagued the United Nations for years and “sexual exploitation and sexual abuse” is a category of offenses in the Under-Secretary General’s annual circular.⁵² While these circulars cover a broad number of the U.N. staff, they do not disclose misconduct of those who participate in U.N. peacekeeping missions.⁵³

3.1. Peacekeeping Missions

In recent years, U.N. peacekeeping missions have been at the center of the conversation about employee sexual misconduct. Peacekeeping missions bring together a variety of people who enjoy different privileges and immunities based on their roles. All U.N. personnel working at the mission are colloquially termed “peacekeepers,” however there is a substantial distinction between the military components, the police, the locally recruited staff, and the international civil servants.

The military forces that operate as part of the peacekeeping mission do so under the direct supervision and authority of their home governments, known as troop-contributing countries. Their mandate comes from the U.N., but they operate under their traditional chain of command and do not purport to operate independently. Generally the troop contributing countries enter into a Memoranda

⁵¹ U.N. Doc. ST/IC/2008/41 (Aug. 15, 2008).

⁵² *Id.*

⁵³ Non-civilian peacekeepers are not the only group of U.N. temporary employees whose accountability is highly contested. Special Rapporteurs for the Human Rights Council are temporary experts who are expected to work independently from any national government. This Article is not able to fully analyze the debate surrounding their accountability mechanisms, as they are not international civil servants. For a robust account of this complex debate, see Philip Alston, *Hobbling the Monitors: Should U.N. Human Rights Monitors be Accountable?*, 52 HARV. INT’L L.J. 561 (2011).

of Understanding with the United Nations that stipulates that only they, the home countries, retain the ability to investigate and prosecute members of their military forces for crimes committed while on mission.⁵⁴ Here, unlike for other U.N. employees, there is a clear mandate for State responsibility for prosecution, removing members of the military peacekeepers from the reach of the Convention on Privileges and Immunities and placing them under the authority granted in the Memoranda of Understanding.⁵⁵ The Secretary-General is not responsible for investigating and waiving immunity for military personnel; he is confined to merely repatriating the accused offender. There are no mandatory obligations for the State to then report back to the United Nations about subsequent action taken on the case.

Non-military employees on the mission operate in a different structure. When the U.N. establishes a peacekeeping mission, usually pursuant to a Security Council resolution, it enters into a Status of Forces Agreement with the nation that will host the mission. This agreement accords functional immunity to all mission employees, even those who are locally recruited and paid hourly and are normally excluded from the protection of the Convention on Privileges and Immunities.⁵⁶ Functional immunity is equivalent to the immunity extended to international civil servants working outside of the peacekeeping space.⁵⁷ The Secretary-General and his specialized offices have the authority to investigate and determine whether or not immunity applies or should be waived. The nature of the immunities is often explicitly conveyed in the Status of Forces Agreement. The Status of Forces Agreement that established the U.N. peacekeeping mission in South Sudan reiterates that military forces may not be criminally investigated or brought to trial anywhere other than their home country.⁵⁸ It also specifies that the government of

⁵⁴ *Fact Sheet: Privileges and Immunities of the United Nations*, CODE BLUE (May 13, 2015), <http://www.codebluecampaign.com/fact-sheets-materials/2015/5/13/immunity> [<https://perma.cc/PBX3-9PG3>].

⁵⁵ *Id.*

⁵⁶ *Id.*; Frederick Rawski, *To Waive or Not to Waive: Immunity and Accountability in U.N. Peacekeeping Operations*, 18 CONN. J. INT'L L. 103, 108-109 (2002); Paul C. Szasz and Thordis Ingadottir, *The UN and the ICC: The Immunity of the UN and Its Officials*, 14 LEIDEN J. INT'L L. 867, 872 (2001).

⁵⁷ Rawski, *supra* note 56, at 110-111.

