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A Critical Analysis of the Responsibilities of International Institutions in International Law

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I. INTRODUCTION

The significant role of international organizations[1] in the modern international community is undeniable. International organizations adopt measures which greatly influence or regulate interstate activities in many fields of international cooperation. Their involvement has become a predominant feature of the areas of international relations such as international trade, human rights protection, economic development and trade transactions among states or so-called international regimes.[2] It is crucial to consider that international organizations act as independent actors on the international plane; expanding both their quantity and quality involvement. They have gradually been entrusted with powers that were long considered the domain of sovereign powers. International organizations are capable of exercising these powers by virtue of their international legal personality.[3] On the same basis, they can incur their own international responsibility, similarly to primary subjects of international law. Yet, the international legal personality of international organizations differs from that of states and this has its consequence in their international responsibility. When exercising their expanding competence, international organizations manifest some structural deficiencies; and therefore, they must often resort to resources offered by their member states. The complex relationship between an international organization and its members is exasperated when the international organization violates international law, particularly with regard to the allocation of international responsibility.[4]

Law of international responsibility of international organizations constitutes an area where many conflicting interests and legal principles emerge. This paper aims to answer whether the current state of international law on responsibility of international organizations protects these principles in an effective way. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not states.[5]In principle, international

[1]There is no generally-recognized definition on international organization. In a broad sense, the term international organization covers intergovernmental organizations, international non-governmental organizations, international tribunals, international public corporations, and even multinational enterprises established by the law of the particular State. In a narrow sense, it means intergovernmental organizations. In this respect, Vienna Convention on the Law of Treaties (1980) provides that international organization is intergovernmental organization (Article 2 (i)). The former is a quite disputable issue among international law scholars. Although the latter expresses traditional concept of international organizations in international law, in fact, it cannot fully encompass diversity among international organizations

[2]M. Hirsch, The Responsibility Of International Organizations Toward Third Parties: Some Basic Principles, Dodrecht, 1995, p. 2.

[3]J. R. Crawford, State responsibility, para. 12 in R. Wolfrum (ed.), "Max Planck Encyclopedia of Public International Law" Online Edition 2013

[4]Jose E. Alvarez, International Organizations as Law-makers, Oxford University Press 2005, p.129

[5]ICJ Advisory opinion, Reparation for injuries suffered in the service of the United Nations (April 11th, 1949), p.178. Available at [6]http://www.icj-cij.org/docket/files/4/1835.pdf last accessed on 8th August, 2018

This is called "the principle of specialty". It means international organizations are established in order to exercise specific functions. See the UN,

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organizations are quite different from States because of the fact that they do not possess a general competence and have been established in order to exercise specific functions.[6]While States possess common rights and duties recognized by international law whereas the rights and duties of international organizations depend upon their purposes and functions expressed or implied in their constitutions and developed practice in this matter. For this reason, the fact that international organization is an international legal person does not mean that it is in the same position as a state in international law. The main role of international law therefore is to promote global peace and prosperity and so it is ideal to recognize the fact that international law and its accompanying institutions act as a balm to smooth over opposing interests that nations may have.

II. DEFINITION OF INTERNATIONAL INSTITUTIONS

An international organization has been defined "as a forum of co-operation of sovereign states based on multilateral international organizations and comprising of a relatively stable range of participants, the fundamental feature of which is the existence of permanent organs with definite competences and powers acting for the carrying out of common aims.[7]In the widest sense, international organization can be defined as "a process of organizing the growing complexity of international relations; international organizations are the institutions which represent the phase of that process. They are the expressions of and contributors to the process of international organization, as well as, the significant factors in contemporary world affairs.[8] International organizations, as institutions may come and go in accordance with the significance of the dynamism of international relations. But international organization, the process, exists as an established trend. It was the stimulus of the existing process ready at hand that automatically led, after the collapse of the League of Nations, to the creation of new organizations like the U.N. Thus, international organization is the process by which states establish and develop format and continuing institutional structures for the conduct of certain aspects of their relationships with each other. It represents a reaction to the extreme decentralization of the traditional system of international relations and the constantly increasing complexities of the interdependence of states''

III. THE CONCEPT OF INTERNATIONAL LAW AND ITS HISTORY

International law is the set of rules generally regarded and accepted as binding in relations between states and between nations.[9] It serves as a framework for the practice of stable and organized international relations.[10] International law differs from state-based legal systems in that it is primarily applicable to countries rather than to private citizens. National law may become international law when treaties delegate national jurisdiction to supranational tribunals such as the European Court of Human Rights or the International Criminal Court. Treaties such as the Geneva Conventions may require national law to conform to respective parts. Much of international law is consent-based governance. This means that a state member is not obliged to abide by this type of international law, unless it has expressly consented

International Law Commission, Draft Articles on the Responsibility of International Organizations, with commentaries (2011), p.3

[7]http://www.abyssinialaw.com/about-us/item/474-meaning-and-scope-of-international-organizations

[8]There is no generally-recognized definition on international organization. In a broad sense, the term international organization covers intergovernmental organizations, international non-governmental organizations, international tribunals, international public corporations, and even multinational enterprises established by the law of the particular State. In a narrow sense, it means intergovernmental organizations. In this respect, Vienna Convention on the Law of Treaties (1980) provides that international organization is intergovernmental organization (Article 2 (i)). The former is a quite disputable issue among international law scholars. Although the latter expresses traditional concept of international organizations in international law, in fact, it cannot fully encompass diversity among international organizations

[9]"International law". Houghton Mifflin Company. *Retrieved 13 September 2011,The term was first used by* Jeremy Bentham*in his* "Introduction to the Principles of Morals and Legislation" in 1780. See Bentham, Jeremy *(1789),* An Introduction to the Principles of Morals and Legislation, *London: T. Payne, p. 6,* retrieved 2012-12-05

[10]Slomanson, William (2011). Fundamental Perspectives on International Law. Boston, USA: Wadsworth. pp. 4–5

to a particular course of conduct.[11] This is an issue of state sovereignty. However, other aspects of international law are not consent-based but still are obligatory upon state and non-state actors such as customary international law and peremptory norms (jus cogens).

The current order of international law, the equality of sovereignty between nations, was formed through the conclusion of the "Peace of Westphalia" in 1648. Prior to 1648, on the basis of the purpose of war or the legitimacy of war, it sought to distinguish whether the war was a "just war" or not.[12] This theory of power interruptions can also be found in the writings of the RomanCicero and the writings of St. Augustine. According to the theory of armistice, the nation that caused unwarranted war could not enjoy the right to obtain or conquer trophies that were legitimate at the time.[13]The 17th, 18th and 19th centuries saw the growth of the concept of the sovereign "nation-state", which consisted of a nation controlled by a centralised system of government. The concept of nationalism became increasingly important as people began to see themselves as citizens of a particular nation with a distinct national identity. Until the mid-19th century, relations between nation-states were dictated by treaty, agreements to behave in a certain way towards another state, unenforceable except by force, and not binding except as matters of honor and faithfulness. But treaties alone became increasingly toothless and wars became increasingly destructive, most markedly towards civilians, and civilized peoples decried their horrors, leading to calls for regulation of the acts of states, especially in times of war.

