

# RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

International Institutional Law  
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# **Responsibility of an international organization for its internationally wrongful acts**

Every internationally wrongful act of an international organization entails the international responsibility of that organization.

# **Draft articles on the responsibility of international organizations (DARIO), 2011**

Adopted by the International Law Commission, in 2011, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/66/10).

Yearbook of the International Law Commission,  
2011, vol. II, Part Two.

# Article 1 DARIO

## Scope of the draft articles

1. DARIO apply to the international responsibility of an international organization for an internationally wrongful act. It defines:

- Elements of the wrongful act
- Consequences ---reparation can assume three forms: restitution, compensation and satisfaction
- Invocation of responsibility – usually the damaged state/IO, but for *erga omnes* obligations everyone

2. DARIO also apply to the international responsibility of a State for an internationally wrongful act in connection with the conduct of an international organization.

## Article 4

### Elements of an internationally wrongful act of an international organization

There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:

- (a) is attributable to that organization under international law [**subjective element**]; and
- (b) constitutes a breach of an international obligation of that organization [**objective element**].

## Article 6

### Conduct of organs or agents of an international organization

1. The conduct of an organ or agent of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization.
2. The rules of the organization shall apply in the determination of the functions of its organs and agents.

## Article 2

### Use of terms

- c) “organ of an international organization” means any person or entity which has that status in accordance with the rules of the organization;
- d) agent of an international organization” means an official or other person or entity, other than an organ, who is charged by the organization with carrying out, or helping to carry out, one of its functions, and thus through whom the organization acts

## Article 8

### Excess of authority or contravention of instructions

The conduct of an organ or agent of an international organization shall be considered an act of that organization under international law if the organ or agent acts in an official capacity and within the overall functions of that organization, even if the conduct exceeds the authority of that organ or agent or contravenes instructions.



# Organs placed at the disposal of an IO

## Article 7 DARIO

### Conduct of organs of a State or organs or agents of an international organization placed at the disposal of another international organization

The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct.

Operational control

# MULTILATERAL MILITARY OPERATIONS

**ECHR, Al-Jedda v. UK, 7 luglio 2011**

80. The Court does not consider that, as a result of the authorisation contained in Resolution 1511, the acts of soldiers within the Multi-national Force became attributable to the United Nations or – more importantly, for the purposes of this case – ceased to be attributable to the troop-contributing nations. ... the United States and the United Kingdom, through the Coalition Provisional Authority which they had established at the start of the occupation, continued to exercise the powers of government in Iraq. Although the United States was requested to report periodically to the Security Council about the activities of the Multi-National Force, the United Nations did not, thereby, assume any degree of control over either the force or any other of the executive functions of the Coalition Provisional Authority.

# MULTILATERAL MILITARY OPERATIONS

**ECHR (GC), Behrami and Saramati, 2 May 2007**

135. Accordingly, UNSC Resolution 1244 gave rise to the following chain of command in the present cases. The UNSC was to retain ultimate authority and control over the security mission and it delegated to NATO (in consultation with non-NATO member states) the power to establish, as well as the operational command of, the international presence, KFOR.

# MULTILATERAL MILITARY OPERATIONS

**Blue helmets:** “It has been the long-established position of the United Nations, however, that forces placed at the disposal of the United Nations are “transformed” into a United Nations subsidiary organ and, as such, entail the responsibility of the Organization, just like any other subsidiary organ, regardless of whether the control exercised over all aspects of the operation was, in fact, “effective”. In the practice of the United Nations, therefore, the test of “effective control” within the meaning of draft article 6 has never been used to determine the division of responsibilities for damage caused in the course of any given operation between the United Nations and any of its troop-contributing States” - **Comments and observations of the UN Office of Legal Affairs on the Draft Articles on Responsibility of International Organizations, February 2011, A/CN.4/637/Add. 1, p. 13 f.**

# MULTILATERAL MILITARY OPERATIONS

## COURT OF APPEAL IN THE HAGUE, NUHANOVIC, 5/7/2011

- 5.11 Furthermore, the Court attaches importance to the fact that the context in which the alleged conduct of Dutchbat took place differs in a significant degree from the situation in which troops placed under the command of the UN normally operate, as was the issue at stake in the cases Behrami v. France, no. 71412/01 and Saramati v. France, Germany and Norway, no. 78166/01 of the ECtHR.
- 5.12 The Court can only conclude that the decision for the evacuation of Dutchbat and the refugees resulting from the consultations between Janvier, Van den Breemen and Van Baal was actually taken by mutual agreement between Janvier on behalf of the UN on the one hand and by Van den Breemen and Van Baal on behalf of the Dutch Government on the other.
- 5.19 The allegations brought against the conduct of Dutchbat by Nuhanovic are directly related to the Dutch Government's decisions and instructions.
- 5.20 The Court concludes therefore that the State possessed 'effective control' over the alleged conduct of Dutchbat that is the subject of Nuhanovic's claim and that this conduct can be attributed to the State. In so far, grounds 3-9 and 11-13 have been put forward successfully.

# ALLOCATION OF RESPONSIBILITY AMONG STATES AND IOs

**Who is the wrongful conduct to be attributed to?**

State

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graph TD; S([State]) --> A[A. Does the IO bear any responsibility in connection with the act of the State?]; IO([International Organization]) --> B[B. Does the State bear any responsibility in connection with the act of the IO?];
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**A. Does the IO bear any responsibility in connection with the act of the State?**

International  
Organization

**B. Does the State bear any responsibility in connection with the act of the IO?**

# **A. Responsibility of an international organization in connection with the act of a State or another international organization**

## **Article 14**

### **Aid or assistance**

An IO which aids or assists a State or another IO in the commission of an internationally wrongful act is internationally responsible for doing so if:

- (a) the organization does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that organization.

