The UN's Role in The Institutional Abuse of Children: Wronged or Wrongdoer?

https://www.e-ir.info/2022/03/30/the-uns-role-in-the-institutional-abuse-of-children-wronged-or-wrongdoer/

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The question of peacekeepers behaving badly is hardly news: some would say it was not even news in 1993 when UN Special Representative to Cambodia, Yasushi Akashi, faced accusations of peacekeepers sexually abusing local people and responded 'boys will be boys'. And there is some progress: since 2017 the present UN Secretary-General, António Guterres, has, for example, shown consistent and quite public commitment to addressing this issue. But it is also true to say that despite many years of the UN's 'zero tolerance' policy, sexual exploitation and abuse (SEA) and other misconduct perpetrated by peacekeepers is still making headlines with monotonous regularity. Indeed, though they provide a useful point of focus for this discussion, such conduct is certainly not confined to uniformed peacekeepers (Alexander and Stoddard 2021; Parker 2021; Westendorf and Searle 2017; Durch et.al. 2009; Csáky 2008).

Of course, responding to such matters is complex and complicated in any environment, and quickly becomes convoluted for the UN. Despite having a separate legal personality under international law, international organisations remain at least somewhat beholden to their constituent members – the states which enable them as an entity, and empower that entity in practice. There are also practical limitations to what response is possible. In common with other international organisations, the UN's institutional immunities are intended to be an enabling device but, in effect, can work to undermine accountability (Donais and Tanguay 2021), or allow impunity (Jennings 2017; Pillinger et.al. 2016). The UN response to misconduct thus tends to devolve into a case-focussed reaction, which is usually about what an individual is alleged to have done, whether that is punishable by law, and, if so, punishable by whom (just for a few examples, see: Westendorf 2020; Morris 2021; Westendorf and Searle 2017; Kihara-Hunt 2017; Smith 2017; Odello and Burke 2016; Hamilton-Martin 2015; York 2015).

Without rehearsing a much larger debate, here it is important to note that peacekeeping operations are provided with their mandate by a decision of the UN Security Council (Koops et.al. 2015; Doyle and Sambanis 2006; Durch 2006). In effect, this legal basis for authorising peacekeeping operations means that they function as a subsidiary organ of the Security Council, as highlighted in the UN response on SEA – Security Council Resolution 2272, for example (see also Neudorfer 2016). This does *not*, however, give the UN direct legal control of troops deployed in peacekeeping under the UN's aegis. Scholarship on peacekeeper misconduct has also served to highlight a wide range of issues created by this always complex, and often convoluted, chain of command (for instance, see: Di Razza 2020; Lundgren et.al. 2021; Williams and Bellamy 2021).

At best, the current understanding of these arrangements seems to leave the UN at the mercy of what individual states are prepared to do in response to such misconduct per se; a more cynical view would say that this enables UN inaction, as well as side-stepping (more) calls for its reform (on reform, see: Müller 2016). On the whole, it seems fair here to suggest two things: firstly, that the effect has been to allow the UN to deflect the largest part of the response to others; and secondly, that related debate then crowds out consideration of more embracing options for what the UN might itself do in response – distinct from, and in addition to, whatever states might do.

There is, in any case, a profound stumbling block to a focus on individual conduct ever proving to be enough. Armed forces are not, by any means, alone in this (as the #MeToo movement has shown) but the fact is that armed forces,

as a genre of organisations, have a rather unlovely – and unfinished – history on related issues over the last several decades.

To take just one example, in the 1990s the US Navy faced the indignity of a running 'front page' drama about the 1991 Tailhook Association Convention. The episode centred on the command chain's failure to act in response to allegations about the sexual assault of scores of women and some men (for a synopsis, see Winerip 2013). Pivotally, since then the US armed forces have seen quite the litany of such scandals, and plenty of adverse public attention, but the institutional response has proven so inadequate that a major independent inquiry has now been conducted (Independent Review Commission on Sexual Assault in the Military 2021). I hasten to add that attention should *not* turn next to those armed forces which are less well-resourced, and so some – but not I – would assert are consequently less well-disciplined and thus more prone to poor conduct standards. In fact, there is no shortage of similar examples from across the developed world in relation to SEA (for example, see: Townsend 2021; Honderich 2021; Cecco 2021; Stayner 2021) and misconduct more broadly (for example: Horne et.al. 2020; Knaus 2020a; Knaus 2020b; DePalma 1997).

