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## **Criminal accountability at what cost? Norm conflict, UN peace operations and the International Criminal Court**

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# Criminal accountability at what cost? Norm conflict, UN peace operations and the International Criminal Court

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## Abstract

How do international organisations (IOs) balance norms that have conflicting prescriptions? In this article, we build on the literature on norm contestation and norm conflict to identify four ways in which IOs might respond to norm conflicts: (1) consistent norm prioritisation; (2) ad hoc norm prioritisation; (3) balanced norm reconciliation and (4) imbalanced norm reconciliation. How IOs are more likely to respond, we argue, depends on the salience of the norm conflict and the relative strength of the conflicting norms. We illustrate our argument by investigating the norm conflicts that the United Nations (UN) encountered between traditional UN peacekeeping norms and the norm of international criminal accountability in the context of assistance by UN peace operations to the International Criminal Court. Distinguishing between behaviour and discourse as well as headquarters and field levels, we argue that the UN's response strategies have been largely successful at reducing the tensions generated by the norm conflicts, but that in the longer term they run the risk of both undermining the international criminal accountability norm and damaging the acceptance and credibility of UN peace operations.

## Keywords

International Criminal Court, peacekeeping, norms, conflict, International Relations, global institutions

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## Introduction

The evolution of international norms has sparked renewed interest in recent International Relations (IR) research on the tension that might arise between two norms with conflicting behavioural implications. Earlier scholarship assumed that new norms evolve only when they fit into the framework of existing norms (Florini, 1996). Empirically, however, we have been observing the evolution of a number of new international norms that either oppose each other or challenge existing norms. The emerging global health security norm, for example, is challenging the existing norms of sovereignty and non-interference (Kreuder-Sonnen, 2019) and the norm to protect civilians is challenging the impartiality norm of peacekeeping operations (Paddon Rhoads, 2016). These examples indicate that norm collisions arising out of the evolution of new norms are rather common, not only resulting from ‘overlapping spheres of authority’ but also between norms that originated within the same level of international authority (Kreuder-Sonnen and Zürn, 2020).

How do actors balance norms that have conflicting prescriptions? Research in IR on how transnational norms are translated into domestic contexts (f.e. Acharya, 2004; Zimmermann, 2016) has identified several strategies that states use to address such (vertical) norm conflicts. Further research has been undertaken with regard to the question of how states respond to two conflicting international norms (horizontal norm conflicts) (Peltner, 2017; Saltnes, 2019). However, there is little literature so far on how international organisations (IOs) respond when they encounter such horizontal norm conflicts (Gholiagha et al., 2020). Therefore, in this article we draw on insights from both the literature on norm contestation and norm conflict to investigate how IOs respond to norm conflicts. We suggest four types of responses that IOs are likely to use in such situations: consistent prioritisation; ad hoc prioritisation; balanced reconciliation; and imbalanced reconciliation. We contend that the complexity of IOs requires distinguishing between headquarter and field-level responses to reveal potential discrepancies and congruencies inside an IO. We use discourse and action-related indicators to operationalise the four strategies with regard to the different implementation sites. We argue that two attributes of the norm conflict make particular responses more or less likely: its *salience* and the *relative strength* of the conflicting norms.

We base our argument on existing scholarship on norm contestation and norm conflict. Scholars who study norm contestation have revealed how norms remain unsettled even after institutionalisation (Wiener, 2014). They demonstrate that actors frequently enter into behavioural or discursive conflict over how to interpret norms or which norm to implement in a given context (Stimmer and Wisken, 2019). However, this focus on how, when and why norms are contested, still leaves a knowledge gap on what implementing agents do in situations where they have to balance two different international norms, neither of which they want to replace.

Such situations more closely resemble the focus of researchers who study norm conflict. They investigate a specific aspect of norm implementation, namely what happens when actors face two norms that prescribe different actions in a situation of choice (Peltner, 2017; Rueland, 2018; Saltnes, 2019; Welsh, 2019; Zürn et al., 2018). While inspired by the study of norm contestation, analyses of norm conflict stand out in at least

two important ways. First, in contrast to norm contestation where actors can contest the applicability or validity of a single norm, norm conflicts necessitate the existence of a second colliding norm. Second, norm contestation implies that the contesting actor (intentionally) weakens or alters the contested norm, while actors who seek to manage norm conflict might still value the other norm and accept its utility.

We apply our theoretical framework to norm conflicts that arose in the context of the introduction of the norm of international criminal accountability into United Nations (UN) peacekeeping. This norm holds that any individual who commits atrocity crimes, regardless of his or her status or official function, should be prosecuted by an international court if states are unable or unwilling to do so themselves, according to regularised procedures in a fair trial (Bower, 2019: 90).<sup>1</sup> It gained traction in the 1990s and saw a fairly strong legalisation and institutionalisation when the International Criminal Court (ICC) was established in 2002 (Sikkink, 2011).<sup>2</sup> Thereafter, the call on UN peace operations to implement this international criminal accountability norm by assisting the ICC became stronger, induced by the fact that the ICC was unable to rely on states alone to implement its mandate (Hillebrecht and Straus, 2017). UN headquarters, in the meantime, was frequently asked to deliver discursive and diplomatic support and provide logistical aid to ICC conferences. According to the UN Secretary-General's reports, between October 2004 and June 2018, the UN delivered assistance to the ICC worth \$10.673.497.<sup>3</sup> In the field, peacekeepers have provided transport, accommodation and security for ICC investigators, shared substantial amounts of information later used as evidence, and even, in some rare cases, contributed to executing the ICC's arrest warrants (Buitelaar, 2020).

As proponents of the international criminal accountability norm sought its institutionalisation, the norm collided with three existing peacekeeping norms (Hamilton, 2016): the respect for the sovereignty of UN member states, a focus on achieving and sustaining stability, and a threefold norm set called 'the holy trinity' (which stipulates that peace operations should remain impartial vis-à-vis the conflict parties, operate with the consent of those parties, and use force only in self-defence). We use these three cases of norm conflicts to illustrate our theoretical argument about IOs' responses to norm conflicts. To ground our analysis, we build on and contribute to scholarly work which analyses how UN peace operations balance their frequently conflicting obligations (f.e. von Billerbeck and Tansey, 2019). In this context, we use as our unit of analysis what Winckler (2015: 43) calls 'the peacekeeping bureaucracy': the UN Secretariat's Departments of Peacekeeping Operations (DPKO) and Political Affairs (DPA) and the field-level missions themselves.<sup>4</sup>

The article proceeds in two parts. First, we discuss the existing literature on norm conflict, on the basis of which we develop a typology of possible IO response strategies to norm conflicts. We then develop expectations as to which strategies IOs are likely to use in which situations and discuss our research design and methods. In the second part, we discuss how the international criminal accountability norm has been institutionalised at the UN and provide a brief overview of the modalities of UN–ICC cooperation. We then analyse how this norm collided with established peacekeeping norms and analyse the responses of the UN peacekeeping bureaucracy to these norm conflicts. We conduct this analysis of norm conflicts against the background of assistance by the UN's missions

in CAR, the DRC, Côte d'Ivoire, Mali, and Sudan, distinguishing between behaviour and discourse and field-level and headquarters responses. We draw on empirical examples from 132 interviews in addition to an analysis of the records of the UN and the ICC. In the concluding remarks, we discuss how this article's findings inform both the theoretical literature on norm contestation and norm conflict, as well as current debates on UN peacekeeping.