⁵⁸ The Status of Forces Agreement Between the United Nations and the Government of the Republic of South Sudan Concerning the United Nations Mission in South Sudan ("SOFA"), ¶ 51, (Aug. 8, 2011), http://www.un.org/en/peacekeeping/missions/unmiss/documents/unmiss_sofa_08082011.pdf

South Sudan could criminally prosecute a non-military employee at the mission if the Special Representative, a U.N. employee, authorizes the action.⁵⁹ This agreement clearly allows for local prosecution of U.N. employees once immunity has been waived, but it stipulates that the South Sudanese must conduct the legal process “in accordance with international standards of justice, fairness and due process of law, as set out in the International Convention on Civil and Political Rights, to which South Sudan intends to become a Party”.⁶⁰ Of course, the Secretary-General via the Special Representative can decline to waive immunity, denying local jurisdiction, and can choose to repatriate the bad actor instead. If the individual is repatriated with his immunity intact, he will not face a criminal investigation or prosecution in his home country.

4. POTENTIAL ACCOUNTABILITY FRAMEWORK

There is a substantial debate as to whether prosecution by the home country or the host country is better. The General Assembly has attempted to tackle this complex issue in the context of the peacekeeping missions through special committees and a “Group of Legal Experts”. The experts and the Member-States published multiple reports and passed several resolutions condemning sexual abuse and exploitation and recommending that culpable individuals be held accountable.⁶¹ In 2008, the Sixth Committee of the General Assembly met to discuss the legal aspects of accountability for missions.⁶² Subsequently, the General Assembly passed resolutions encouraging States to extend their criminal jurisdiction for crimes committed by their nationals abroad on a U.N. mission and to cooperate with other Member-States and the U.N. to share information and pursue perpetrators.⁶³

[<https://perma.cc/5UNY-WMZH>].

⁵⁹ *Id.*

⁶⁰ *Id.* at ¶ 51.

⁶¹ See generally Rep. of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations, U.N. Doc. A/60/980 (Aug. 16, 2006); G.A. Res. 64/110 (Jan. 15, 2010).

⁶² Marco Odello, Tackling Criminal Acts in Peacekeeping Operations: The Accountability of Peacekeepers, 15 J. CONFLICT & SEC. L. 347, 354 (2010).

⁶³ Odello, *supra* note 62; G.A. Res. 62/63 (Jan. 8, 2008); G.A. Res. 63/119 (Jan. 15, 2009).

The Sixth Committee of the General Assembly convened again to discuss this subject in 2014. The States reiterated the importance of prosecuting wrongdoers to protect the image and the mandate of the organization and acknowledged large gaps in accountability.⁶⁴ South Africa recognized that some countries preferred that the host countries prosecute locally, but, speaking for the Africa Group, disagreed and advocated for the perpetrator to return to the home country for prosecution.⁶⁵ Thailand suggested that these matters should be explicitly delegated through treaties and agreements on mutual legal assistance in criminal matters between host States and troop-contributing States.⁶⁶ Norway and Finland highlighted that the U.N. rarely, if ever, receives feedback or subsequent information about criminal action on cases it refers back to the home country of the perpetrator.⁶⁷ Agreeing, the United States suggested a more formal feedback system to receive and record information about referrals.⁶⁸ Several states mentioned the potential for a future convention defining State responsibility in this context.⁶⁹ This dialogue identified the States' disagreements over the best direction for criminal liability, especially for sexual crimes committed at U.N. missions, and substantial institutional gaps and failings existing in the current system.

While individual accountability is generally discussed in the context of sexual crimes in U.N. missions, these conversations can, and should, be extended to a broader system of criminal accountability for all U.N. employees. The current system is ad hoc, lacks transparency, and is fraught with gaps that allow many employees to escape proper investigation and prosecution. For employees who enjoy functional immunity and who are not covered by an international agreement between the U.N. and a Member-State that dictates criminal jurisdiction, the Secretary-General has the power to decide

⁶⁴ Meetings Coverage, Criminal Accountability of United Nations Officials, Experts on Mission Critical to Organization's Credibility, Legal Committee Stresses in Debate, GA/L/3485 (Oct. 22, 2014), <http://www.un.org/press/en/2014/gal3485.doc.htm> [https://perma.cc/CA3F-8PA8].

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* Finland cited that out of sixty-two referrals, the Office of Legal Affairs had only received subsequent information about five cases.