The modern study of international law starts in the early 19th century, but its origins go back at least to the 16th century, and AlbericoGentili, Francisco de Vitoria and Hugo Grotius, the "fathers of international law."[14] Several legal systems developed in Europe, including the codified systems of continental European states and English common law, based on decisions by judges and not by written codes. Other areas developed differing legal systems, with the Chinese legal tradition dating back more than four thousand years, although at the end of the 19th century, there was still no written code for civil proceedings.[15] One of the first instruments of modern international law was the Lieber Code, passed in 1863 by the Congress of the United States, to govern the conduct of US forces during the United States Civil War and considered to be the first written recitation of the rules and articles of war, adhered to by all civilized nations, the precursor of international law. This led to the first prosecution for war crimes in the case of United States prisoners of war held in cruel and depraved conditions at Andersonville, Georgia, in which the Confederate commandant of that camp was tried and hanged, the only Confederate soldier to be punished by death in the aftermath of the entire Civil War. In the years that followed, other states subscribed to limitations of their conduct, and numerous other treaties and bodies were created to regulate the conduct of states towards one another in terms of these treaties, including, but not limited to, the Permanent Court of Arbitration in 1899; the Hague and Geneva Conventions, the first of which was passed in 1864; the International Court of Justice in 1921; the Genocide Convention; and the International Criminal Court, in the late 1990s. Because international law is a relatively new area of law its development and propriety in applicable areas are often subject to dispute.[16]

IV. HISTORY OF INTERNATIONAL INSTITUTIONS

The development of international organizations has been in the main, a response to the evident need arising from international intercourse rather than to the philosophical or ideological appeal ofthe notion of world or global government. The growth of international intercourse has been a constant feature of maturing societies; advances in the mechanics of transport and communications combined with the desire for trade and commerce have produced a degree of intercourse which ultimately called for

[11]*Slomanson, William (2011). Fundamental Perspectives on International Law. Boston, USA: Wadsworth. p. 4*

[12]Available athttps://en.wikipedia.org/wiki/International_law last accessed on 9th August, 2018

[13]Randall Lesaffer, "Too Much History: from War as Sanction to the Sanctioning of War", in Marc Weller (ed.), The Oxford Handbook of the Use of Force in International Law (Oxford: Oxford University Press, 2015), p.37-38

[14]Thomas Woods Jr. (18 September 2012).*How the Catholic Church Built Western Civilization*. Regnery Publishing, Incorporated, An Eagle Publishing Company. pp. 5, 141–142. *ISBN 978-1-59698-328-1*

[15]*China and Her People*, Charles Denby, L. C. Page, Boston 1906 page 203

[16]https://en.wikipedia.org/wiki/International_law last accessed on 9th August, 2018

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international regulation by institutional means.[17]Such regulation has taken various forms. Originally, international society was unorganized. Each state acted separately in resolving conflicts with other states. As relations increased, it became necessary to regulate and set common standards through bilateral and later multilateral diplomatic conferences.[18]

The first attempt towards organized society probably was the congress of Vienna in 1815 which marked the end of the Napoleonic wars. It was the first attempt to create a standing conference of European powers to deal with problems andstreamline their policies. Many diplomatic conferences were held between 1820 and 1885 in Europe. One of such conferences was for the partition of African territories among the European powers after their intense struggles forAfrican territories. The achievements during the period included co-operation in communication, transport, public health and economic fields.[19]Several Administrative unions were founded within the above stated period and they were the first definite steps towards a semi-organized international community. The permanent court of Arbitration came into existence in 1899. The first attempt at a general political organization was the League of Nations which was set up in 1920. The Council of fifteen (including permanent members) had certain executive functions in handling and settling disputes between members. However, the requirement of unanimity (with certain exceptions in voting) limited its scope. The other main organs of the League of Nations were the Assembly and the Secretariat. The Treaty of Versailles which also embodied the covenant of the league created the international labour organization (ILO). The shortcomings of the league included its inability to prevent the aggression by Japan against China in 1931 and Italy against Abyssinia in 1935-6. The league was also indifferent of colonial exploitation and abuses. The short comings of the League of Nations inevitably led to the formations of **the United Nations** in 1945 at the San Francisco conferences.[20]The central deliberative organ of the United Nations is the General Assembly, which is made up of representatives of all the member nations. The General Assembly is an important forum for discussion and negotiation, but it does not have the power to make binding international law decisions. Instead, it conducts studies and issues non-binding resolutions and recommendations reflecting the views of its members.[21] The principal enforcement arm of the United Nations is the Security Council. The Council is made up of representatives from fifteen nations. Five nations (China, France, Russia, the United Kingdom, and the United States) have permanent seats on the Council, as well as a veto power over the Council's decisions. The other ten seats on the Council are filled by representatives of other nations elected by the General Assembly. Under the United Nations Charter, the Council is given ''primary responsibility for the maintenance of international peace and security.'' To address any threat to the peace, breach of the peace, or act of aggression, ''the Council may call upon the members of the United Nations to apply'' measures not involving the use of armed force, such as economic sanctions. If the Council determines that such non-military measures are inadequate, it may authorize ''such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.'' The Charter obligates each member to ''accept and carry out the decisions of the Security Council.''

Another component of the United Nations system is the **International Court of Justice** (also sometimes referred to as the ''World Court''), which is based in The Hague, in the Netherlands. There are fifteen judges on the Court and they are elected to staggered nine-year terms. The Court has jurisdiction over two types of cases: contentious cases and cases seeking an advisory opinion.[22] In contentious cases, only nations may appear as parties. In cases seeking advisory opinions, certain international organizations may also be parties. To be a party to a contentious case before the International Court of Justice, a nation must ordinarily be a party to the Statute of the International Court of Justice (a multilateral treaty) and have consented to the Court's jurisdiction. Consent to jurisdiction can be given in several ways: a special agreement between the parties to submit their dispute to the Court; a jurisdictional

[17]Sauds& Klein: Boweth Law of International Institution, 2001, p.2.

[18]Crawford, The Creation of Statehood in International Law, Oxford, 1979

[19]U. O. Umozurike: Introduction to International Law. P.233.

[20]https://cyber.harvard.edu/cybersecurity/Overview_of_International_Law_and_Institutions last accessed on 9th August, 2018

[21]https://cyber.harvard.edu/cybersecurity/Overview_of_International_Law_and_Institutions last accessed on 9th August, 2018

[22]https://cyber.harvard.edu/cybersecurity/Overview_of_International_Law_and_Institutions last accessed on 9th August, 2018

clause in a treaty to which both nations are parties; or a general declaration accepting the compulsory jurisdiction of the Court.

In addition to the United Nations system, there are a variety of international institutions established to administer particular treaty regimes. A prominent example is the **World Trade Organization (WTO)**, which was established in 1995 to administer the General Agreement on Tariffs and Trade and related agreements.[23] The WTO has its own dispute settlement body, which adjudicates trade disputes between member nations. To enforce its decisions, the dispute settlement body can authorize the prevailing party to impose trade sanctions on the losing party.

Another example is the **International Criminal Court**, based in The Hague, which has jurisdiction to try and punish certain international offenses, such as genocide.[24] Finally, there are regional international institutions, the most prominent of which is the **European Union (EU).** The EU currently is made up of 27 member countries. The EU has a number of constitutive organs, including a European Parliament, which is elected by individuals in the member countries; a Council of the European Union, which has representatives from the member governments; and a European Commission (an executive body). It also has a European Court of Justice, based in Luxembourg, which interprets and applies the treaty commitments of the Union. Although not part of the EU system, there is also a European Court of Human Rights, based in Strasbourg, France, which interprets and applies the European Convention for the Protection of Human Rights and Fundamental Freedoms (which has been ratified by over 40 countries). The decisions of both the Court of Justice and the Court of Human Rights are binding on the member countries.