### *Responding to norm conflicts*

*IOs and norm conflicts.* A norm conflict occurs when an actor encounters a situation in which two or more concurrently existing norms offer conflicting prescriptions for how to respond in a situation of choice (Zürn et al., 2018). The actor has to decide how to balance the norms and decide on their relationship. This balancing exercise is challenging because both norms will generally have supporters who expect norm-consistent behaviour from the actor, and the actor has to fear audience costs when it violates one of the two norms (Rueland, 2018). In most cases, this situation therefore necessitates a response strategy because the actor wants to reduce, eliminate or avoid these costs.

The current literature on norm conflict focuses on how states respond to such conflicts between colliding domestic and transnational norms (i.e. vertical norm conflicts). Zimmermann (2016), for example, suggests that states can resist a new transnational norm, fully adopt it, or pursue various approaches to translate the new norm into a domestic context. In a more comprehensive assessment, Rueland (2018) distinguishes six different response strategies that states may use, which vary in the degree to which they attempt to replace the conflicting norm: consistent norm prioritisation (the implementation of one norm without attempts at norm replacement); general and context-specific norm replacement (removing one of the two norms from the environment); norm reconciliation (an attempt to adapt both norms to improve their fit); conflict denial (reframing the choice situation so that the competing norm does not apply); and a mixed response strategy (a flexible approach with varying compliance patterns). In addition, recent research on two conflicting international norms has revealed four strategies that states may use in response to horizontal norm conflicts: hierarchy; mix (reconciliation); one-norm guidance (disregard the other norm altogether); and third-norm guidance (Peltner, 2017).

However, given the state-centered focus of the research on norm conflicts, there is insufficient recognition in the literature that conflicting norms can also have implications for IO behaviour. As a consequence, our knowledge base about how IOs respond to norm collisions is comparatively limited. When studying IO responses, it is essential to recognise that IOs, to a larger degree than states, function in situations of limited autonomy, balancing different constituencies and higher normative expectations of their audiences. As the scholarship on IOs emphasises, they operate as both operational and normative actors, while they function as both agents of their member states and autonomous promoters of rules. These lead to various, sometimes conflicting sources of IO legitimacy (Barnett and Finnemore, 2004).

Even though we therefore expect that IOs are at least as likely as states to experience norm conflicts, we have limited knowledge on how they respond. In one of the few

existing contributions, Welsh (2019: 21–24) proposes a continuum of response strategies, ranging from a reconceptualisation of the normative terrain by consistently prioritising one norm over the other, to a reconciliation of the conflicting norms by creating context-specific relationships. She also recognises situations where actors engage in institutional adaptation (changing doctrines and institutional guidelines) or where they have no systematic strategy at all, resulting in paralysis, a sequencing in time of the two norms, or principled inconsistency.

We use these insights from existing research to build a theoretical framework, which recognises IOs' status as actors with limited autonomy, conflicting legitimacies and competing mandates. Taking into consideration the various implementation sites inside IOs, this framework will also improve our understanding of when various actors within an IO adopt which strategy in response to norm conflict.

*Identifying response strategies.* Building on the scholarship discussed above, we suggest four types of possible response strategies that IOs may adopt in a situation of norm conflict. First, IOs may pursue norm prioritisation, where they implement only one norm and violate the other, thus establishing a hierarchy between the two. Norm prioritisation can take place in two forms, either in a consistent manner or ad hoc. In *consistent norm prioritisation*, IO actors systematically favour one norm over the other or choose to always sequence the implementation of the norms in a particular way. While championing their 'favourite' norm, they either ignore the other norm completely or they actively contest its applicability or validity. Consistent prioritisation allows actors to reduce the ambiguity that is created by the diverging demands of the norms (Deitelhoff and Zimmermann, 2020).

In *ad hoc prioritisation*, by contrast, IO actors implement one norm and violate the other depending on the context. While this may be a result of the fact that actors lack a consistent strategy, it may also follow from a conscious choice not to commit to one option over the other and instead make context-specific judgements about which norm to implement or how to sequence them. Welsh (2019: 23) emphasises that this 'can be underpinned by an actor's genuine commitment to both values and reluctance to abandon either part of its identity'. Thus, the key distinction between consistent and ad hoc prioritisation is whether or not prioritisation occurs consistently over time and space.

Besides norm prioritisation, IO actors can also opt for norm reconciliation, whereby they try to build congruence between conflicting norms by reconstructing some of the norms' parts in order to improve their fit. While this changes (and potentially weakens) both norms, the resulting norm relationship generates fewer tensions and creates room for a simultaneous implementation of both norms. Thus, to observe norm reconciliation, we should see evidence of one or both norms being changed from their *status quo ante*.

Depending on how actors reconstruct the relationship between the colliding norms, we argue that there are two forms of reconciliation: balanced and imbalanced norm reconciliation. In *balanced reconciliation*, actors engage with both norms and (equally) adapt both of them to allow for more congruence with the other. For example, the Responsibility to Protect (R2P) norm was the result of a mutual adaptation between the norms of non-interference and sovereignty and the norm of humanitarian intervention. In 2005, UN member states accepted an R2P that recognised the sovereignty of member

**Table 1.** International organisation strategies to manage norm conflicts.

Strategy	Norm relationship
Consistent norm prioritisation	One norm is consistently prioritised over the other
Ad hoc norm prioritisation	One norm is inconsistently prioritised over the other, depending on the context
Balanced norm reconciliation	Norms A and B are both adapted so that they no longer collide
Imbalanced norm reconciliation	Only norm A or norm B is adapted so that the two norms no longer collide

states but simultaneously granted the international community a right to intervene when these states systematically committed atrocity crimes (Welsh, 2013). In *imbalanced norm reconciliation*, by contrast, actors reconstruct parts of one norm, but leave the other (mostly) untouched. This imbalanced reconciliation has often been identified in norm localisation, when local norms were adopted to a new international norm and vice versa (Acharya, 2004). In Table 1, we summarise the four strategies that IO actors can adopt.

