

# RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

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# INTRODUCTION

- ‘International Organisations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.’ (ICJ - *Interpretation of Agreement Advisory Opinion*)

# INTRODUCTION

- Responsibility is a necessary consequence of international personality and the resulting possession of international rights and duties.
- Such rights and duties may flow from headquarters agreements (e.g. an agreement between the international organization and the host state in which the international organization operates), or from principles of customary international law.
- The basis of international responsibility is the breach of an international obligation and such obligations will depend upon the situation.

## ANALOGY TO STATE RESPONSIBILITY

- International norms on state responsibility have been transferred to international organisations (IOs). It does not mean that IOs have the same obligations as states; this is a question of primary law.
- For example, here are some rules that are in both the law of state responsibility and in the responsibility of IO: (i) the conduct of an organ is considered act of an IO; (ii) IO which aids or assists a state in commission of an internationally wrongful act will itself bear international responsibility.
- The responsibility of the IO is established if there is (i) a breach of an obligation under international law and (ii) if this breach is attributable to the international organization. These elements of responsibility have also been confirmed by the ILC Draft Articles on the Responsibility of International Organisations (DARIO).

## PROBLEMS...

- Have particularly arisen in the case of peace keeping operations. What happens when states commit troops to a mission that is directed by the UN? Who has responsibility: the state(s) or the UN or both the state(s) and the UN?

# PROBLEMS

1. How do we apply principles of international state responsibility to international organizations?
2. What is the relationship between the IO and its member states with respect to the distribution of responsibility?

# BEHRAMI & SARAMATI: FACTS

- This case came before the ECtHR and concerns peacekeeping troops in Kosovo.
- Behrami( applicant 1): A child was killed and another child was injured by a cluster bomb. KFOR (a NATO-led peacekeeping force, later under the auspices of the UN) and UNMIK (a UN mission) had been aware of the undetonated bombs for months. Claimants argued a violation of Art 2 (right to life) of the ECHR. They argued that the troops were aware of the bombs and should have marked or defused them, but failed to do so.
- Saramati (applicant 2) was arrested by police and brought before an investigating judge on suspicion of attempted murder and illegal possession of a weapon. He argued violations of Arts 5 (right to liberty and security), 13(right to an effective remedy), and Art 6 (right to a fair trial) on account of no access to court.
- Key question – did the court have jurisdiction? To answer this question they had to figure out to whom these acts were attributed – the international organisations (in which case, the ECtHR has no jurisdiction because NATO and the UN are not a party to the court) or the troop contributing member states (in which case the court could have jurisdictions because the states were a party to the court).

## BEHRAMI & SARAMATI: STATE RESPONSE

- States argued that the applicants did not fall within their jurisdiction because:
  - - not on their national territory
  - - The UN and KFOR had control of their troops
  - -- applicants were not resident in the 'legal space' of the Convention – Kosovo is not a party to the ECHR



## COURT'S ASSESSMENT

- The entity with the mandate to detain and demine issuing detention orders was KFOR
- supervision of de-mining fell within UNMIK's mandate
- Can the impugned action and inaction be attributed to the UN and/or NATO?

## COURT'S ASSESSMENT

The actions are attributable to the UN because:

- KFOR was exercising lawfully delegated Chapter VII provisions of UNSC so that the impugned action was, in principle, 'attributable' to the UN. (So KFOR's powers came from the UN)
- UNMIK was a subsidiary organ of the UN created under ChVII of the charter so that the impugned action was in principle attributable to the UN in the same sense (so UNMIK's powers also came from the UN)

## COURT'S ASSESSMENT

3. Does the court have jurisdiction?

- No. The impugned action and inaction are attributable to the UN. UN has a legal personality separate from member states. UN is not member of the ECtHR.

## COURT'S ASSESSMENT

4. Is the court competent *ratione persone* to review the acts of the respondent states carried out on behalf of the UN? (i.e. does the ECtHR have jurisdiction over this case?)

- No. The primary objective of the UN is the maintenance of international peace and security. Since operations established by Chapter VII resolutions (UN Security Council) are fundamental to this mission they rely for their effectiveness on support from UN Member States. The ECHR therefore cannot be interpreted in a manner which would subject the acts and omissions of the Contracting parties to the scrutiny of the ECtHR because it would interfere with the fulfilment of UN's key mission

## (II) *AL-JEDDA*

- The applicant was detained without trial in Iraq by UK forces operating under a UN mission
- ECtHR (2011) distanced itself from Behrami, without expressly overruling it
- The UK argued that Article 103 of the UN Charter applies. This article provides that UN Security Council obligations override other international law obligations if there is a conflict.
- The ECtHR disagreed. They said it was possible to read the UK's ECHR and UNSC obligations in a harmonious way. Therefore the UK could have implemented its ECHR obligations in a way that also respected its UNSC obligations.
- ECtHR appears to leave open the possibility of dual attribution/concurrent responsibility

# MOTHERS OF SREBRENICA



### (III) *MOTHERS OF SREBRENICA*

- Key question: could the Dutch contingent of UNPROFOR be held legally responsible for removal of individuals from compound under UNPROFOR control?
- The Dutch court held that the applicable standard for attribution of conduct to Netherlands is effective control test under international law.
- They held that the Dutch troops were partially responsible. When Srebrenica fell, there was no specific instruction from the UN and the Dutch troops should not have removed individuals from the compound under their control.
- Possibility of dual attribution explicitly acknowledged by the Court – Netherlands therefore legally responsible

## (G) THE PROBLEM OF ATTRIBUTION

- Possibility of dual attribution (international organisation and member states)?
  - This possibility was not considered in *Behrami*, but *Al-Jedda* (ECtHR) and the Dutch SC's decision appear to provide some support for this
- Can a state be responsible for the acts of an IO merely on the basis of membership of that IO alone?  
Rejected by the *Institut de Droit International* and ILC
  - General rule appears to be that excluded unless Organisational Charter provides otherwise
- Other forms of Secondary Responsibility included in DARIO Articles 58-62



## SUMMARY – RESPONSIBILITY OF INTERNATIONAL ORGANISATIONS

- DARIO
- Problems of attribution
- *Behrami and Saramati* (ECtHR 2007)
- *Al-Jedda* Case (ECtHR 2011)
- *Mothers of Srebrenica / Dutchbat* (Hague Court of Appeal 2011; Supreme Court 2013; ECtHR 2013)