⁶⁸ *Id.*

⁶⁹ *Id.*

to waive immunity, to order the employee to repatriate, or to cooperate and contribute to the investigation and prosecution of a local government. Many of these determinations are made on a case-by-case basis without much transparency. The next section of this Article will explore some of the potential avenues for criminal accountability that could be utilized in the context of international civil servant misconduct, specifically home State prosecution, host State prosecution, an independent U.N. tribunal, or the International Criminal Court (ICC).

4.1. Prosecution in the Home Country of the Accused Individual

Even though international civil servants pledge independence from their countries of origin when they take their place as employees of the United Nations, their countries of origin have an interest in the due process and fair treatment of their citizens. Many of the most egregious crimes occur in developing or conflict-prone nations that have a fledgling or fragile judicial system. They may not be able to investigate and prosecute the individual in a way that comports with international standards of justice.⁷⁰ While a dysfunctional justice system may cause problems with local prosecution, it can also complicate the extradition process of the accused individual. Extradition agreements generally require that the conduct in question be criminal in both nations. In a country with a weak or developing criminal code, the requisites for extradition and legal assistance may not be met if there are major inconsistencies between the penal codes in the corresponding countries.⁷¹

To be able to prosecute a crime that occurred extraterritorially, States would be required to amend their penal code to accommodate a new category of crimes. Countries may be hesitant to extend criminal liability to all nationals who commit crimes abroad. For example, in American jurisprudence, there is a presumption against extraterritoriality.⁷² Courts will look to see if Congress explicitly included an extraterritorial reach in the criminal statute before agreeing to convict or uphold a conviction based on a crime committed abroad. Generally, when foreigners commit crimes in other

⁷⁰ Odello, *supra* note 62, at part 6.

⁷¹ *Id.*

⁷² *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010).

countries, they are left to the domestic criminal system. This concern could be remedied by specific language limiting the extraterritorial scope to bureaucrats in international organizations, but this could conflict with some countries' principle of equal treatment before the law.⁷³ Many States have taken this step in relation to crimes committed by their nationals in a peacekeeping capacity.⁷⁴ Depending on the wording, these statutes could also apply to nationals working as international civil servants outside of the peacekeeping context, or revisions could be made to expand their scope.

The United Nations does repatriate dismissed nationals, who are accused of crimes, to States that have already enacted such laws. In 2015 the organization repatriated the four individuals dismissed for viewing and distributing child pornography, and the individual accused of trafficking drugs in a U.N. vehicle with the intention that the home States would investigate and prosecute them.⁷⁵ The U.N. does not publicly disclose the nationalities of the disciplined employees, preventing external watchdog groups from following up with the home States and investigating the accountability mechanisms used in those situations. Based on statements made by Member-States and non-governmental organizations, it appears that more often than not, States do not relay information about subsequent accountability measures based on U.N. referrals.⁷⁶

4.2. *Prosecution in the Host Country where the Alleged Crime Occurred*

In certain situations, the Secretary-General will waive immunity and cooperate with the investigation of the authorities in the host

⁷³ Odello, *supra* note 62 at part 6.

⁷⁴ See, e.g., G.A. U.N. A/69/210 (2014). Colombia reported that it had sufficient extraterritorial provisions in its criminal code to facilitate the investigation and prosecution of a national who commits a crime abroad and who has not been charged by the local jurisdiction. Colombia also noted that it has incorporated evidentiary laws that will allow it to cooperate with U.N. agencies in investigating and collecting evidence for the charges. El Salvador made similar admissions.

⁷⁵ See Reuters Staff, *supra* note 47.

⁷⁶ GA/L/3485 *Criminal Accountability of United Nations Officials, Experts on Mission Critical to Organization's Credibility, Legal Committee Stresses in Debate* (Oct. 22, 2014) <http://www.un.org/press/en/2014/gal3485.doc.htm>; *The Problem: Impunity for Sexual Exploitation and Abuse by UN Peacekeeping Personnel*, CODE BLUE CAMPAIGN (Nov. 17, 2016), <http://www.codebluecampaign.com/the-problem> [<https://perma.cc/FSX5-K26E>].