## **Article 15**

### **Direction and control**

An IO which directs and controls a State or another IO in the commission of an internationally wrongful act is internationally responsible for that act if:

- (a) the organization does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that organization.

# A. Responsibility of an international organization in connection with the act of a State or another international organization

## Article 16 Coercion

An IO which coerces a State or another IO to commit an act is internationally responsible for that act if:

- (a) the act would, but for the coercion, be an internationally wrongful act of the coerced State or international organization; and
- (b) the coercing international organization does so with knowledge of the circumstances of the act

## Article 17 Circumvention of an obligation through decisions and authorizations addressed to members

1. An international organization incurs international responsibility if it circumvents one of its international obligations by adopting a decision binding member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization.
2. An international organization incurs international responsibility if it circumvents one of its international obligations by authorizing member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization and the act in question is committed because of that authorization.
3. Paragraphs 1 and 2 apply whether or not the act in question is internationally wrongful for the member States or international organizations to which the decision or authorization is addressed



# **A. Responsibility of an international organization in connection with the act of a State or another international organization**

## **Article 19**

### **Effect of this Chapter**

This chapter is without prejudice to the international responsibility of the State or international organization which commits the act in question, or of any other State or international organization.

## B. Responsibility of a State in connection with the conduct of an international organization

### ECHR, Nada v. Switzerland, 12/09/2012

121. In the present case the measures imposed by the Security Council resolutions were implemented at national level by an Ordinance of the Federal Council and the applicant's requests for exemption from the ban on entry into Swiss territory were rejected by the Swiss authorities (the IMES, then the ODM). The acts in question therefore relate to the national implementation of UN Security Council resolutions... The alleged violations of the Convention are thus attributable to Switzerland.

122. ... The impugned acts and omissions are thus capable of engaging the respondent State's responsibility under the Convention.

## B. Responsibility of a State in connection with the conduct of an international organization

### Article 58

#### Aid or assistance by a State in the commission of an internationally wrongful act by an IO

1. A State which aids or assists an IO in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:
  - (a) the State does so with knowledge of the circumstances of the internationally wrongful act; and
  - (b) the act would be internationally wrongful if committed by that State.
2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of this article.

### Article 59

#### Direction and control exercised by a State over the commission of an internationally wrongful act by an IO

1. A State which directs and controls an IO in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:
  - (a) the State does so with knowledge of the circumstances of the internationally wrongful act; and
  - (b) the act would be internationally wrongful if committed by that State.
2. An act by a State member of an IO done in accordance with the rules of the IO does not as such engage the international responsibility of that State<sup>19</sup> under the terms of this article.

## B. Responsibility of a State in connection with the conduct of an international organization

### Art. 1 ECHR

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

e.g. a Member State would incur international responsibility if:

- 1) It votes in favor of a resolution authorising torture
- 2) It contributes troops to a UN mission whose aim is to torture

## B. Responsibility of a State in connection with the conduct of an international organization

### Article 60

#### Coercion of an IO by a State

A State which coerces an IO to commit an act is internationally responsible for that act if:

- (a) the act would, but for the coercion, be an internationally wrongful act of the coerced IO; and
- (b) the coercing State does so with knowledge of the circumstances of the act.

### Article 61

#### Circumvention of int. obligations of a State member of an IO

1. A State member of IO incurs international responsibility if, by taking advantage of the fact that the IO has competence in relation to the subject-matter of one of the State's international obligations, it circumvents that obligation by causing the IO to commit an act that, if committed by the State, would have constituted a breach of the obligation.
2. Paragraph 1 applies whether or not the act in question is internationally wrongful for the IO.

# 1. ECtHR, *Bosphorus Hava Yollary Turizm ve Ticaret Anonim Sirketi v. Ireland*, 30/06/2005

154. In ... establishing the extent to which a State's action can be justified by its compliance with obligations flowing from its membership of an international organisation to which it has transferred part of its sovereignty, the Court has recognised that absolving Contracting States completely from their Convention responsibility in the areas covered by such a transfer would be incompatible with the purpose and object of the Convention; the guarantees of the Convention could be limited or excluded at will, thereby depriving it of its peremptory character and undermining the practical and effective nature of its safeguards [...]. The State is considered to retain Convention liability in respect of treaty commitments subsequent to the entry into force of the Convention [...].

155. In the Court's view, State action taken in compliance with such legal obligations is justified as long as the relevant organisation is considered to protect fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides [...]). By “equivalent” the Court means “comparable”; [...]

156. If such equivalent protection is considered to be provided by the organisation, the presumption will be that a State has not departed from the requirements of the Convention when it does no more than implement legal obligations flowing from its membership of the organisation.

However, any such presumption can be rebutted if, in the circumstances of a particular case, it is considered that the protection of Convention rights was manifestly deficient.

**2. ECtHR, STICHTING MOTHERS OF  
SREBRENICA AND OTHERS v the  
Netherlands, 11/06/2013**

**See Seminar!!!**



## **B. Responsibility of a State in connection with the conduct of an international organization**

### **Article 40**

#### **Ensuring the fulfilment of the obligation to make reparation**

1. The responsible IO shall take all appropriate measures in accordance with its rules to ensure that its members provide it with the means for effectively fulfilling its obligations under this Chapter.
2. The members of a responsible IO shall take all the appropriate measures that may be required by the rules of the IO in order to enable the IO to fulfil its obligations under this Chapter.