When analysing how these IO responses to norm conflicts manifest, we argue for two key distinctions. First, as recent norm contestation literature recognises, the compliance with or violation of a norm can occur through behaviour, discourse or both (Deitelhoff and Zimmermann, 2019). Equally, we would argue, the response to a norm conflict may manifest in a mix of discourse and behaviour. This is a key addition to existing norm conflict typologies, which tend to insufficiently operationalise response strategies because they focus on discourse as the key observable implication of norm conflict (Stimmer and Wisken, 2019). Here, there are three theoretical options. The first is that behaviour and discourse are in unison and demonstrate the same preference. The actor chooses norm prioritisation or norm reconciliation and justifies this choice through complementary discourse. This can occur through speech acts, or by including the new norm relationship in agreements, guidance notes or position papers. The second option is what we call silent implementation, which we expect to only occur in norm prioritisation. Here, IO actors implement their strategy, but do not offer justificatory discourse and try to keep the implementation quiet.<sup>5</sup> The third option is that the response of an IO is marked by a discrepancy between talk and action. Following existing research on organised hypocrisy in IR (Hirschmann, 2012; Krasner, 1999; Lipson, 2007), we use the concept of decoupled response to analyse how IO actors sometimes pursue one response through behaviour, but then discursively maintain they are pursuing a different response. In sum, we maintain that for an appropriate analysis of IO responses to norm conflict, researchers should study both the discourse and the behaviour of IOs and pay attention to how their responses may differ between speech and action.

Second, we argue that IO actors may encounter norm conflicts at each of the different levels (or implementation sites) on which they operate. These responses may vary because they may face different incentive structures at each of these levels. For example, in the context of the UN, the headquarters level is more closely connected to the diplomatic apparatus in New York and engaged in balancing the demands of different member states. At the field level, by contrast, the leadership of peace operations is confronted with the



operational realities of implementing the mandate and has to translate the different norms into action on the ground (Karlsrud, 2013; Winckler, 2015: 60). If the strategies chosen by the different levels are at odds, the decoupling of the different implementation sites can contribute to organised hypocrisy on the meta-level (Hirschmann, 2012), for example if the headquarters level engages in consistent norm prioritisation and the field level opts for ad hoc prioritisation. Hence, we contend that researchers should distinguish between the headquarters and the field level when analysing IO responses to norm conflicts. In particular, we argue that the way IO responses manifest in combinations of behaviour and discourse hinges on the implementation site in which it occurs. Given the varying levels of access to implementation and the differences in incentive structures, we would expect the headquarters level to be more focused on implementing the response strategy through discourse, with less supplementary behaviour, and the field level to be more focused on executing the chosen strategy through action, with less concomitant discourse (Stimmer and Wisken, 2019). By conceptualising discourse and action-related indicators of the four strategies, we provide a framework of IO responses that takes into consideration potential discrepancies and congruencies generated by the different implementation sites.

**Expectations.** Which strategies are IO actors likely to choose when responding to a norm conflict? On the basis of IR research on norms, we argue that there are two core explanatory conditions influencing this choice, both of which are attributes of the norm conflict: the salience of a norm conflict and the relative strength of the two colliding norms.

In conceptualising *salience*, we follow Foot and Walter (2013: 331), who define salience as the extent to which a norm's behavioural rules 'impinge directly on the organisation of domestic social and political life', in our case on the daily operations of an IO. The higher this impact, the more likely it is that norm audiences will pay attention to the norm conflict and publicly state their preferences. While we recognise that salience may run along a continuum, for the purposes of this article we distinguish high and low salience. Salience is high when both norm audiences simultaneously make public demands for norm-following, either in the media, in public debates or in IO fora (Gholiagha et al., 2020). In this context, an IO faces high audience costs if it does not live up to this expectation. Salience is low when the norm conflict is only discussed internally within the IO, or not at all. While IO actors may still perceive conflicting demands, there is less political sensitivity, which reduces the expected audience costs. Thus, we measure the salience of a norm conflict by examining both public discourse by norm audiences and the UN's internal discussions as revealed by meeting notes, internal reporting or interviews.

We expect that low salience facilitates the choice for norm reconciliation because the potential costs that are involved in adapting norms are likely to be lower. Because of the lower political sensitivity and the lower impact on its daily operations, IO actors have a larger room for manoeuvre (Foot and Walter, 2013) and may thus seek a strategy that allows them to implement both valued norms (albeit in weakened form). In other words, they opt for norm reconciliation. In contrast, when salience is high, the room for manoeuvre is decreased and IO actors have to make a choice, that is they have to prioritise one of the two norms. A key example of the impact of a norm conflict's salience can be found in Lyck's (2007: 423–424) analysis of the assistance by the UN mission in Kosovo (UNMIK) to the International Criminal Tribunal for the former Yugoslavia (ICTY).



UNMIK had a track record of facilitating the ICTY's arrest warrants. But when in 2005 the ICTY issued an arrest warrant against an important Kosovar politician, Ramush Haradinaj, UNMIK was facing the choice as to whether it should prioritise its assistance to the ICTY or its obligation to preserve stability. Arresting this important political player was expected to significantly influence UNMIK's operations, and therefore generate substantial media and member state attention. Facing high audience costs, UNMIK prioritised stability and tried to obstruct the ICTY's warrant against Haradinaj.

The second attribute of the norm conflict that influences the chosen strategy is the *relative strength* of the colliding norms, measured by the degree of obligation generated by the institutionalisation of the norms and the relative strength of their respective proponents and opponents (Panke and Petersohn, 2016). The question, therefore, is whether there is a hierarchy between the two norms (Kreuder-Sonnen and Zürn, 2020). We use several indicators to determine the relative strength of colliding norms in peace operations. We assess whether the norms have been institutionalised through an official document or policy and how precise the obligation stemming from this document is for the IO (Abbott et al., 2000). For example, the UN's founding Charter not only establishes that the organisation is supposed to protect its member states' sovereignty, but also stipulates that it is supposed to promote human rights. However, by including more precise references to sovereignty, the document introduces an unequal norm relationship.

The second indicator is the relative power of the different norms' proponents and opponents (Deitelhoff and Zimmermann, 2019). When the IO's most powerful states or veto holders support a particular norm, and contest the other, this has an important impact on the relative strength of the norms. For this reason, we conceptualise the relative strength as equal when both norms are supported or opposed by equally powerful states, or as unequal when there is a clear difference. With regard to the UN's commitment to sovereignty and human rights, many member states and NGOs have successfully raised the importance of human rights, but the most powerful member states within the UN, including most veto-holders, still insist on the overwhelming importance of sovereignty. This reinforces the unequal norm relationship.

We expect that this explanatory condition determines the type of prioritisation or reconciliation chosen. When choosing for prioritisation, a situation where the two norms are equally strong complicates the IO's decision which one to prioritise, rendering *ad hoc* prioritisation more likely. In contrast, when there is a pre-existing hierarchy between the norms, we expect that the choice is easier and the actor thus opts for consistent prioritisation. Similarly, if the IO tries to reconcile the norms, equally strong norms make it likelier that the IO chooses balanced reconciliation, while unequal strength facilitates imbalanced reconciliation. Table 2 summarises our expectations regarding how the salience of a norm conflict and the relative strength of norms relate to the different IO responses to norm conflict. As discussed above, the way in which these strategies manifest in specific combinations of discourse and behaviour is expected to be shaped by the implementation site in which it occurs.