country. As the main U.N. headquarters are located in the United States and Switzerland, the criminal charges will often arise in those jurisdictions. Prosecution in either the United States or Switzerland probably will not raise concerns for the United Nations about due process, procedural fairness, or international standards of justice, as compared to other jurisdictions, due to the size, reputation, and stability of their legal systems. The Secretary-General has, on many occasions, taken disciplinary action against an employee, decided against repatriation of the individual, and cooperated with the local criminal investigation. One high profile example occurred in 2005, when investigators and prosecutors in the Southern District of New York charged two U.N. employees with conspiracy to launder money for their involvement in the Iraqi oil-for-food scandal.⁷⁷ It remains unclear what criteria the Secretary-General considers in making his decision to support local efforts to investigate and prosecute instead of repatriating a dismissed employee for criminal proceedings.

There are several benefits to investigating and prosecuting where the crime occurred. First, it allays concerns that the international bureaucrats create a separate class of people who are above the local laws.⁷⁸ Subjecting them to the local legal system, when it does not harm the interests of the organization, allows the host State to maintain a consistent standard for criminal behavior. Especially for certain crimes, those that have local victims, engaging in the legal system of the affected community can be better in terms of restorative justice. This type of justice is not meant to punish the wrongdoer, but rather to restore the dignity of the affected community. Effective restorative justice requires a proximity or bond between the community and the adjudicating body.⁷⁹ A local procedure may restore trust in the legal system and allow victims of crimes to see that reporting crimes of international actors results in some form of

⁷⁷ *United States v. Kuznetsov*, 2007 U.S. Dist. Lexis 50653 (S.D.N.Y. 2007); Stolen Asset Recovery Initiative, THE WORLD BANK, UNODC (Nov. 17, 2016), <http://star.worldbank.org/corruption-cases/node/18455> [<https://perma.cc/J29W-KLH2>].

⁷⁸ Wolfgang Munch, *Wrongdoing of International Civil Servants – Referral of Cases to National Authorities for Criminal Prosecution*, 10 MAX PLANCK Y.B. U.N. L. 71, 79 (2006); *People v. Coumatos*, *supra* note 21, at 1089 (expressing concern that granting widespread immunity from local jurisdiction would create “a large preferred class of people within our borders who would be immune to punishment” and would be “contrary to our sense of justice.”)

⁷⁹ William Burke-White, *Regionalization of International Criminal Law Enforcement: A Preliminary Exploration*, 38 TEX. INT’L L.J. 729 (2003).

accountability. When the victims are more removed from the justice system, it may be difficult for them to assess whether reporting the crime is worth the perceived risk.⁸⁰

Granting local government authority to act may expedite and improve the efficiency of the process. When the evidence, witnesses, victims, and perpetrator are concentrated in one country, that State's authorities are better situated to efficiently proceed. They will not need to take the time or resources to relocate victims or witnesses, ship evidence while maintaining proper evidentiary procedures, or compensate as much for the language and culture barrier.⁸¹ The two jurisdictions with the highest number of U.N. personnel, Switzerland and the United States, have highly respected judicial systems that are well equipped to handle, in an effective manner, most, if not all, crimes that would arise. Integrating these cases into competent local jurisdictions could prove cost effective for the United Nations, and due to the limited number of cases, would probably not be an overwhelming financial burden on the domestic legal systems.

Advocates for prosecution in the host country assert that this is the accountability measure that is the most respectful of State sovereignty: a principle that is fundamental to the United Nations, and that can only be infringed upon in very particular, exigent circumstances.⁸² If a host State has a dysfunctional legal system, they argue that it should enter into an agreement with the U.N. to ensure a criminal procedure that respects the rights of the accused.⁸³ This voluntary reassignment of prosecutorial responsibility maintains the State's sovereignty interests, while safeguarding uniform accountability.

⁸⁰ *A Practical Plan to End Impunity for Peacekeeper Sexual Abuse*, CODE BLUE CAMPAIGN (October 13, 2016), <http://www.codebluecampaign.com/press-releases/2016/10/13> [<https://perma.cc/7ZTM-GKWG>].