This all speaks to the contrary of the time-honoured logic of 'it can't happen here' (in this case, 'it can't happen in proper, professional armed forces'). Accordingly, such organisations ought not be presumed to always be reliable in taking enough action on SEA and associated misconduct – whether this misconduct arises at home or when deployed for UN peacekeeping operations. In turn, this informs the reason to refer herein to 'those who are seen to represent the UN'. Peacekeepers are emblematic of the difficulty arising when those (legally) controlled by one actor, their state, are in a position to harm the reputation of the actor on whose behalf they are carrying out some activity, in this case the UN. Being in uniform, they are readily recognised as representatives of some organisation, but the link to the UN is self-evident and memorable in the blue helmet or beret worn by UN peacekeepers.

Thus, while there is an important ongoing scholarly debate about the legal question of 'effective control' over peacekeepers (for example: Morris 2021; Di Razza 2020), my concern is this: those allegedly wronged by peacekeepers, and, I suggest, wider civil society, are unlikely to draw a bright, clear line between the state and the UN, so such acts will more likely have the effect of *bringing both into disrepute*. This further suggests a question is lurking on the UN's horizon about perceptions of the UN's role in such matters: if the organisation will not do enough to address such wrongs, could the UN's response itself come to be seen as wrong-doing?

Accordingly, a brief look at scholarship on institutional abuse of children will go towards illustrating why, when those seen to represent it are said to have done wrong, the UN should more closely consider such cases to find better responses, including direct action.

How does institutional child abuse figure in the need for a response?

Beyond known issues of dealing with misconduct as sketched above, a newer conundrum relates to the consequences arising if the *institutional response* to cases involving SEA of children is itself found to be materially lacking. This question has been probed in relation to, for example, various churches (Brown 2021; BBC News 2020; Al Jazeera 2021; BBC News 2022) and other organisations (Tuerkheimer 2021; Kennedy and McCarthy 2021; Kelly et.al. 2020; Chutchian 2022). The deepening travails of such institutions point to a new dimension of these challenges in cases involving children: the possibility that a form of child abuse may arise, in effect, from an institutional response to alleged wrong-doing that falls short.

The phrase 'institutional abuse' is now used in scholarly writings fairly consistently to mean abuse that occurred in an institutional setting (Daly 2014). The term, 'institutional' is taken broadly as non-familial, of the kind of setting central to the recent Royal Commission inquiry into institutional responses to child sexual abuse in Australia (Wright and Swain 2018). Various countries have found that the issue is not confined to one place or even one organisation (Sköld 2013, 2016; note the diversity of case studies addressed by the Royal Commission, including the Australian Defence Force).

Part of the signature of such acts is abuse of institutional power (Death 2015), which itself comes in various forms,

but commonly arises if 'adults tend to place the interest of institutions … above the protection of children' (Hamilton 2017). This includes failing to act – or to act sufficiently – in the face of relevant reports, or, indeed, failing to provide a reasonable mechanism to elicit reports in the first place and/or then being seen to treat 'whistle-blowers' inappropriately.

Obviously, by its Purposes given in the UN Charter, the UN is *not* primarily about caring for children in the way that the operator of an orphanage or other youth services organisation is usually taken to be. It seems abundantly clear, however, that the UN implicitly takes on a non-trivial role in, even if not an element of legal responsibility for, avoiding harm to children by the actions of those seen to represent the UN – noting that harms are not limited to those implied by a strict understanding of SEA (Westendorf and Searle 2017; see also Horne et.al. 2020).

Public inquiries have served to highlight a related and regrettable reality: that failure to act is not infrequently some kind of a 'knowing failure'. That is, the first organisational response is not reliably proactive in addressing the matter to clear and positive effect, or even in recognising that police investigation without delay is very likely the appropriate response, at least when potentially criminal acts are involved. The organisational response more usually varies from 'mere' ineptitude in institutional leadership and consequent delays, to denial and/or obfuscation towards protecting the organisation's name, to wilful cover-ups, complicit acts, retributions against whistle-blowers, and so on.