**Research design and methods.** While we develop our theoretical framework for all IOs in situations of norm conflict, in this article, we demonstrate its utility by explaining the UN's responses in three cases of norm conflict. In all three, the norm conflicts were

**Table 2.** Explanatory conditions.

	Salience high	Salience low
Relative strength equal	Ad hoc prioritisation	Balanced reconciliation
Relative strength unequal	Consistent prioritisation	Imbalanced reconciliation

generated by the introduction of the international criminal accountability norm into UN peacekeeping, which collided with existing peacekeeping norms: the respect for the sovereignty of UN member states, a focus on achieving and sustaining stability, and a three-fold norm set that is called ‘the holy trinity’. Hereby, we focus on one particular behavioural implication or ‘duty of conduct’ (Welsh, 2013: 368) that follows from the international criminal accountability norm, namely the general ‘obligation to cooperate’ with the ICC as formalised in the 2004 UN–ICC Relationship Agreement. Across the three cases, the norm conflicts vary in salience and the relative strength of the colliding norms, as well as in the resulting responses to the norm conflict. They, therefore, provide a good illustration of the different strategies that IOs may use to respond to norm conflicts.

We start by discussing the institutionalisation of the international criminal accountability norm at the UN. Then, for each norm conflict, we analyse its salience and examine the relative strength of the conflicting norm vis-à-vis the international criminal accountability norm. Where relevant, we also discuss if salience and relative strength varied diachronically or geographically within the norm conflict. After these assessments, we analyse the UN’s responses at the field and the headquarters level by examining discourse and behaviour. Throughout the analysis, we provide empirical insights from the UN’s missions in CAR, the DRC, Mali, Cote d’Ivoire and Sudan, which operated in parallel to ICC investigations in these countries.

For the empirical material, we draw on several sources. First, we conducted 132 semi-structured interviews with (former) UN peacekeepers from the relevant missions, as well as UN Secretariat staff, ICC officials, diplomats, and NGO representatives (see the Online Appendix for a detailed overview).<sup>6</sup> We asked these respondents to reflect on how assisting the ICC conflicted with other peacekeeping goals and asked them follow-up questions on specific norm conflicts, where we also inquired about how the UN responded. While not all of the interviewees encountered all three conflicts, and not all were in a position to respond to it, the majority of them argued that these matters constituted ‘dilemmas’ and were aware of what the UN did in practice. These interviews provide us with data on the empirical manifestation and the salience of the norm conflicts and the UN’s responses to them. Second, we conducted an extensive analysis of the archival records of the UN and the ICC, and analysed public documents originating from the UN’s discussion fora (primarily the UN General Assembly and the UN Security Council). We also analysed international media outlets for signs of public demands on the UN that it follows particular norms, which provides us with additional data on the salience of the norm conflicts. Finally, we use secondary literature to assess the relative strength of the different norms we discuss.

### *International criminal accountability and UN peacekeeping*

The UN has played a leading role in developing and institutionalising the international criminal accountability norm. In the 1990s, the UN Security Council established international criminal tribunals to prosecute the perpetrators of atrocities committed during the genocide in Rwanda and the conflict in the former Yugoslavia. Afterwards, the UN Secretariat sponsored a number of hybrid tribunals, amongst others in Sierra Leone and Cambodia. Top Secretariat officials have furthermore played a key role for the UN in the promotion of international criminal accountability. Indeed, the former Secretary-General, Ban Ki-Moon (2007: para 81) stated that ‘international criminal justice [. . .] has become a defining aspect of the work of the organization’. In general, recent scholarship has found that the norm is relatively robust and strong (Ben-Josef Hirsch and Dixon, 2020: 17–18; Simmons and Jo, 2019).

Although the ICC was developed within the diplomatic infrastructure of the UN and linked to its institutional architecture, it was ultimately founded as an independent organisation (Schiff, 2008). Nevertheless, in October 2004, the UN and the ICC agreed on a Relationship Agreement, which institutionalised and formalised a general ‘obligation’ for both parties to assist each other where they can. Although it was not particularly action-guiding, the overall prescription was clear and the document offered a framework for follow-up agreements where relevant. In addition to this inter-organisational agreement, the UN Security Council has increasingly mandated UN peace operations to support rule of law and criminal justice efforts in (post-)conflict zones (Katayanagi, 2016). Indeed, in an extreme, recent example, the UN mission in CAR has the mandate to apprehend and hand over to Central African authorities ‘those in the country responsible for [atrocity crimes] so that they can be brought to justice’.<sup>7</sup> Among states, moreover, there is general support for a closer relationship between the UN and the ICC, visible in annual resolutions in which the General Assembly expresses support for the ICC’s message of non-impunity and calls on the two organisations to develop closer relationships.<sup>8</sup>

Although it can therefore be said that the injunction of UN–ICC cooperation has been relatively well institutionalised and has considerable state support, its strength is weakened by continued opposition from powerful states that are non-members of the ICC. These include three of the UN Security Council’s veto-wielding Permanent Five (China, Russia, and the United States), as well as countries that are among the top troop contributors (TCCs) to UN peace operations (like Ethiopia, Rwanda and India). This opposition has sometimes made it impossible for the Council to directly mandate UN peace operations to assist the ICC. Thus, we can conclude that the international criminal accountability norm, specifically the behavioural injunction for UN peace operations to assist the ICC, was relatively well institutionalised at the UN and established a reasonably precise duty of conduct. At the same time, significant opposition to the international criminal accountability norm, on the side of the states most important to UN peacekeeping, weakened the strength of the norm’s behavioural implication to assist the ICC.

*Norm conflict 1: International criminal accountability v. sovereign equality.* When the UN is asked to assist the ICC, the international criminal accountability norm comes into conflict with the intersubjective expectation that the UN should not operate autonomously

without the consent of its sovereign member states. We call this the ‘sovereign equality’ norm, because it relates to the sovereign right of states to operate as equals in a horizontal international system. This expectation has strong roots in amongst others the sovereignty norm and, as Welsh (2013: 394) notes, this attachment to the horizontal nature of the international system arises as a deep objection to vertical systems such as the ICC – where ‘conduct is subject to oversight and punishment by an unspecified and unaccountable agent of the “international community”’. The sovereign equality norm could be violated if the UN assists the ICC, a treaty court with membership that only partially overlaps with the UN and is actually stringently opposed by some key members. This norm conflict, therefore, primarily arises when the UN is regarded to be ‘in cahoots’ with the ICC by non-ICC members, because in such instances it may violate the expectation that it operates as a representative of *all* member states.<sup>9</sup>

The sovereign equality norm is a strongly institutionalised norm with reasonably precise behavioural implications and powerful proponents among UN member states (Welsh, 2019). In particular, G77 member states, major TCCs such as Ethiopia, India and Rwanda, and two of the five P5 (Russia and China) oppose peace operations’ assistance to the ICC. In some cases they have been joined by the United States in arguing that states that are not member to the Rome Statute should not be held to the obligations flowing forth from that Statute. Together, these countries frequently contest the legitimacy of the ICC and try to decouple the Court from the UN, which has a negative effect on the assessment of state support for UN–ICC cooperation.<sup>10</sup> Given the strength of this coalition and the more precise implications of the sovereign equality norm, we conclude that this norm is stronger than the international criminal accountability norm.