⁸¹ Kelly Askin, *Global: Ending Impunity for Crimes Committed by UN Peacekeepers*, INTERNATIONAL BAR ASSOCIATION (Jun. 17, 2016) <http://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=cebc5f69-a238-49bb-b85a-5e8d878fe485> [<https://perma.cc/25U9-JJD3>].

⁸² Odello, *supra* note 62 at part 6(B).

⁸³ *Id.* (discussing the Global Legal Experts' opinions in UN Doc A/59/710 para. 18).

4.3. *Investigation and Prosecution by an Independent UN Tribunal*

The United Nations has expressed hesitancy, and even an unwillingness, to take on a judicial or prosecutorial role towards its employees.⁸⁴ OIOS, the branch responsible for the investigations into the most serious forms of employee misconduct, can only make a recommendation to the Office of Legal Affairs for the case to be referred to a national government for further action.⁸⁵ The U.N. even denies itself the ability to fill the jurisdictional gap that occurs when the host State is unable to prosecute and the home State lacks extraterritorial jurisdiction, admitting that these kinds of gaps would allow a perpetrator to escape accountability.⁸⁶ “[T]he Secretariat cannot hold a person criminally accountable. The Secretariat cannot conduct a criminal investigation [. . .] Nor can the Secretariat prosecute an alleged offender. In the absence of an executive mandate where the United Nations is mandated to have law enforcement and prosecutorial powers, such as in Kosovo [. . .] and Timor-Leste [. . .] the exercise of criminal jurisdiction remains the responsibility of Member States.”⁸⁷ This language recognizes the U.N.’s current inability to exercise criminal authority over these individuals. However, it also acknowledges the fact that the U.N. has the capacity to engage in these judicial procedures when it has the authorization to do so. If enough political will existed, an independent U.N. tribunal specializing in criminal prosecution of international civil servants could be established, but the political capital would have to be quite substantial.

The U.N. could establish both civilian and military tribunals staffed by professional judges and prosecutors.⁸⁸ In the peacekeeping context, legal professionals who share the nationality of the troops in question could staff the court.⁸⁹ Having its nationals running the court, and not just standing before it, may engender more support from the troop-contributing countries. These tribunals would be local, facilitating access to the evidence and the victim. The U.N. would also be able to ensure that the judges had proper

⁸⁴ G.A. U.N. A/62/329 (2007) para. 16.

⁸⁵ Shockley, *supra* note 29 at 482.

⁸⁶ G.A. U.N. A/62/329 (2007) paras. 17–19.

⁸⁷ G.A. U.N. A/62/329 (2007) para. 16.

⁸⁸ Askin, *supra* note 81.

⁸⁹ *Id.*

training on sensitive issues such as gender violence and sex crimes.⁹⁰ To establish a cohesive and consistent independent legal system, the U.N. would have to determine what law it would apply; the Staff Rules and Regulations that currently govern employee conduct is not a criminal code and would not be applicable. Efforts would need to be taken to create a code that comports with international standards of justice and many of the international human rights treaty obligations.

Another alternative option could be a hybrid tribunal that would be a joint venture between the United Nations and the host State. This cooperation would allow for a local prosecution that utilizes the expertise of the international community and comports with international standards of due process and justice.⁹¹ The U.N. has engaged in several hybrid tribunals in the past, including the Special Court for Sierra Leone and the Extraordinary Chambers in Cambodia.⁹² The U.N.'s ability to establish such a tribunal would depend on the consent of the host State, acquiescence of the Security Council, and funding from other Member-States.⁹³ As these hybrid tribunals have proved to be very expensive to establish in the past, the Member-States would have to determine whether the benefits from a hybrid structure would outweigh the financial burden of creating it. This option would most likely only be feasible in a developing nation that experiences widespread misconduct from international civil servants in its jurisdiction.

A third tribunal possibility would be one that is completely independent from the United Nations. The Code Blue Campaign, a non-governmental organization (NGO) advocating for greater accountability for peacekeepers, advocates for an international legal entity that specializes in certain types of criminal cases, funded directly by Member-States.⁹⁴ The tribunal would be located in the country where the crime took place and would employ impartial

⁹⁰ *Id.*

⁹¹ Odello, *supra* n. 62 at part 6(c).