There is a related issue for the command chain in the case of uniformed personnel, which very much comes home to roost in deployments – including UN peacekeeping operations. The first institutional response to alleged misconduct is, seemingly inevitably, to assert that the leadership was unaware of such terrible doings – but one must question this very seriously when operational deployments involve unusually close quarters for living and working. There are few secrets in a barracks room, but none at all in a tent in an operational compound, so an assertion that no misconduct was 'seen' in those circumstances should almost instantly be considered threadbare, even tantamount to a failure by those charged with supervising peacekeeping personnel for which they should be required to account.

One could attempt to map the UN response since Akashi accordingly, and, despite some positive developments (such as the Zeid Report in 2005), one would very likely find evidence for each form of failure or ineffectiveness in the UN's institutional response (not least, in the poor treatment of whistle-blowers – see Hamilton-Martin, 2015). That much said, perhaps here it is enough to notice that the ugly headlines continue largely unabated – much as those involving other institutions did before a culminating scandal.

Thus, quite distinct from the challenges that persist in testing the culpability of a peacekeeper alleged to be a wrong-doer, and regardless of what any particular state does in its own legal realm, the question prompted by the debate on institutional abuse of children is as to whether the *UN response* is itself adequate, sufficient, and complete. In future, what could it mean if the UN is seen as failing to act, or act sufficiently, in the face of ongoing instances of SEA of children? Put another way, *could lack of direct UN action on SEA of children be seen to morph into wrong-doing by the UN?*

How to avert (perceptions of) wrong-doing by doing more in response to SEA

Peacekeeping remains a flagship activity of the UN, despite the level of activity ebbing somewhat since the highwater mark around 2015. Accordingly, responding to the (alleged) misconduct of peacekeepers provides a point of focus for discussing whether the UN does enough on its own account to respond to SEA of children in its orbit. That is, has the UN done what it can, with the tools that it has, to address this genre of issues when they arise on its watch? Or, might it be seen that the response has been shaped primarily by considerations other than duly protecting children and so working, in effect, to allow further hurt?

As noted earlier, how one might answer depends, to a degree, on one's conception of the relationship between the UN and an individual peacekeeper, and this, in turn, connects to how the role of the (alleged) perpetrator is framed – and even which actor in the UN should take action (where the Secretary-General has had much of the running to date, but the Security Council remains responsible for the activities of its subsidiary organs). Pivotally, scholarship on institutional abuse of children shows that every authority in the institutional chain has a role to play, and a lapse by

any one of them might render the overall institutional response inadequate, insufficient, or otherwise incomplete. Thus a further wrong of institutional abuse *could arise almost regardless of how questions of legal culpability of individual peacekeepers are addressed and/or resolved*.

In terms of UN action per se, despite the hurt done to the UN's name by such misconduct, much more has been said than has actually been done about remediating the UN's role in such matters. Some would connect this to what are now well-known challenges in finding enough contributions to fill the bill on personnel required for peacekeeping operations (on those challenges, see: Williams and Bellamy 2021; Horne et.al. 2020; Smith and Boutellis 2013; Reinl 2015; Coleman 2013). The alternative view, with which I readily admit some sympathy, is that fielding an abusive peacekeeper may well prove to be no better an answer than not fielding one at all.

Either way, thus far the bulk of the UN response has been the urging of others to take action, such as by more, and more open, reporting of such matters, 'naming and shaming' of states whose peacekeepers behave badly, and initiatives designed to vet peacekeepers as to any history of prior misconduct. Even where this goes in the right direction, some – perhaps many – would find this lack of *direct action* to be a modest extent of response, and surprising given that the acts themselves are typically egregious, the human rights consequences for children are so dire, and the stain on the reputation of the UN then so persistent. However, the same might have been said, and probably was said, about those other institutions whose travails were noted earlier. History now shows that those organisations still shied away from addressing the matters directly, until it became unavoidable in relatively recent times – and, importantly, reputational fallout abounds as an evident result.

Put bluntly, and with no disrespect intended to the present Secretary-General, this suggests that hand-wringing should now give way to more effective problem-solving, and that it is for the Security Council to take that action on peacekeeping which operates under its auspices. For instance, one could challenge what has become the 'accepted wisdom' which keeps the issue looping around in a Gordian knot – that lacking direct legal control over peacekeepers means, perforce, that the UN generally, or the Security Council specifically, entirely lacks any mechanism for taking direct action on these matters and that nothing more can be done, leaving those who would do wrong unconstrained by the prospect of actually bearing the consequences of their actions. Accordingly, to break out of that Gordian knot, a good starting place would be to re-frame the matter.