The norm conflict became salient at the headquarters level almost immediately after the ICC started requesting assistance from UN peace operations. In 2004, when the ICC opened investigations in the DRC, ICC-supporting states in the Security Council tried to include a provision in the mandate of the UN mission there (called MONUC) that would instruct the mission to assist the ICC. They faced staunch resistance from the United States (and other countries), who refused to accept any such reference. Although the Council eventually compromised on a paragraph that enabled assistance only in rather vague terms, the United States saw fit to clarify that it only voted for the resolution ‘with the understanding that [it] does not direct MONUC to cooperate with the ICC’.<sup>11</sup> The United States, the largest financial contributor to peace operations, further demanded publicly that the UN would obtain reimbursement for all assistance to the ICC so that the assessed contributions of non-members would not be used for this purpose.<sup>12</sup> Thus, the norm conflict was fiercely discussed in public by both norm audiences and therefore highly salient. At the mission level, however, the degree of salience was moderated by the visibility of the operation’s assistance to the ICC. UN actors could share information with and provide logistical assistance to the ICC with little member state attention and thus maintain low salience. By contrast, salience was higher when UN actors visibly linked themselves with the ICC by co-locating in peacekeeper camps or carrying out arrest warrants.<sup>13</sup>

*The UN’s response: a reimbursement scheme and silent prioritisation in the field.* Due to the combination of high salience and the existence of a hierarchy between the norms, we

would expect the UN to respond to this norm conflict through consistent prioritisation of the stronger norm. The empirics indeed demonstrate that, at the headquarters level, the UN opted for consistent prioritisation of the sovereign equality norm. In effect, to emphasise the independence of both institutions, it acquiesced to the American demand for reimbursement, which was subsequently taken up in all agreements signed with the ICC. Moreover, it tried to avoid overt association with the ICC, maintaining a mostly symbolical and partly practical distance between the UN and the ICC.<sup>14</sup> While complicating the provision of assistance and imposing an administrative burden, the UN ensures in this way that states not party to the Rome Statute do not pay for the assistance through their assessed contributions to the UN, enabling assistance while preserving the universal nature of the UN. Discussions have continued in the UN about whether or not the UN system should be responsible for funding situations referred to the ICC by the Security Council. However, when it comes to the UN's more direct assistance to the ICC, the reimbursement system that still exists today has largely eliminated the salience of the norm conflict at the headquarters level.

At the field level, mission leadership was aware that many important UN member states did not recognise the ICC.<sup>15</sup> However, we see within-case variation depending on the degree of salience as mission leadership responded to the norm conflict. In cases of low salience, MONUC would make its assistance to the ICC dependent on two factors: the impact of assistance on its other operational goals, and whether the costs of assistance were easily quantifiable. If assistance significantly impeded its other mandated goals, it would refuse to assist. Similarly, if assistance was easily quantifiable, it would prioritise the sovereign equality norm by asking for reimbursement. If assistance was not quantifiable, however, it would still allocate resources to assistance (and thus violate the sovereign equality norm). In instances of low salience, peace operations thus chose ad hoc prioritisation, while in cases of high salience, they chose consistent prioritisation of the sovereign equality norm. In both instances, MONUC pursued its strategy silently, keeping assistance under the radar and not offering discursive justification. In practice, this meant that, as one former mission leader recalls, because of US opposition, he could not 'go overboard' in his assistance to the ICC.<sup>16</sup> UN peace operations generally refused to offer permanent accommodation to ICC staff in their peacekeeper camps because such visible assistance would tie the two organisations too closely together and might thus violate the sovereign equality norm.<sup>17</sup> This finding from the field level contradicts our expectation that IOs will choose for norm reconciliation when the salience is low.

*Norm conflict 2: International criminal accountability v. the 'holy trinity' of peacekeeping.* The second norm conflict experienced by the UN peacekeeping bureaucracy relates to the 'holy trinity', a set of interrelated norms that are fundamental to the practice of UN peacekeeping. Developed in the early Cold War to frame UN peacekeeping as a novel tool for conflict management, it prescribes that UN peacekeepers should remain impartial, act with the consent of the parties, and use force only in self-defense. This introduces a threefold norm conflict. First, assistance to the ICC is likely to violate impartiality since ICC investigations always target at least (and often only) one side of the conflict (Rosenberg, 2017). By providing assistance to the ICC, a peace operation could be perceived as too close to the ICC and seen as contributing to the prosecution of particular

conflict parties, negatively affecting the operation's perceived impartiality.<sup>18</sup> Second, assistance may violate the consent norm when the state in question opposes ICC involvement. This poses both audience costs and major pragmatic challenges: peace operations require parties' consent not only to deploy in the first place, but also for such important activities as protecting civilians, maintaining ceasefires and conducting humanitarian operations (Sebastián and Gorur, 2018). Finally, consistently implementing the international criminal accountability norm means that peace operations should also execute ICC arrest warrants. This comes into conflict with the norm that peace operations should use minimum force in self-defense only, because arrest operations require considerable coercive force to detain ICC suspects who often retain significant political and military support.

The holy trinity norm set has been a key justification of UN peacekeeping since its establishment – with its components being endorsed as the 'basic principles of peacekeeping' (f.e. United Nations, 2008a: 31). Especially regarding impartiality and the non-use of force, there is strong support for the original concept of the holy trinity by Russia and China, as well as major TCCs like India and Bangladesh. At the same time, the increasing amount of references to 'the protection of civilians' in the Security Council's peacekeeping mandates, particularly pushed for by Western member states, indicates that the traditional impartiality norm has lost some of its strength (Bode and Karlsrud, 2018; Howard and Dayal, 2018; Paddon Rhoads, 2016). When it comes to consent, however, the norm's components have been strongly institutionalised and are supported by the majority of member states and UN actors (Sebastián and Gorur, 2018). Together, this leads to a mixed assessment of the strength of the 'conservative' holy trinity norm and we would conclude that while the impartiality and non-use of force norms can be classified as of more or less equal strength as the international criminal accountability norm, the consent norm can be classified as stronger than the international accountability norm.

We also observe a difference in salience between the conflict with impartiality and non-use of force on the one hand, and with consent on the other. States and NGOs have generally not politicised potential violations of the impartiality and use of force norms in the context of assistance to the ICC, except in situations where the UN engaged in actions that would too obviously violate the norm's prescriptions, for example when MONUC was involved in 2006 in a failed attempt to arrest the Lord Resistance Army's number two, Vincent Otti (Lewis, 2006). This meant that the collision of the international criminal accountability norm with the impartiality and non-use of force norms generally had low salience among norm audiences. By contrast, when the host state opposed the ICC's involvement, the conflict with the consent norm was highly salient. The best example here is the case of Sudan: the ICC's indictment of that country's President in 2009 generated substantial controversy and the UN faced significant obstacles when trying to maintain consent for its missions (Duursma and Müller, 2019). Moreover, at the mission level, the perception of salience again is moderated by the visibility of the assistance requested. We found that the leadership of peace operations largely deemed assisting the ICC through information-sharing and logistics acceptable due to its low visibility.<sup>19</sup> However, when it came to arrests, which would stand to clearly violate both the impartiality and the non-use-of-force norm, visibility was much higher, potentially increasing audience costs and making the norm conflict more salient.