⁹² *Id.*

⁹³ See e.g. S/Res/1315 (Aug. 14, 2000) (Requesting that the U.N. negotiate with Sierra Leone to create a special court.). Sierra Leone later consented to the Court in an agreement with the U.N, and the court was born.

⁹⁴ *A Practical Plan to End Impunity for Peacekeeper Sexual Abuse*, *supra* note 80 at 2-3 (Code Blue Campaign introduces a solution to the problems that exist within the UN system for civilians).

members of the international and national police and judicial communities.⁹⁵ These tribunals would receive the referrals and cooperate where possible with the home States.⁹⁶ The NGO argues that this system would remedy two major faults in the current system: it would avoid the conflict of interest that exists when the U.N. polices itself, and it would introduce a consistent standard of accountability that would restore the reputation of the United Nations as a bastion for human rights.⁹⁷ While this NGO's mission is specifically targeted at establishing reliable accountability measures for peacekeepers, the critiques and arguments it makes could easily be applied to the broader international civil servant community.

4.4. *International Criminal Court Jurisdiction Over International Civil Servants*

The United Nations was instrumental in the establishment of the International Criminal Court (ICC), and the Secretary-General and the General Assembly have encouraged States to ratify the Rome Statute and participate in the process.⁹⁸ This would seem to recommend cooperation between the organization and the Court. If a situation arose in which a U.N. employee was accused of a crime that fell within the ICC mandate, immunity should not apply to shield him or her from the jurisdiction of the Court, as the actions should not be connected to the individual's official functions.⁹⁹ If the Secretary-General determines that immunity does apply in that circumstance, he should waive it. Some scholars suggest that a waiver of immunity is not necessary because Article 27 of the Rome Statute dictates that the Statute should "apply equally to all persons without any distinction based on official capacity. . . Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the

⁹⁵ *Id.* at 3.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Paul C. Szasz and Thordis Ingadottir, *The UN and the ICC: The Immunity of the UN and Its Officials*, 14 LJIL 867, 875 (2001) (comments on the fact that these institutions were established under the auspices of the Rome Statute).

⁹⁹ *Id.* at 880-881 (crimes committed by UN employees should not relate to their function).

Court from exercising its jurisdiction over such a person.”¹⁰⁰ As the United Nations is not a party to the Rome Statute, it is unclear that it would be obligated to waive immunity of its employees to comply with this provision. However, arguments can be made as to the normative merits of such a waiver.

Despite the serious nature of some of the crimes committed by U.N. employees, the majority of the criminal infractions lay far outside the current purview of the International Criminal Court as defined in the Rome Statute. Even some of the most egregious crimes committed by U.N. employees in conflict zones lack the requirement of being “committed as part of a widespread or systematic attack.”¹⁰¹ There are exceptional cases that would seem to fall within the jurisdiction of the Court. In 1994 during the Rwandan genocide, a U.N. employee hired to protect other U.N. workers was accused of participating in the murders of thirty-two people, including several of his colleagues.¹⁰² He was accused of personally shooting two people. Twenty-four witnesses corroborated these allegations, yet he never faced prosecution.¹⁰³ In fact, he went on to hold several more U.N. posts around the world.¹⁰⁴

Even if the alleged crime fell under the mandate of the ICC, or the prosecutors were able to re-interpret some of the subject matter restrictions in the Rome Statute, there is strong State opposition to the prosecution of their nationals in the ICC. While this has mostly been discussed in the peacekeeping context and more specifically in relation to the military contingents, it seems unlikely that these States would drastically change their position for their non-military nationals. In 2002, the Security Council, led by the United States, unanimously passed resolution 1422, exempting peacekeeping troops from countries not party to Rome Statute from ICC jurisdiction.¹⁰⁵ While the Security Council refused to renew the resolution

¹⁰⁰ Rome Statute of the International Criminal Court, art. 27(1-2) (Jul. 19, 1998); Szasz and Ingadottir, *supra* note 98 at 881.

¹⁰¹ Rome Statute, *supra* note 100, at art 7; Odello, *supra* note 62 at 370-373 (the crimes of UN employees are not being policed by the body itself and are not seen as UN issues of adjudication).