What to do next?

In terms of specific suggestions to re-frame the matter: if remaining focussed on the accountability of individual peacekeepers gives rise to that particular Gordian knot, it may be more productive to consider other options for the point of focus for accountability. For example, one might look again to ask: to whom is offence given by the actions in question, and about whom could complaint thus be made?

Instead of assuming that the wrong is done *only* to others, such as the child victims of SEA, the UN could, for example, conceive of itself as offended by such actions. To be very clear, here I am suggesting that this arises *in addition* to any outrage done to an individual complainant, or even the harm done to the name of a state by its citizen being implicated in alleged or possible misconduct. This approach could highlight the hurt done to the UN's reputation when, for example, those wearing the blue beret are involved in questionable activities, or when those activities are so egregious that they interfere with what the UN is attempting to do via peacekeeping operations.

The offence given to the UN might thus be re-framed as, for example, 'conduct unbecoming of representing the UN', or, in more serious matters, perhaps 'conduct prejudicial to the UN's operations, mission, or Purposes'. Next, again to avoid that Gordian knot noted earlier, one option would be to address the matter as part of the relationship between the UN and the relevant state – the 'troop-contributing country' (TCC) in UN parlance. That is, the UN's complaint would arise from the consequences of the TCC sending an individual alleged to have done wrong, rather than against that individual(s) per se. The UN could consider itself offended because, for example, conduct by that TCC's citizen while deployed was not in compliance with the standards set for such activities by the UN in related policy or a relevant memorandum of understanding. Importantly, while being one way of providing a clear demonstration of the UN's intent to take actual action on such matters, this approach should not intrude upon the

legal or disciplinary recourse that the TCC may have against its personnel.

Asserting a right to test the quality of conduct carried out under its aegis is not entirely novel for the UN, though it would be a new development in this genre of matters. In any case, the UN presently lacks a relevant venue in which such matters might be heard, and so would need to construct one. In line with the logic advanced here, that mechanism could conceivably operate as another subsidiary organ of the Security Council, and so be established by a Council resolution.

This suggests one way in which verifiable evidence of events in question might be taken up by a 'review of conduct mechanism', in which the respondent would be the TCC providing peacekeeper(s) alleged to have done wrong, thereby adding direct action to the UN's overall institutional response to alleged misconduct. Such an initiative would parallel Council resolutions establishing other necessary – even if, at the time, unusual – mechanisms to pursue the Council's agenda. Relevant examples would include the International Criminal Tribunals on the Former Yugoslavia and Rwanda, various committees dealing with terrorism, plus a variety of commissions and investigative bodies that have been employed over the decades.

In this approach, the specific legal nature of the acts said to have occurred would matter less in terms of the details of black-letter law that might be involved. What matters more is simply whether the events can be shown to have occurred, and then to what extent the UN would find itself offended by those events – because they breach UN policy on which compliance is expected, just for one example. There is also the question of the degree of hurt to the UN and/or its reputation, where relevant misconduct may range from genuinely isolated incidents by a lone individual, to those which continue so long or hurt so many that they cross a threshold of seriousness suggesting the misconduct impedes that peacekeeping operation, or even the work of the UN more generally.

Taken together, this approach might largely involve verifying whether the events occurred at all, and then forming a view on the implications of the conduct for the good name of the UN. Some elegance would, of course, be called for in determining what rules of operation might apply to the working of such a venue, and there are certainly questions to answer about what measure of consequences would be appropriate in substantiated cases. However, even this 'headlines' extent of discussion suggests that rather more fertile ground exists for tilling than might be supposed from the conventional focus on immunities of the organisation, and/or who has the 'effective control' of peacekeepers. Those remain important debates, but, I suggest, insufficient discussions in the light of emerging civil society views about the institutional abuse of children.

Of course, the next question is who might grasp the nettle on instigating direct action to respond to SEA of children that occurs on the UN's watch. Since questions of SEA and other misconduct have already persisted for quite some time, one should not wait with bated breath for standard approaches to somehow produce a different result. Instead, there may be more to be learned from unconventional approaches, in turn suggesting that this element of the debate would be worthy of more attention in the near future. Even if motivated by desire to address the implications of institutional abuse of children, there is also the prospect that via such debate a way may be found to more productively address a wider array of misconduct in due course.

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