*The UN's response: Assertive impartiality and case-by-case assessments.* Our theoretical framework would expect the UN to respond to the norm conflict with the impartiality and non-use of force norms, which had low salience and equally strong norms, with balanced norm reconciliation. By contrast, in the highly salient and unequal conflict with the consent norm, we would expect the UN to consistently prioritise the consent norm. In this section, we will first discuss the norm conflicts with the impartiality and non-use of force norms, and then move to the conflict with the consent norm.

We found that in the first two instances of norm conflicts, the UN, contrary to our expectations, responded with imbalanced reconciliation. Echoing the findings of Paddon Rhoads (2016), our data show that UN headquarters responded to the norm conflict with impartiality by discursively linking the international criminal accountability norm to protection-related concerns. This meant that, instead of maintaining strict neutrality, UN actors argued that the impartiality norm actually prescribed that the UN should impartially apply supposedly universal human rights norms.<sup>20</sup> Advocating for a protection-focused interpretation of impartiality enabled them to assist the ICC without violating the impartiality norm. In the conflict with the non-use-of-force norm, these actors also responded with imbalanced reconciliation: spurred on by member states, the UN developed guidance that allowed UN peacekeepers to use force more robustly to assist the ICC, but only if it served to protect civilians.

While this imbalanced reconciliation took away some of the tensions, UN actors at the headquarters level left decisions about how to balance the two norms as much as possible to the field level.<sup>21</sup> UN headquarters sought to formalise this response in the Memoranda of Understanding (MoUs) that it negotiated with the ICC for the UN's peace operations in CAR, Côte d'Ivoire, the DRC and Mali. Indeed, these MoUs, which build on the Relationship Agreement to clarify the UN's cooperation with the ICC, are full of language enabling case-by-case assessments. In a representative example, the MINUSMA-ICC MoU stipulates that the mission will provide transportation on 'a space-available basis', it will consider government requests to assist with ICC arrest warrants on 'a case-by-case basis' and it has the 'sole discretion' to 'determine that the provision of the administrative or logistical services requested by the Court is beyond the staffing capabilities of MINUSMA' (United Nations, 2014: Arts. 7(3), 15(1) and 5(3)). With this strategy, UN headquarters stayed within a discursive response strategy, but left the implementation of the actual response to the field level.

In the conflicts between the international criminal accountability norm and the impartiality and non-use-of-force norms, UN actors in the field made use of this flexibility to pursue a strategy of silent ad hoc prioritisation. This meant that it implemented one or the other norm depending on the salience of the norm conflict – without attempts to discursively justify this choice. Following best practices that were later formalised in a 2016 manual, which advises that 'maximum discretion is vital' and 'care is to be taken to avoid any visible connection between UN presences in the field and the Court' (United Nations, 2016: 7), field-level actors managed to keep salience low when assisting the ICC through information-sharing and logistical and security assistance. But in the case of arrests, where salience was higher, UN actors had the tendency to prioritise the peacekeeping norms. Only when they could rely on explicit host state consent and were able to justify their actions through a benefit to civilian



protection did they make attempts to arrest ICC fugitives (f.e. Vincent Otti in 2006 and Sylvestre Mudacumura in 2014).<sup>22</sup>

We see a different pattern in the more salient norm conflict with the consent norm, where the UN chose consistent prioritisation of this latter norm. In cases of conflict, it established a norm hierarchy to prioritise the norm that it should operate with the consent of the host state over its obligation to cooperate with the ICC. In this so-called triangular approach, the UN technically does not directly assist the ICC but rather assists the host government in fulfilling its sovereign obligations towards the ICC (Rastan, 2008). Again, UN headquarters sought to formalise this norm relationship through the MoUs by caveating most types of assistance with language such as ‘with the prior written consent of the Government’ and ‘requests from the government to assist the Government in. . .’ (United Nations, 2012). In practice, this strategy rarely led to problems because most states in which the ICC is investigating have referred the situation in their respective countries themselves and cooperated relatively well with the ICC.<sup>23</sup> However, when the host state government did oppose the ICC, the UN accepted that it could not assist the ICC in any way, shape or form.<sup>24</sup> For the UN mission in Sudan, for example, the threatened audience costs were so high that its leadership at one point even requested DPKO to ensure that the ICC’s proceedings against Bashir would not go ahead because it feared that its mandate would become impossible to implement (United Nations, 2008b). The mission leadership thus contested the obligation to assist the ICC and rather consistently prioritised the consent norm.

Consistent prioritisation also became manifest at the headquarters level. In 2013, the UN Secretary-General (2013) issued ‘Guidance on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court’. This guidance note sought to establish a relationship between the obligation to support the ICC and the reality that UN personnel need to meet with state officials to maintain the consent of their host states to function – even when these same officials are indicted by the ICC. This document established a hierarchical relationship between these two norms, requiring UN officials to refrain from such contacts, except for ‘those which are strictly required for carrying out essential United Nations mandated activities’ (Cummings-John, 2013). In other words, the note enables UN officials to determine if their contacts with fugitives are ‘essential’ to their operations, and thus allows them to override the international criminal accountability norm.

In sum, we find that the UN responded to the norm conflict between the international criminal accountability norm and the holy trinity norm set through a combination of imbalanced reconciliation, and consistent and ad hoc prioritisation. The variance can primarily be explained through differences in the degree of salience of the norm conflict and differences in the relative strength of the conflicting norms.

*Norm conflict 3: International criminal accountability v. ‘stability first’.* The third norm conflict concerns what we call the ‘stability first’ norm, which denotes the widespread belief that UN peace operations ought to primarily bring or keep stability in a (post-)conflict zone. Its implementation has included amnesty-for-peace deals and power-sharing agreements that offer de facto impunity. This norm can collide with the norm of international criminal accountability, which holds that perpetrators of atrocities should be prosecuted

and proscribes amnesties for these crimes (Clark, 2018). The collision is frequently framed as one between peace and justice, and has been particularly common for the UN's interaction with the ICC because of the latter's active involvement in ongoing conflicts (Kersten, 2016).