V. CLASSIFICATIONS OF INTERNATIONAL INSTITUTIONS

The classifications of international institutions are done with regard to their form, operation, aims and objectives and the scope or area of operation.[25] International institutions may be classified as universal, global or regional according to whether they concern the universe as a whole or only part of it. In this regard, the United Nations (UN)ICAO[26] and IMO[27] are universal or near universal in their coverage. The Organization of African Unity (OAU), OAS[28]and NATO[29] are regional. A universal or global institution may have regional bodies such as the UN Economic Commissions for Africa, for the far East, for Europe andLatin America. International institutions may also be general or specialized. They may have comprehensive or limited competence. The UN deals with all matters within its very wide scope. The ICAO, IMO, WHO and FAO deal with specific matters, they maybe advisory, regulatory. Members may obey their resolutions or ignore them without legal, as against political or moral consequences. The International Monetary Fund (IMF) and the ICAO are regulatory while the European Steel and Coal Community and the EEC[30] have supranational characteristics. They maybe executive when they carry out specific functions for the members states like the River Basins. They maybe judicial like the International Court of Justice (ICJ) and the European Court of Human Rights as well as the International Criminal Court (ICC). They may also be political like the UN that has general political competence. They may also be classified as adhoc, provisional or permanent in relation to their duration and as single-purpose or multi-purpose according to the nature of their purpose.[31]International institutions may also be classified as governmental when embrace representatives of governments, as most do, or private like the ICRC, International Parliamentary Union, the International Law Association and the International Chamber of Commerce. Every international organization usually has a plenary organ in which all members are represented with equal or weighted voting and an executive organ or secretariat.[32]

[23]https://cyber.harvard.edu/cybersecurity/Overview_of_International_Law_and_Institutions last accessed on 9th August, 2018

[24]https://cyber.harvard.edu/cybersecurity/Overview_of_International_Law_and_Institutions last accessed on 9th August, 2018

[25]Available at https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/29661/30454 last accessed on 9th August, 2018

[26] ICAO – International Civil Aviation Authority

[27]IMO –International Maritime Organization

[28]OAS –Organization of American States

[29]NATO –North Atlantic Treaty Organization

[30] EEC –European Economic Community

[31] D.V. Bowet, The Law of International Institutions, 1975 pp. 9 - 11

[32]Available at https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/29661/30454 last accessed on 9th August, 2018

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VI. LEGAL STATUS OF INTERNATIONAL INSTITUTIONS

a. General Principles

The legal status of any organization means the recognition as an entity of that organization by the relevant law(s).[33] Simply put, it means the legal personality of the organization. In other words, is the organization recognized by law as a legal person? In this context, therefore, what is the legal personality or status of international institutions? Legal personality is very important and crucial. Without it, groups and institutions cannot operate for they need to be able to maintain and enforce claims. In municipal law, individuals, limited companies and public corporations are recognized as each possess a distinct legal personality, the terms of which are circumscribed by the relevant legislation.[34]It is the law that determines the scope and nature of personality. An international person is an entity that is recognized as having rights and duties in international law. Such an entity is a subject of international law as opposed to an object that has no right and duties. Some international lawyers argue that only states can be the true subjects of international law.[35]

b. Status of International Institutions

There is no doubt that states remain the typical and primary subjectsof international law. However, not all states have the same capacities. One of the important developments in contemporaryinternational law is the widening concept of international personality. What the personality entails for international persons are not necessarily identical. Legal personality is now generally considered to be the most important constitutive element of international organizations.[36] It is above all the fact that they are endowed with a separate legal personality that distinguishes international organizations from other entities which are nothing more than organs common to two or more states, as were most of the nineteenth century international secretariats orbureau. The recognition that there was no necessary link between international personality and sovereignty,on the one hand, and the appreciation of an increasing role for intergovernmental organizations ininternational affairs and relations, on the other, gradually resulted in a more general acceptance of the fact that international organizations possessed or could possess a separate legal personality with consequential effects in the international and domestic legal orders.[37]

The concept of legal personality and its implications are not always easy to understand. This seems to be particularly true in relation to international organizations given that they are "secondary subjects" of international law the creation of which flows from the will of other international legal persons (mostly states but also, more recently other international organizations). The explicit conferment ofinternational legal personality on intergovernmental organizations has for a long time remained the exception rather than the rule. It was, hence, only in a bilateral instrument aiming at governing its status in the host country and not in the covenant, that the League of Nations was recognized as possessing "international personality and legal capacity"[38]. Similarly, the UN Charter only provides in Art 104 for the legal capacity of the organization in the territory of each of its members. But such explicit recognition, by conventional means, is not the only way in which international legal personality has been conferred upon international organizations.

As earlyas 1949, the I.C.J ruled in its celebrated **Advisory Opinion on the Reparation for injuries suffered in the service of the United Nations**that the organization was to be deemed to possess **"a large measure of international personality"**.[39]In reaching its decisions, the court relied on various elements (such as the attribution oflegal capacity, privileges and immunities in the territory of member states and the capacity to conclude treaties) to reach the conclusion that the organization possessed a juridical personality on the international plane, and was therefore capable of presenting such a claim. The judges observed that the members had entrusted the organization with a variety of functions, the fulfillment of which would not have been possible ifthe UN had not been endowed with a legal personality of its own.[40]The Court stated: **"the organization was**

[33]Crawford, The Creation of Statehood in International Law, Oxford, 1979
[34]R. Dias, Jurisprudence, 5thEd. London, 1985, Chapter 12.

[35]Available at https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/29661/30454 last accessed on 9th August, 2018
[36]Verzijl, International Law, pp. 17 – 43; Lauterpacht, International Law, pp.494-500

[37]Reinisch, International Organizations before National Courts, 2000.
[38] 7 OJLN (1926), Ann. 911a, 1422
[39] (1949) I.C.J. Reps 179
[40] Ibid. 178

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intended to exercise and enjoy, and is in factexercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. It is at present the supreme type of international organization, and it could not carry out the intentions of its founders if it was devoid of international personality. It must be acknowledged that its members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable thosefunctions to be effectively discharged"[41]. It is also noteworthy that the judges took great care to link the attribution of such personality to the will of the member states –which is necessarily implied in this case. Although the I.C.J. emphasized the characteristics of the UN as an organization entrusted with particularly important responsibilities on international plane, it is now widely accepted that the same reasoning maybe adapted to any international organization, the international legal personality of which has not been explicitly proclaimed in its constitutive or other instruments.[42]The attribution of international legal personality simply means that the entityupon which it is conferred is a subject of international law and that it is capable of possessing international rights and duties. The precise scope of those rights and duties will vary according to what may reasonably be seen as necessary, in view of the purposes and functions of the organization in question, to enable the later to fulfill its task. What is beyond debate is that in creating this capacity, the attribution of international legal personality to an intergovernmental organization establishes it as an entity legally distinct from its members. This is one of the elements emphasized by the I.C.J. in its 1949 Advisory Opinion. In the same vein, the Swiss Supreme Court (Tribunal Federal) ruled in the **AOI, case** that "the personality accorded to the AOI, as well as the autonomy conferred on it at the legal, financial and procedural level –are the obvious and unequivocal signs of the total legal independenceof the organization in relation to the founding states.[43]The sum total of all the above is that international institutions are legal personalities in the international plane.[44]

VII. THE RESPONSIBILITIES OF INTERNATIONAL INSTITUTIONS

7.1 Fundamental principles

International institutions are established by states by international treaties. The establishment of an international organization with international personality results in the formation of a newlegal person, separate and distinct from the states creating it.[45] This separate and distinct personality necessarily imports consequences as to international responsibility, both to and by the organization. The I.C.J.noted in **the Reparations case** that **"when an infringement occurs, the organization should be able to call upon the responsible state to remedy its default, and in particular, to obtain from the state reparation for the damage that the default may have caused" and emphasized and there existed an "undeniable right of the organization to demand that its members shall fulfill the obligations entered into by them in the interest of the good working of the organization"**.[46]

Responsibility is a necessary consequence of international personality andthe resulting possession of international rights and duties. Such rights and duties may flow from treaties such as headquarters agreements or from the principles of customary international law.[47]The precise nature of responsibility will depend upon the circumstances of the case and, no doubt, analogies drawn from the law of state responsibility with regard to the conditions under which responsibility will be imposed.[48]It is worthy to note that the basis of international responsibility is the breach of an international obligation and such obligations will depend upon the situation. The court noted in **the Reparation case**[49]that the obligations entered into by member states to enable the agents of the UN to perform their duties were obligations owed to the organization. Thus, the organization has, in the case of a breach of such obligations, the capacity to