¹⁰² Jane Perlez, *Rwandan Accused in Genocide Wins Suit for U.N. Pay*, NEW YORK TIMES, (Aug. 8, 2004), http://www.nytimes.com/2004/08/08/world/rwandan-accused-in-genocide-wins-suit-for-un-pay.html?_r=2 (showing what the UN employee was accused of, and the effect of the accusation.).

¹⁰³ *Id.* (news article shows that UN employee was never prosecuted).

¹⁰⁴ *Id.* (specifically showing that the UN employee kept his job).

¹⁰⁵ S/Res/1422 (July 12, 2002).

in 2004, it still marks a strong intent of one of the permanent five members to keep its citizens outside of the reach of the ICC.

5. RECOMMENDATIONS AND CONCLUSION

The current accountability system for international civil servants is riddled with inconsistencies: for the same act U.N. employees are locally prosecuted, repatriated for criminal proceedings, or simply fired without being criminally investigated.¹⁰⁶ Erratic practice and ex-post decision making about proper accountability avenues have led to jurisdictional gaps that hinder clear accountability. Given the framework and practice discussed in the earlier sections of this paper, the author would like to recommend enhanced transparency and consistency through a published policy that determines the prosecutorial responsibility ex-ante, and the dissemination of more detailed information about alleged crimes and the responsible jurisdiction.

The Secretary-General should promulgate an official policy that outlines, and states the rationale behind, specific situations in which his office will repatriate employees or cooperate with local prosecution efforts, or refer to a separate tribunal. The scenarios listed do not need to be exhaustive, but should illustrate the proffered rationale, allowing for a predictable and consistent practice to develop. Articulating a reasoned plan ex-ante would close some of the jurisdictional gaps identified in this paper by clearly delegating responsibility for the individual.

It is not necessary, and may not be the best practice, for the United Nations to choose one accountability avenue over another one for all cases. There may be certain instances of misconduct that are most efficiently dealt with in local courts, and others that are best resolved in an independent tribunal or in the individual's home country. A full analysis of possible scenarios and a detailed plan for consistent accountability are outside the scope of this paper; however an example of a policy could be the following: Employees working at headquarters who commit crimes in those jurisdictions

¹⁰⁶ Compare the individual dismissed in 2008-2009 for viewing and distributing child pornography who was prosecuted locally with the individuals terminated for the same act in 2014-2015 who were repatriated for criminal investigation. ST/IC/2009/30; ST/IC/2015/22.

will be referred for local prosecution, while those working at peace-keeping missions will be repatriated or tried in a local hybrid tribunal if one is especially designed for the mission. Preferencing local investigation and prosecution over repatriation may help maintain the necessary independence of the international bureaucracy by removing an employee's incentive to benefit his or her nation of origin in hopes of preferential treatment upon repatriation.

Another important transparency measure that the Secretary-General should implement is to release specific details about all criminal referrals, including the nature of the crime and the country responsible for further investigation. This information could easily be included in the annual circulars, or the office could publish a separate report. Making this kind of information publicly available would allow civil society and interested parties to act as a watch dog and pressure Member-States to follow through on their investigatory obligations. Given that OIOS is not a body with prosecutorial authority, and that its decisions in disciplinary matters do not require as high of a burden of proof as traditional criminal proceedings, the Secretary-General may have an interest in keeping the identity of the dismissed employee private to protect the individual's due process rights. Ultimately the name of the alleged criminal is not imperative for better accountability.

The United Nations occupies a position of high moral standing, from which it monitors, reviews, and recommends instrumental changes for Member-States. This position has been tarnished by the reports of criminal acts committed by the organization's employees. While it is unreasonable to expect that all of the U.N.'s 44,000 employees exemplify perfect behavior, it is reasonable for the international community to demand that the U.N. institute a consistent and transparent accountability system to ensure proper criminal investigations and prosecutions take place after the individual leaves the organization. Given the current piecemeal framework, the author posits that this goal could be achieved through publishing a detailed policy that allocates responsibility for criminal action *ex-ante*, and by disclosing further details about specific crimes that would allow the press and civil society to follow-up on the cases and motivate States to fulfil their responsibilities.