The expectation that peacekeepers should primarily occupy themselves with achieving and maintaining stability is widely shared among UN member states and UN actors (von Billerbeck and Tansey, 2019). Even those concerned with the 'agenda of protection' have generally tended to prioritise stability when there was a possibility that justice could undermine peace (Peskin and Boduszynski, 2016). Furthermore, several generations of UN peace operations and UN mediators have adhered to this norm and argued that stability should precede justice (Hayner, 2018). Recognised as 'the core business' of UN peacekeeping by the 2008 Capstone doctrine (United Nations, 2008a: 20–25), the emphasis on 'stabilisation' as a key goal of peace operations has more recently also been reflected in the practice of the UN Security Council. Indeed, the operations in Mali, CAR and the DRC have all been mandated as 'stabilisation' missions. Given this strong member state support and institutionalisation through UN documents and resolutions, we conclude that the stability first norm is stronger than the international criminal accountability norm.

In 1999, before the establishment of the ICC, the UN Secretariat had developed guidelines to its mediators that forbade them from observing peace agreements that included amnesty for atrocity crimes (Hayner, 2018). However, after 2002 and with the ICC's frequent involvement in ongoing conflicts, the norm conflict between stability and international criminal accountability often became highly salient when the UN was involved in peace deals that appeared to accord amnesty to persons accused of atrocity crimes. In other situations, the insistence that perpetrators should be held accountable complicated achieving a peace deal. In these cases, both norm audiences made explicit demands that the UN ought to either avoid making peace deals with perpetrators of atrocity crimes, or – rather – that it should seek to place an emphasis on stopping the fighting and pursue justice once it would no longer undermine stability. Both norm audiences would publish op-eds, reports and press releases in which they sought to press the UN to follow their preferred norm (Clark, 2011). The topic would also be discussed in the UN General Assembly and UN Security Council (Schabas, 2016). All of this indicates that this norm conflict was highly salient.

*The UN's response: Adaptation of peacemaking practices but peace first in the field.* Consistent with our theoretical expectations, our analysis shows that the UN responded to the norm conflict with consistent prioritisation of the stability first norm both at the headquarters and the field level. At headquarters, UN actors adopted guidance notes and issued instructions to UN peace operations that they should pursue 'sequencing', which they framed as a compromise between the stability first and the international criminal accountability norm. In other words, they argued that they were reconciling the two norms and implementing both.<sup>25</sup> In practice, however, the pursuit of 'sequencing' constituted an instance of prioritisation, as it established a hierarchy where the stability first norm would be implemented first and the international criminal accountability norm would only be implemented when it would no longer undermine stability (and there

was thus no longer a norm conflict). This discrepancy between rhetorical balancing and practical prioritisation indicates a decoupled response.

Perhaps most clearly, this strategy manifested itself during the Juba peace negotiations (2006–2008) between the Ugandan government and the Lord's Resistance Army rebel group. The ICC had indicted the leadership of this group, but the UN supported negotiations between the antagonists to agree on a peace deal. In May 2007, the UN Secretary-General's Policy Committee noted that 'in this "era of the end of impunity", the UN could not be seen as compromising on issues of justice and accountability in the pursuit of other goals' (United Nations, 2007a). At the same time, it noted the challenge of finalising a peace agreement without watering down the ICC indictments and thus suggested that the UN's mediators should perhaps deal 'with the two issues in a sequenced manner'. This document clearly shows how UN actors at headquarters saw sequencing as a way not to compromise 'on issues of justice' and thus argued, on a rhetorical level, that it was pursuing norm reconciliation. In practice, however, such an approach constituted consistent prioritisation.

This became particularly clear at the field level. UN staff largely internalised and followed the guidelines on amnesties issued by the headquarters level and thus avoided observing peace agreements with amnesties for atrocity crimes. However, this approach has seen only limited success, as the warring parties have still tried to ensure that their de facto impunity would be protected through other elements of the peace agreement, such as their integration into the army or a recognition of their power position (Vandeginste and Sriram, 2011). In CAR, for instance, the UN mission supported the February 2019 peace deal between the Central African government and armed groups. The deal excluded amnesty for atrocity crimes but also gave those suspected of atrocity crimes senior government positions (Fabricius, 2019). In addition, field-level UN actors consistently prioritised the stability first norm by making use of the sequencing option. During the Juba peace negotiations, for example, the UN Special Envoy was willing to support an agreement that would suppress the ICC's arrest warrants in favour of (probably less effective) domestic proceedings (Quinn, 2009). In the same context, MONUC's leadership asked the Congolese government to refrain from actions against the armed group that might lead to its isolation, for fear of undermining the Juba peace process (United Nations, 2007b). In effect, this strategy constitutes consistent norm prioritisation, revealed more through behaviour than discourse.

Peace operations have also shown their prioritisation of the stability first norm by largely refusing to execute the ICC's arrest warrants. Almost all of our respondents saw arrest operations as something that the UN 'does not do' (Buitelaar, 2020), arguing that law enforcement was within the remit of the government.<sup>26</sup> But even when the government explicitly requested a UN peace operation for assistance in executing an ICC arrest warrant, peacekeepers were extremely reluctant to get involved. They defended this choice by arguing that arrests may violate the stability first norm. For example, despite an official request from the Congolese government in 2007 to assist in executing the warrant against the notorious warlord Bosco Ntaganda, the UN mission in Congo never ended up doing so, arguing that this was the responsibility of the government or that it would undermine stability.<sup>27</sup> In conclusion, we find that in the highly salient norm conflict between the unequally strong stability first norm and the international criminal

accountability norm, UN actors at both the headquarters and the field level opted for a decoupled response that led to consistent norm prioritisation in practice.

## **Conclusion**

In this article, we studied how IOs respond to horizontal norm conflicts. We proposed a typology of responses, which acknowledges the peculiar position of IOs as norm promoters and norm implementers, while considering their status as complex actors with conflicting legitimacies and operating on different implementation levels. Based on the literatures on norm contestation and norm conflict, we suggested that IOs might adopt four types of responses to norm conflicts, namely ad hoc prioritisation, consistent prioritisation, balanced reconciliation, and imbalanced reconciliation. We further argued that the response type depends on the salience of the norm conflict and the relative strength of the conflicting norms.

Relying on extensive first-hand empirical material from UN operations in CAR, Côte d'Ivoire, the DRC, Mali, and Sudan, we analysed how the UN peacekeeping bureaucracy responded to the norm conflicts it encountered as it attempted to operationalise its dual commitments to the international criminal accountability norm and three existing peacekeeping norms. The case studies produced two main findings. First, the findings reveal that our theoretical framework overall helps to explain which strategies UN actors chose. The case studies show that in situations of high salience, the UN was more likely to opt for prioritisation, whereas reconciliation was more likely in cases of low salience, in particular at the headquarters level. In two cases, however, the field level did not choose norm reconciliation in a conflict of low salience but instead opted for ad hoc prioritisation. With regard to the relative strength of norms, we found that this explanatory condition helped to explain which type of prioritisation UN actors chose but did not always correlate in the way we expected with the type of reconciliation that UN actors chose. In fact, in two cases, UN actors chose for imbalanced norm reconciliation with equal norm strength. This might be due to the fact that an empirical analysis of the norms' relative strength according to the actors' perceptions might lead to a different assessment than our analysis of indicators based on the secondary literature. In sum, our study demonstrates that salience and relative strength are relevant explanatory conditions, but may need to be incorporated into a more fine-grained theoretical framework, which includes additional conditions to enhance its explanatory power.