[41] Ibid. 179
[42]See egSchermers and Blokker, International Institutional Law, 4th edn, 2004. Para. 1568
[43] Judgment of July 19, 1988, 80 ILR 658
[44]Available at https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/29661/30454 last accessed on 9th August, 2018
[45]M. Ragazzi (ed.), Responsibility of International Organizations – Essays in Memory of Sir Ian Brownlie, MartinusNijhoff, Leiden/Boston, 2013, pp. XLVI-469
[46] ICJ Reports, 1949, p. 184; 16AD p.328
[47] See eg the WHO Regional Office case, ICJ Reports, 1980, p.73
[48] See the WHO Regional Office Case, ICJ Reports, 1980, pp.73, 90; 62 ILR pp.450, 474 referring to general rules of international law.
[49] See the Report of the ILC, 2002, A/57/10, p.228

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claim adequate reparation, andin assessing this reparation, it is authorized to include the damage suffered by the victim or by persons entitled through it. Whereas the right of a state to assert a claim on behalf of a victim is predicated upon the link of nationality, in the case of an international organization, the necessary link relates to the requirementsof the organization and therefore the fact that the victim was acting on behalf of the organization in exercising one of the functions of that organization. As a state can be held responsible for injury to an organization, so can the organization be held responsible for injury to a state, where the injury arises out of a breach by the organization of an international obligation deriving from a treaty provision or principle of customaryinternational law.[50]

The issue of responsibility has arisen, particularly in the context of UN peacekeeping operations and liability for the activities of the members of such forces. In such circumstances, the UN has accepted responsibility and offered compensation for wrongful acts.The crucial issue will be whether the wrongful acts in question are imputable to the UN and this has not been accepted where the offenders were under the jurisdiction of the national state, rather than under that of the UN. Much will depend upon the circumstancesof the operation in question and the nature of the link between the offenders and the UN. It appearsfor example, to have been accepted that in the Korean (1950) and Kuwait (1990) operations, the relationship between the national forces and the UN was such as to preclude the latter's responsibility.[51]However, while responsibility will exist for international unlawful acts attributable to the institution in question, tortuous liability may also arise for injurious consequences caused by lawful activities for example environmental damage as a result of legitimate space activities.[52]

VIII. ANALYSIS OF THE DAFT ARTICLES ON RESPONSIBILITY OF INTERNATIONAL INSTITUTIONS:THE INTERNATIONAL LAW COMMISSION PERSPECTIVE.

The responsibility of international organizations is a field of international law which has gained importance in theory and practice especially within the last decades. As of 2002, also the International Law Commission started attending to the topic. It concluded its work in August 2011 by adopting on second reading a set of 67 new Draft Articles on Responsibility of International Organizations (DARIO). The purpose of this contribution is to give an introduction and assessment of the content and potential of these articles and to evaluate the critique that has been raised so far. The DARIO are modelled after the Commission's previous and very successful work, the Articles on State Responsibility (ASR). Thus, the question can be posed whether the DARIO are likely to follow in the footsteps of its older sibling, the ASR, to become similarly successful.

8.1 The Reasons behind the DARIO

When thinking about legal responsibility of international organizations one can first wonder why international organizations can be held responsible at all, namely by third, non-member states. The Commission states in article 3 DARIO**"Every internationally wrongful act of an international organization entails the international responsibility of that organization."** Some argue that this reflects a ruleof international law, either by stating that it reflects a general principle of law[53]or by finding that this is a rule of international customary law.[54]Others basetheir reasoning on the international legal personality of international organizations.[55]Behind this legal argumentation

[50]See e.g. the WHO Regional Office case, ICJ Reports, 1980, p.73; 62ILR. P.450

[51] See B. Amrallah, The International Responsibility of the United Nations for Activities carried out by UN Peace-Keeping Forces; D.W. Bowett, Un Forces, London, 1964, lp.149

[52]A. Sari, "UN Peacekeeping Operations and Article 7 ARIO: The Missing Link", *International Organizations Law Review*, vol. 9, 2012, pp. 77-85

[53] M.H. Arsanjani, "Claims Against International Organizations", Yale Journal of World Public Order7 (1981), 131 et seq.

[54] M. Hirsch, The Responsibility of International Organizations Toward
Third Parties: Some Basic Principles, 1995, 8; ILA, Final Report, Account-ability of International Organizations, Berlin Conference 2004, 26, available at <http://www.ila-hq.org>

[55]I. Brownlie, Principles of Public International Law, 2008, 683 et seq.; K. Ginther, "International Organizations, Responsibility", in: R. Bern-hardt, Encyclopedia of Public International Law II, 1995, 1336; M. Hart-wig, "International Organizations or Institutions, Responsibility and Li-ability", in: R.Wolfrum (ed.), Max Planck Encyclopedia of

one can find a political consideration which is based on the major role that international organizations nowadays play at the global level: because of their major role it would seem intolerable not to hold them responsible when violating international norms.[56]

8.2. The Elements of Responsibility

Article 4 DARIO states that: "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; and (b) constitutes a breach of an international obligation of that organization." The Commission states in its Commentary that "article 4 expresses with regard to international organizations a general principle that applies to every internationally wrongful act, whoever its author."[57]

a. The Rules on Attribution

Like the articles on State responsibility, those on the responsibility of international organizations for internationally wrongful acts do not in principle address the so-called primary rules, which establish whether an organization is bound by a certain international obligation, but only the secondary rules, relating to the consequences of its breach. However, in order to be operational, the articles also address questions such as those of attribution which may equally be considered an aspect of the primary rules.[58] For instance, the interpretation of a primary rule includes answering the question whether, when a State is prohibited from taking a certain act, the State is required not to take that act also through a person other than an organ acting under its instructions.[59]

As for States, international responsibility of an international organization generally presupposes the existence of conduct (a positive act or an omission) that is attributed to the responsible subject.Like a State, an international organization acts through its organs, which in article 2 (c) are defined as "any person or entity which has that status in accordance with the rules of the organization". However, an international organization often acts instead through an agent, who is defined as "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" (article 2 (d)). While an international organization may have reasons for outsourcing some of its activities to entities or persons who are apparently independent and cannot be considered officials, this does not rule out that the activities that these entities or persons perform at the request and on behalf of the organization are attributed to the latter under international law. Attribution would in that case be based also on a factual link. One question of attribution that has frequently been raised before national and international courts concerns the conduct of armed forces which have been put by a State at the disposal of the United Nations. Given the fact that the contributing State retains some measure of control over its forces, in particular by keeping its competence with regard to criminal and disciplinary matters, article 7 attributes the conduct of these forces to the organization only insofar as "the organization exercises effective control over that conduct". With regard to the military operations run by forces put at the disposal of the United Nations, effective control will generally rest with the United Nations. However, there have been circumstances under which the contributing State has played a decisive role in the conduct of its forces. Conduct will then have to be attributed to the State or, as the case may be, jointly to the State and the Organization.Under the different scenario where a State does not put forces at the disposal of an international organization but acts on the basis of an authorization by an organization, the conduct of the forces has to be attributed to the State. This follows from the articles on State responsibility. Like those articles, the articles on the responsibility of international organizations contain only positive rules on attribution. They do not specify when an act should not be attributed to an international organization.[60]

b. The Breach of an International Obligation

The articles focus on the consequences of a breach of an obligation under international law

Public International Law, 2012, Vol. VI, 6 et seq., paras 11 et seq.

[56]Hirsch, see note 5, 8; E. Paasivirta and P.J. Kuijper speak of a public morals argument, id., "Does One Size Fit All?: The European Community and the Responsibility of International Organizations", NYIL36 (2005), 169 et seq. (172 et seq.).

[57] Commentary to article 4, ibid., para. 1.

[58]C.F. Amerasinghe, "Comments on the ILC's Draft Articles on the Responsibility of International Organizations", *International Organizations Law Review*, vol. 9, 2012, pp. 29-31.

[59]Available at http://legal.un.org/avl/ha/ario/ario.html last accessed on 10th August, 2018

[60]Available at http://legal.un.org/avl/ha/ario/ario.html last accessed on 10th August, 2018

and do not attempt to identify the obligations binding an international organization. Thus the articles do not determine to what extent the rules of the organization have to be considered as part of international law. Article 10, paragraph 2, simply states that the articles include the breach of an obligation that "may arise for an international organization towards its members under the rules of the organization".[61]

c. Responsibility in Connection with an Act of a State or another International Organization

An international organization may incur responsibility for its contribution to a breach of an international obligation by a State or another international organization. Articles 14 to 16 apply to international organizations rules that are similar to those applicable to States according to the articles on State responsibility, with regard to aid or assistance in the commission of a breach, direction and control exercised over a breach, and coercion. In the case of aid or assistance, or direction and control, the organization thus incurs responsibility only if the act "would be internationally wrongful if committed by that organization".The articles provide a further instance of responsibility of an international organization which is connected with the conduct of a State or another organization that is not necessarily wrongful for the latter entities. Article 17 considers that an international organization might circumvent its international obligations by taking advantage of the separate legal personality of its members, which may not be bound by the same obligations.[62] Responsibility is envisaged under different conditions according to whether the organization imposes an obligation on its members or only authorizes them to take some action. One could say that the obligations of an international organization are extended to cover actions required or authorized by the organization. This provision is clearly innovative. It is intended to fill a possible gap, although circumvention, which implies an element of intention, may be difficult to ascertain.[63]

d. Countermeasures

Countermeasures are considered in the articles from two different perspectives. First, in article 22 as circumstances that may justify an act of an international organization that is not in conformity with an international obligation.[64] Second, in articles 51 to 56 as measures against an international organization which is responsible for an internationally wrongful act. In view of the principle of cooperation underlying the relations between an organization and its members, additional conditions are considered to apply to countermeasures affecting those relations.[65] Countermeasures against one of its members by the international organization or against an international organization by one of its members are allowed only if they are not inconsistent with the rules of the organization and if there are no appropriate means available for otherwise inducing compliance with the obligations of the responsible entity (articles 22 and 52).

e. Reparation for Injury

The obligations that a responsible international organization incurs as a consequence of an internationally wrongful act are substantially the same as those incurred by States.One specific issue is addressed in article 40. It concerns the question whether members of an international organization are under an obligation to provide the organization with sufficient means to make reparation when it is responsible for injury. Article 40 requires members to take "all appropriate measures" under the rules of the organization in order to enable the organization to fulfil its duty to make reparation. An obligation rests also with the international organization to ensure that its members provide the necessary means, but again this obligation is required to be in accordance with the rules of the organization.[66]

[61] Available at http://legal.un.org/avl/ha/ario/ario.html last accessed on 11th August, 2018

[62] C. Ahlborn, "The Use of Analogies in Drafting the Articles on the Responsibility of International Organizations. An Appraisal of the 'Copy-Paste Approach'", International Organizations Law Review, vol. 9, 2012, pp. 53-66.

[63] C. Ahlborn, "The Rules of International Organizations and the Law of International Responsibility", International OrganizationsLawReview,vol.8,2011,pp.397-482.

[64] A. Sari, "UN Peacekeeping Operations and Article 7 ARIO: The Missing Link", *International Organizations Law Review*, vol. 9, 2012, pp. 77-85

[65] A.N. Pronto, "An Introduction to the Articles on the Responsibility of International Organizations", *South African Yearbook of International Law*, vol. 36, 2011, pp. 94-119.

[66] O. Murray, "Piercing the Corporate Veil: The Responsibility of Member States of an International Organization", *International Organizations Law Review*, vol. 8, 2011, pp. 291-347.

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f. Invocation of Responsibility

When the obligation that is breached by an international organization is owed to the international community, one may query whether another international organization may invoke responsibility as a "non-injured" entity. States may do so. In the case of international organizations article 49, paragraph 3, requires that "safeguarding the interest of the international community as a whole underlying the obligation breached is within the functions of the international organization invoking responsibility". This reflects the principle of speciality.[67] In substance, what States can do directly, they can delegate to an international organization.[68]

g. Responsibility of a State in Connection with the Conduct of an International Organization

The main issue here is whether member States of an international organization incur responsibility when that organization commits an internationally wrongful act. What applies to States that are members of an international organization also concerns member organizations.Article 62 is based on the idea that, given the separate legal personality of the organization, responsibility does not as a rule fall on its members.[69] There are two exceptions which do not contradict this principle. They simply envisage, first, an acceptance of responsibility binding a member State towards the injured party, and, second, an attitude of a member State which "led the injured party to rely on its responsibility". An example of this second exception may be the case of the members of a small organization prompting a third party to deal with the organization with the assurance that they would be responsible for any wrongful act committed by the latter.[70]The separate legal personality could lead to a different form of circumvention than the one considered in article 17. Article 61 envisages the case of a member State circumventing one of its international obligations by "causing the organization to commit an act that, if committed by the State, would have constituted a breach of the obligation". This may be viewed as an extension of an obligation binding the member State. What has already been noted about the difficulty of ascertaining circumvention restricts the practical importance of this provision.[71]Articles 58 to 60 deal with the responsibility that States may incur when aiding or assisting, directing and controlling, or coercing an international organization that commits an internationally wrongful act. These provisions are similar to those concerning the responsibility of a State in connection with the conduct of another State (articles 16 to 18 on State responsibility) and the responsibility of an international organization in connection with the conduct of another organization (articles 14 to 16 on the responsibility of international organizations). However, articles 58 and 59 specify that "an act by a member State of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State" for aiding or assisting, or for directing and controlling the organization in the commission of an internationally wrongful act.[72] While States retain their international obligations when they act as members of an international organization and may therefore breach an international obligation when acting as members, the fact of contributing to the functioning of the organization does not per se establish their responsibility.[73]

9. References to the Articles in Judicial Practice

Practice concerning the responsibility of international organizations is scarce. International organizations have developed their activities only over a relatively recent period. They generally

[67]N. Nederski and A. Nollkaemper, "Responsibility of International Organizations 'in connection with acts of States'", International Organizations Law Review, vol. 9, 2012, pp. 33-52.

[68]Ragazzi (ed.), Responsibility of International Organizations – Essays in Memory of Sir Ian Brownlie, MartinusNijhoff, Leiden/Boston, 2013, pp. XLVI-469

[69]Draft articles on responsibility of international organizations, with commentaries. Report of the International Law Commission on the work of its sixty-third session, 26 April to 3 June and 4 July to 12 August 2011 (A/66/10 and Add.1).

[70]J. d'Aspremont, "The Articles on the Responsibility of International Organizations: Magnifying the Fissures in the Law of International Responsibility", *International Organizations Law Review*, vol. 9, 2012, pp. 15-28.

[71]N. Blokker and R.A. Wessel, "Introduction: First Views at the Articles on the Responsibility of International Organizations", *International Organizations Law Review*, vol. 9, 2012, pp. 1-6.