The second main finding is that the type of responses that the UN is likely to choose varies per implementation site. At headquarters, the UN's main approach has been one of norm reconciliation, trying to formalise and integrate the international criminal accountability norm into its peacekeeping practices. However, it also sought to devolve decisions to the field level and opted for consistent norm prioritisation (in the collision with the sovereign equality norm) when there was high pressure from an important member state. At the field level, however, officials within UN peace operations often chose a strategy of norm prioritisation and rarely opted for norm reconciliation. In addition, the mode of response varies across the different implementation sites: UN headquarters tends to focus more on responding through discourse, while the field level tends to concentrate on taking pragmatic action without discursively justifying their choices in public. Part of

the explanation for this variance in strategy and mode of response might be related to the different incentive structures faced by the two levels of implementation. Indeed, field-level actors are further away from the diplomatic focus of UN headquarters, which means that they are less directly involved in balancing member state demands and thus have less of an incentive to choose norm reconciliation.

As we hope this article makes clear, the impact of norm conflicts on IOs is an important, but understudied phenomenon. In this article, we suggested a typology of potential IO responses and developed hypotheses that may explain the strategies they choose. However, future research is necessary to further test the theoretical framework on other IOs and different issue areas. Moreover, given the fact that our expectations with regard to the effects of salience and the relative strength of norms did not always hold, future researchers might explore additional explanatory conditions or intervening variables. Another avenue for further analysis would be to systematically assess the incentives at work in different implementation sites to explain the variance of response strategies. Moreover, there is room for additional research into the potential legitimacy problems that meta-hypocrisy, caused by the discrepancy between responses at the headquarters and field level, creates for IOs.

In more practical terms, the analysis makes clear that IOs like the UN are faced with strong dilemmas when responding to norm conflicts. Our findings suggest that the response strategies adopted by the UN peacekeeping bureaucracy have succeeded in combining a moderate amount of assistance to international criminal justice efforts with a limited impact on the organisation's main peacekeeping norms. In the longer term, however, we argue that these patterns carry three major risks.

First, the ad hoc prioritisation strategy adopted at the field level makes international justice contingent on the operational imperatives of a peacekeeping mission, exacerbating the problem of selectivity in the application of criminal procedures. Although it enables officials on the ground to maximise local effectiveness by deciding per situation what the best response is, a consistent subordination of the international criminal accountability norm to the operational necessities of a peace operation also potentially undermines a core aspect of the international criminal accountability norm, namely that all perpetrators should be held accountable regardless of their status. The UN peacekeeping bureaucracy's norm reconciliation strategies have reduced some of the tensions produced by the norm conflicts, but they have remained imbalanced in carving out important exceptions to the applicability of the international criminal accountability norm, especially if officials of the host state are involved. If criminal accountability is perceived as context-dependent, this could ultimately lead to norm erosion.

Second, the close connection between assistance to the ICC and the consent of the government introduces a risk of instrumentalisation of both the ICC and the peace operation by the government. If a government only consents to assistance when it is in its interest, the ICC becomes an 'international legal lasso' to neutralise domestic opposition, with the peace operation as a willing collaborator (Hillebrecht and Straus, 2017). The consent-based assistance by UN peace operations to the ICC, although entirely justifiable from the perspective of their operational needs and normative background, stands to exacerbate the perception that the ICC is overly dependent on governments and subservient to state interests (Clark, 2018).

Finally, the increasing use of peace operations to implement criminal justice affects the unique role that UN peacekeeping plays in international conflict resolution. Supporting a court that some conflict parties perceive as partial may limit a peacekeeping operation's ability to mediate between conflict parties, affect its legal protection as impartial troops, and undermine international acceptance within the UN. If the norm conflict is resolved primarily through ad hoc prioritisation at the level of individual peace operations, these operations risk their credibility and local legitimacy being damaged. Therefore, we recommend that the UN undertakes greater efforts at the headquarters level to reconcile its support to the ICC with existing peacekeeping norms. Greater acceptance and active support of the ICC through the UN's member states – in particular those involved in the implementation of peacekeeping – would benefit this reconciliation in the long run.

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### **Supplemental material**

Supplemental material for this article is available online.

### **Notes**

1. We follow the standard definition of a norm as 'a standard of appropriate behaviour for actors with a given identity'. See: Finnemore and Sikkink (1998: 891).
2. The ICC can open investigations in states when the state refers a 'situation' to the Court's jurisdiction, when the UN Security Council decides to refer a situation to the ICC or when the ICC Prosecutor convinces judges that a situation in a member state meets the conditions to open an investigation.



3. This number is based on the reimbursements reported by the UN Secretary-General in his annual reports on 'Expenses incurred and reimbursement received by the United Nations in connection with assistance provided to the International Criminal Court.' See: f.e. UN Docs. A/63/471 and A/73/333.
4. In 2019, the UN changed the name of DPKO to the Department of Peace Operations and that of DPA to the Department of Political and Peacebuilding Affairs. However, because of the temporal focus of this article, we use DPKO and DPA to refer to the UN Secretariat units that dealt with the UN's peacekeeping operations.
5. This is similar to the idea of behavioural contestation as used by Kreuder-Sonnen (2019).
6. The first author conducted the data collection for this article, including the interviews and the document analysis. The numbers in the footnotes with the interviews refer to the Online Appendix. While the general strategy was to conduct the interviews on the record, each respondent was offered the option to maintain anonymity so that he or she could speak candidly.
7. UN Security Council Resolution 2448 (2018), para 40 (xi).
8. The most recent one can be found in UN Doc. A/RES/74/6.
9. Interviews with UN Office of Legal Affairs officials (#14, #23, #28).
10. Interview with European diplomat working in the UN Security Council (#36).
11. UN Security Council (2004); UN Security Council Resolution 1565 (2004).
12. Interview with Luis Moreno-Ocampo (#117).
13. Interview with senior DPKO official (#73).
14. Interviews with Patrick Cammaert (#71) and Hervé Lecoq (#70).
15. Interview with William Lacy Swing (#75).
16. Interview with Swing (#75).
17. Interviews with UN officials (#17 and #19).
18. Interview with UN official (#121).
19. Interviews with mission leaders of MINUSCA and MONUSCO and several UN officials working in MINUSMA, MINUSCA and UNOCI, 2017–2020.
20. Interviews with DPKO official (#33).
21. Interview with UN official (#23).
22. Interviews with Patrick Cammaert (#71) and Martin Kobler (#78).
23. Interview with Security Council Report expert (#21).
24. Interview with UN official (#16).
25. Interview with Haile Menkerios (#123).
26. Interview with Amin Mohsen (#79).
27. Interviews with William Lacy Swing (#91), Alan Doss (64) and Roger Meece (#45).

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