[72] ibid

[73]G. Gaja, "The Relations Between the European Union and its Member States from the Perspective of the ILC Articles on Responsibility of International Organizations", SHARES Research Paper 25, 2013, available at www.sharesproject.nl

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refrain from submitting their disputes to arbitration and invoke immunity in national judicial proceedings.[74] As noted in the commentary to the present articles, the fact that several articles "are based on limited practice moves the border between codification and progressive development in the direction of the latter". However, the need for rules concerning the responsibility of international organizations reflects the importance that their activities have acquired in the international society. This may explain why, with regard to the question of attribution, the present articles have already been extensively considered by the European Court of Human Rights (Grand Chamber) in **Behrami and Behrami v. France**and**Saramati v. France, Germany and Norway** (decision of 2 May 2007)[75], and in **Al-Jedda v. United Kingdom** (judgment of 7 July 2011)[76], and by some national courts, in particular the House of Lords in **Al-Jedda** (decision of 12 December 2007)[77] and the Supreme Court of the Netherlands in Nuhanović (judgment of 6 September 2013).[78]

IX. THE LIABILITY OF INTERNATIONAL ORGANIZATIONS UNDER INTERNATIONAL LAW: AN ANALYTICAL OVERVIEW

The fact that international organizations maybe held accountable for the consequences of their illegal or wrongful acts are no longer in doubt as same is widely accepted.[79] Liability is thus generally presented as the logical corollary of the powers and rights conferred upon international organizations.The legal capacity conferred upon organizations in domestic legal orders byvarious international or national instruments generally includes the right to institute proceedings before domestic courts.[80]The more recent examples include the claim presented by the UN to Israel following the bombing by Israel forces of a UNIFIL compound in Southern Lebanon in 1976.[81]The principle is clearly recognized by international organizations themselves.

a. Illegal acts of International institutions

Illegal institutional acts of international organizations are to be considered as acts capable ascribing legal responsibility and attracting legal consequences and of legal effects.[82]When they produce adverse consequences, they may also make the organization liable to compensate for the damages caused.[83]The internal law of a few organizations extends this obligation to all damages caused by organs or agents in the course of their functions thus covering the consequences of legislative and executive activities. The most developed of those systems is found in the European Community. Article 288(2) of the **Rome Treaty** provides that:**"In the case of no contractual liability, the community shall in accordance with the general principles common to the laws of the member states, make good any damage caused by its institutions or by its servants in the performance of their duties."** A provision similar to the above (Art. 288) is to be found in the **Euratom treaty** (Art. 188(2)). Similarly, Art. 22 of **Annex III of the United Nations Convention on Law of the sea** provides that the International Sea-Bed Authority "shall have responsibility or liability for any damage arising out of wrongful acts inthe exercise of its powers and functions..." It is much more common to find internal rules providing for the liability of international organizations towards their own staff for service –incurred damages.

[74]M. Möldner, "Responsibility of International Organizations – Introducing the ILC's DARIO", *Max Planck Yearbook of United Nations Law*, vol. 16, 2012, pp. 281-327.

[75]European Court of Human Rights, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, Nos. 71412/01 and 78166/01, Decision of 2 May 2007

[76] European Court of Human Rights, *Al-Jedda v. United Kingdom*, No. 27021/08, Judgement of 7 July 2011

[77]House of Lords, United Kingdom of Great Britain and Northern Ireland, *R (on the application of Al-Jedda) v. Secretary of State for Defence*, Decision of 12 December 2007, [2007] UKHL 58.

[78] Supreme Court of the Netherlands, *The State of the Netherlands v. Hasan Nuhanović*, No. 12/03324, Judgment of 6 September 2013

[79]https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/29661/30454 last accessed on 10th August, 2018

[80]See in particular Standard Bank V. ITC, High Court, Queen's Bench Division (Commercial Court), April 17, 1986, 77 ILR8

[81]See Generally Panico, The International Responsibility of the Host State for Damages to the United Nations Agents, 11 Politico (1976) pp. 112-138

[82]Sauds and Klein, Bowetts Law of International Institutions, 6thEdn. P.519

[83] See Art 233 (1) of the EC Treaty

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b. Liability under Contract

Secondly, liability may arise either under contracts concluded by international organizations and to which a national law is applicable or in circumstances where tortuous acts are attributable to an organization irrespective or any contractual link.[84]The fact that the contractual liability of international organizations is governed by the law applicable to the contract itself is undisputed.[85]Organizations may, in such cases, find themselves liable as a result of the non-performance, or wrongful performance of the contractual clauses as would any party to such a contract. The principle, according to which international organizations may be liable under national law for damages resulting from their activities on the territory of a state is beyond dispute, and applies to contractual as well as non-contractual damages (tortuous liability). In other to protect themselves against the consequences of their non-contractual liability, organizations generally conclude insurance contractswith private companies.[86]Organizations may, in such cases, find themselves liable as a result of the non-performance, or wrongful performance of the contractual clauses as would any party to such a contract.

c. Breach of agreements

In the case of short-term activities (conferences, etc), agreements with the host state providing for the transfer of liability (or more exactly, of the consequences of such liability) to that state.[87]Various devices have been developed to ensure an impartial adjudication of questions of liability, and to accord a remedy to parties aggrieved by the acts or omissions of international organizations. Claims immunity all afford means whereby the responsibility of the organization can be determined. Most instruments on privileges and immunities even make it a duty for organizations to provide alternative dispute resolution mechanism in such cases.[88]

d. Self Defence

While Article 51 of the Charter of the United Nations refers to self defence only with regard to an armed attack on a State, it is far from inconceivable that an international organization may find itself in the same situation as a State. This was taken for granted in a memorandum by the Office of Legal Affairs to the Senior Political Adviser to the Secretary-General, which stated that: The use of force in self defence is an inherent right of United Nations forces exercised to preserve a collective and individual defence. It would indeed be odd if an international organization could not lawfully respond not necessarily through the use of force if it were made the object of an armed attack. The view had been expressed that, when the United

Nations force in the Congo reacted against attacks by Belgian mercenaries; the United Nations could invoke self-defence and hence did not engage its international responsibility.[89] In relation to the United Nations Protection Force, a memorandum from the Legal Bureau of the Department of Foreign Affairs and International Trade of Canada held that:Self-defence" could very well include the defence of the safe areas and of the civilian population in those areas.[90]

e. Liability in peace keeping operations under treaties with member countries

Some multilateral treaties dealing with the responsibility under international law explicitly establish the responsibility of international organizations.[91] (see, eg 1972 Convention onInternational Liability for Damage Caused by

[84]See the note of August 22, 2003 addressed by the Office of Legal Affairs to the Assistant Secretary-General, Department of Peace-Keeping Operations (2003) UNJY, at 536.

[85]See e.g. Lysen. The Non-Contractual and Contractual Liability of the European Communities, (1976) 155; Art. 9(1) of the European Patent Convention (for contracts concluded by the European Patent Organization).

[86]See eg. Art. XIII of the Agreement of January 29, 1992 between the United Nations and Colombia on the arrangement for the eight session of UNCTAD. U.N.J.Y. (1992) 22

[87]See e.g. Art. XIII of the Agreement of January 29, 1992 between the United Nations and Colombia on the arrangements for the eight session of UNCTAD U.N.J.Y. (1992) 22.

[88]See S.29 of the Convention of the Privileges and Immunities of the United Nations

[89]This view was expressed by Salmon, "Les accords Spaak–U Thant du 20 février 1965", p.482.

[90]Kirsch, "Canadian practice in international law: at the Depart-ment of Foreign Affairs in 1995–96", p.389.

[91]https://www.jura.unibonn.de/fileadmin/Fachbereich_Rechtswissenschaft/Einrichtungen/Lehrstuehle/Herdegen/de_Wet/WiSe_2017/Voelkerrecht_III__Collective_Security/EPIL_International_Organizations_or_Institutions_Responsibility_and_Liability.pdf last accessed on 5th September, 2018

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Space Objects; Art. 5 of Annex XI UN Convention on the Law of the Sea). There have been many incidents in which the question of responsibility of international organizations under international law came up. A situation where this problem was discussed at an early stage was during the peacekeeping operations of the United Nations. The Secretary-General declared that the United Nations will bear responsibility for all acts conducted under the effective control, ie operational command andcontrol, of this organization(UNGA 'Financing of the United Nations Protection Force: Report ofthe Secretary-General' [20 September 1996] UN Doc A/51/389 paras 17–18). In such cases,national and internationalcourts rejected the responsibilityof Member States thatcontributed troops to missions under the command of the United Nations (HN v The State of the Netherlands [Judgment of 10 September 2008]District Court in the Hague Case No 265615 [2008]55 NILR440; Behrami and Behrami v France[ECtHR]and Saramati v France Germany and Norway[ECtHR] [Decision of 2 May 2007] para. 140). In the Westland Helicopter case (WestlandHelicopters Ltd v the Arab Organizationfor Industrialization [Interim Award RegardingJurisdiction]ICC Case No 3879/AS [1984] 23 ILM 1071; Westland Helicopters Arbitration[Annulment of Award with Respect to Egypt]Court of Justice of Geneva and the Federal Tribunal[1989] 28 ILM) and then in the above-mentioned InternationalTin Council case, for the first time,the responsibilityof an internationalorganizationfor economic activities was discussedon a large scale.

f. Responsibility under Human Rights

The proliferation of International Organizations (IOs) in all areas of intergovernmental cooperation has entailed numerous conflicts with international human rights law. For instance, United Nations (UN) sanctions severely affect the human rights guarantees of the International Covenant on Civil and Political Rights (ICCPR),[92] International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171.The World Trade Organization (WTO) has also been criticized for limiting the WTO members' policy space to implement their human rights obligations:[93]The accountability gap for conduct of International Organizations (IOs) conflicting with their members' human rights treaty obligations undermines the acceptance of IOs as a forum of international cooperation and weakens the achievements of the UN Covenants alike.[94]There are three possible approaches to establish a legal link between IOs and their members' human rights treaty obligations. First, the treaty obligations could be transferred to IOs through the act of establishment. Second, IOs could be bound by the law of treaties to interpret their founding treaty in accordance with their members' human rights treaty obligations. Third, obligations of international cooperation could bind IOs to observe their members' human rights treaty obligations. All approaches face the challenge of paying deference to the independent legal personality of IOs as well as the pacta tertiis problem. The article demonstrates that IOs are bound to respect the UN Covenants to the extent their obligations are generally accepted. For determining and further developing substantive human rights obligations of relevance for IOs, the UN Covenants' Committees play a vital role.

g. Liability in debts

Questions of liability may also arise when an international organization incurs debts to third parties in the conduct of its operations. Many international organizations are established for the purpose of con-ducting trade in various commodities, or providing finance. When such an organization, having incurred debts to third party States or private individuals, no longer has the financial wherewithal to meet its obligations, the question arises whether the debtors may seek recovery from the Member States. The first reported litigation over this question took place in relation to the Arab Organization for Industrialization ("AOI"), which was established in 1975 by the United Arab Emirates, Saudi Arabia, Qatar, and Egypt in order to develop an arms industry. AOI concluded an agreement with Westland Helicopters Ltd. ("Westland") to create a joint stock company for the purpose of manufacturing and selling helicopters developed by Westland. The agreement included a clause

[92] International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171

[93] UN ECOSOC, 'The Realization of Economic, Social and Cultural Rights: Globalization and its Impact on the Full Enjoyment of Human Rights' Preliminary Report submitted by J. Oloka Onyango and Deepika Udagama, in accordance with Sub-Commission resolution 1999/8 (15 June 2000) E/CN4/Sub2/2000/13; Ernst-Ulrich Petersmann, 'Human Rights and International Economic Law in the 21st Century' (2001) 4 JIEL 3

[94] https://www.tandfonline.com/doi/full last accessed on 5th September, 2018

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requiring the parties to refer any dispute to arbitration. In 1979, following the conclusion of a peace treaty between Israel and Egypt, the Member States announced that AOI would cease to operate. Westland filed a request for arbitration naming AOI and the four Member States as respondents and claiming £126,000,000 in damages. The Arbitral Tribunal held that while AOI had legal personality,[95]the absence of a provision in its constituent instrument excluding liability of the Member States meant the States were liable under general principles of law.[96]Egypt appealed to the Court of Justice of Geneva, which held that the Arbitral Tribunal did not have jurisdiction over the Member States because they had not signed the arbitration agreement.[97]This ruling was affirmed on appeal by the Federal Supreme Court, which noted that the "total legal independence" of the AOI precluded the possibility that its acts could be regarded as undertaken on behalf of the Member States.[98]

International organizations do not always comply with these obligations in practice. For instance the absence, in some of the contracts concluded by the ITC, of any clause providing for alternative dispute resolution, in spite of the inclusion in the headquarters agreement it had concluded with the United Kingdom (UK) of a provision similar to that of the UN convention.[99]Such failures constitute a clear breach of their international organizations compliance legal principle with their obligation to provide compensation once their liability is established. However, precedents such as the west land and ITC cases show that it is not always so, and that it is sometimes only after lengthy judicial or arbitral proceedings that organizations finally comply with their obligations.[100]

X. THE INTERNATIONAL LAW COMMISSION'S APPROACH TO THE CODIFICATION OF THE RULES ON THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS: WHAT'S WRONG WITH IT?

a. Doctrine of Responsibility

Since international organizations are a rather recent phenomenon, it does not come as a surprise that the rules on the responsibility of international organizations have come into existence only recently. Still a few decades ago some authors expressed doubts about the possibility that international organizations could commit internationally wrongful acts.[101]The prevailing view was that, while the organization does not have the capacity to commit wrongful acts, member states had to bear responsibility for its conduct.[102]Nowadays the general approach has changed considerably. As views expressed by states and international organizations during the recent work of codification conducted by the International Law Commission made clear, the principle that international organizations, like any other subjects of international law, have the capacity to commit internationally wrongful acts and have to bear responsibility for that acts appears

[95] Westland Helicopters Ltd. v. Arab Org. for Industrialization, 80 I.L.R. 595, 611 (ICC Int'l Ct. of Arb. 1982).

[96]Arab Org. for Industrialization v. Westland Helicopters Ltd., 80 I.L.R. 622, 640–41 (Ct. ofJustice of Geneva 1987) (Switz.).

[97]Id.at 613

[98]Westland Helicopters Ltd. v. Arab Org. for Industrialization, 80 I.L.R. 652, 658 (Fed. Sup. Ct.1988) (Switz.).

[99] See in particular Standard Bank V. ITC, High Court, Queen's Bench Division (Commercial Court), April 17, 1986, 77 ILR8

[100]https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/29661/30454 last accessed on 12th August, 2018

[101]Significantly, in a statement made in 1963 during the work of the International Law Commission, Roberto Ago, at the time a member of the Commission, observed that «[i]t was even questionable whether [international] organizations had the capacity to commit international wrongful acts». Yearbook of the International Law Commission, vol. II, 1963, p. 229.

[102]See HARTWIG, M., International Organizations or Institutions, Responsibility and Liability, in WOLFRUM, R., (ed), Max Planck Encyclopedia of Public International Law, OUP, Oxford, 2011, para 7 («For a long time, it has not been clear if international organizations may bear international responsibility»). For one of the first studies entirely focused on the issue of the responsibility of international organizations, see EAGLETON, C., International Organizations and the Law of Responsibility, Recueil des cours, vol. 76, 1950, p. 319 et seq

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to be generally accepted. Similarly, it is widely recognized that there is no general principle whereby states are, due solely to their membership, responsible for the wrongful acts of the organization of which they are members.[103]

b. The Specialty Principle

One the recurring comments addressed to the work of the International Law Commission related to the diversity among organizations and to the importance of the principle of specialty for the purposes of determining the rules of responsibility which are applicable to them. In particular, it has frequently been observed that, unlike states, international organizations are one different from the other in terms of functions, structure and composition and that this has necessarily important implications when it comes to the identification of the rules of responsibility. Such view was supported by many international organizations as well as by somestates. Following such approach, the idea that there is a set of rules of responsibility which are applicable toevery international organization would be hardly conceivable.[104]During the work of the Commission, states and international organizations submitted proposals which aimed to include in the draft articles a rule giving relevance to the diversity among international organizations. Thus, the European Union repeatedly asked to include a provision recognizing the special position of the so-called «regional economic integration organizations».[105]According to the United Kingdom, the set of articles should have included, in addition to the rule on lexspecialis, a provision «requiring the special characteristics of a particular organization to be taken into account in applying the draft articles».Some organizations went even further. They substantially denied the very existence of a general regime of responsibility which applies to every organization, claiming, as the International Monetary Fund did, that, apart from international rules having a peremptory character, the question of whether an organization has committed an internationally wrongful act or has incurred in international responsibility has to be assessed primarily on the basis of the rules of that organization.[106]

c. General Applicability

The adoption of the Articles on the responsibility of international organizations did not put to an end the debate over the existence of a general regime of responsibility which is applicable to all organizations. The focus of the debate has only slightly changed. Those who, in the period between 2003 and 2011, criticized the Commission's approach aimed to determining the «general rules» of responsibility, appear now to accept the existence of such rules. At the same time, they found that in most cases these rules are displaced by the rules of the organization or by other special rules applicable to the organization. It is therefore not surprising that, after the adoption of the Articles, several authors, including some legal advisers of international organizations, held the view that Article 64 is the most important provision among those contained in the set of articles.[107]Moreover, as it was recognized by the Commission itself, the rules set forth in the Articles are not supported by an extensive practice.[108]The lack of extensive and uniform practice is an element on which one could rely in order to deny the very existence of general rules of responsibility

[103]While the Articles do not include a provision stating a residual rule on the non-responsibility of members for acts of the organization, as the commentary makes clear, «such a rule is clearly implied. Therefore, membership does not as such entail for member States international responsibility when the organization commits an internationally wrongful act».

[104] Within the International Law Commission such view had already emerged in the past. In the seventies, it led the Commission not to push forward the proposal of codifying the rules on the responsibility of international organizations.

[105] BLOKKER, N., Preparing Articles on Responsibility of International Organizations: Does the International Law Commission Take International Organizations Seriously? A Mid-Term Review, KLABBERS, J., and WALLENDAHL, A., (eds), Research Handbook on the Law of International Organizations, Edward Elgar, Cheltenham, 2011, pp. 318

[106]http://centrodireitointernacional.com.br/wp-content/uploads/2014/05/The-Law-of-Responsability-of-Internacional-Organizations.pdf last accessed on 12th August, 2018

[107] See, for instance LECKOW, R., and PLITH, E., Codification, Progressive Development or Innovation? Some Reflections on the ILC Articles on the Responsibility of International Organizations, in RAGAZZI, M., (ed.)

[108]Report of the International Law Commission on the Work of its Sixty-third Session, cit., pp. 69-70, para. 5: «One of the main difficulties in elaborating rules concerning the responsibility of international organizations is due to the limited availability of pertinent practice.

and to reaffirm the importance of special regimes of responsibility which apply to a specific organization or category of organizations.[109]

d. Doctrine of Accountability

The approach of the International Law Commission has also been criticized from a different perspective. The question was raised as to whether a set of general rules of responsibility may be regarded as an adequate way of making international organizations more accountable.[110]It has been argued that that the traditional principles of international responsibility–based as they are on a civil law paradigm, a paradigm involving responsibility between and among actors of equal standing have little impact on the activity ofinternational organizations and that, when it comes to the problem of controlling the conduct of organizations, other forms of control and alternative mechanisms of accountability are required.[111]Seen from this perspective, the lack of extensive practice would simply confirm the limited impact of the rules of international responsibility. It is therefore suggested that the focus should be on alternative mechanisms for controlling the conduct of the organizations. These alternative approaches include the recourse to general principles of accountability,[112]whose application is not conditional upon the breach by the organization of an international obligation, or, as suggested by the global administrative law approach, the recourse to principles borrowed from administrative law, such as the principles of transparencyor participation of the main stakeholders in the decision-making process of the organization.[113]While, no doubt, more is needed in the quest for accountability of international organizations than simply devising a set of principles of international responsibility, it may be asked whether this circumstance is sufficient to justify the criticism addressed against the approach proposedby the International Law Commission. More broadly, it may be interesting to investigate what are the specific features of that approach in comparison to the other approaches.

XI. CONCLUSION

The role of international organizations in the world order centers on their possession of international legal personality. Once this is established, they become subjects of international law and thus capable of enforcing rights and duties upon the international plane as distinct from operating merely within the confines of separate municipal jurisdictionsThe question of personality will in the first place depend upon the terms of the instrument establishing the organization.This actually occurs in only a minority of cases. However, personality on the international plane may be inferred from the powers or purposes of the organization and its practice. This is the more usual situation and one authoritatively discussed and settled with respect to the UN by the ICJ.[114]The court held that the UN had international legal personality because this was dispensable in order to achieve the purposes and principles specified in the charter. In other words, it was a necessary inference from the functions and rights the organization was exercising and enjoying. A vivid debate over the appropriate test for attribution of international responsible conduct under art. 7 DARIO arose on the occasion of the joint decision on admissibility of the cases on Be-hrami v. France and Saramanti v. France,Germany and Norway by the European Court of Human Rights.[115] This decision is

[109] ibid

[110]For a general overview of the different responses to the problem concerning the ways and means for controlling the conduct of international organizations, see KLABBERS, J., Controlling International Organizations: A Virtue Ethics Approach, International Organizations Law Review, vol. 8, 2011, p. 285 et seq

[111]See ALVAREZ, J., International Organizations: Accountability or Responsibility?, intervention made in 2006 at the Canadian Council of International Law (www.asil.org/aboutasil/documents/CCILspeech061102.pdf) last accesed on 12th August, 2018

[112]See the principles identified by the Committee on Accountability of International Organizations of the International Law Association, International Law Association, Report of the Seventy-First Conference, Berlin, 2004, p. 200

[113] See the critical remarks addressed to the work of the International Law Commission by KINGSBURY, B., En guise d'ouverture Views on the Development of a Global Administrative Law, BORIES, C., (ed.), Un droit admnistratif global?/A Global Administrative Law?, Paris, 2012, pp. 16-17

[114]The Reparation for Injuries Suffered in the Service of the United Nations Case, ICJ Reports, 1949, p.174, 16AD, p.318

[115]European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature on 4 November 1950, entered into force on 3 September 1953, ETS 5; 213 UNTS 221.

considered to be a landmark decision on this issue. In this case the Court considered its ratione personaejurisdiction to decide on the issue of responsibility of the actions and the omissions made under the authority the UN Interim Administration Mission in Kosovo and Kosovo Force.[116] The Strasbourg Court claimed to base its assessment on the criterion of effective control under the provisionally adopted art. 5[117], but in fact it introduced a new test for attribution of conduct, namely the test of ultimate authority and control. The decisive point for the attribution of the actions and omissions of the military contingents to the UN was the consideration that It has been shown that international organizations are responsible under international law for breaches of international norms binding upon them. It is accepted, largely, that the rules governing the responsibility of states may apply equally to international organizations, with the necessarymodifications. The elements of state responsibilitybreach of an international obligation and attribution of the wrongful act to the state, apply equally to the determination of an international organization's responsibility.

XII. RECOMMENDATION

The writer recommends that the International Law Commission should conduct extensive Seminars, research and conferences with international institutions to perfect a uniform legal structure for the harmonization of the responsibilities of international institutions as the current world practices of international institutions tend to show their seeming non commitment to their obligations under international law.

[116] In Behrami claims were brought against France for the failure of French-contributed KFOR troops to clear mines dropped during the NATO bombardment in 1999. In the case of Saramantia Kosovar man challenged his arrest and detention under UNMIK authority for attempted murder and illegal possession of weapons as well as his re-arrest and detention under KFOR authority for involvement in armed groups. The charges were brought against Germany as it was the lead contributing nation in charge of the sector where he was arrested and against Norway and France because the Commanders of KFOR issued the orders for his arrest and detention were, consecutively, a Norwegian and a French officer

[117]Report of the International Law Commission adopted at 56thsession, UN Doc. A/59/10(2004), p. 99. Thewording of the draft art. 5 is identical with the wording of art. 7 DARIO. While examining its in personaejurisdiction the Court quoted art. 5 in extensor and invoked various paragraphs of the related commentary, see: Behrami and Saramanti, paras.29-33.

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