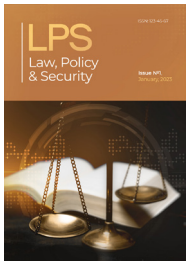

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Attribution of conduct to an International Organisation: Theory and practice

Abstract. The growing role of international organisations in international relations and their rapid development prompts the creation of a coherent international legal framework that will ensure that these subjects of international law bear full responsibility. Attribution of conduct to an international organisation is a crucial step that precedes attribution of responsibility. The study analysed the Articles on the Responsibility of International Organisations regarding attribution of conduct to an international organisation and the case law on their application with a view to determining whether the application of general rules will be sufficient to attribute conduct to international organisations. An analysis of a series of court decisions on attribution of conduct to international organisations found that judicial institutions are guided by the provisions of the Articles. It was noted that attribution of conduct to international organisations is based on general principles and under agreements between states and an international organisation or between international organisations. It was substantiated that when attributing the conduct of a state body, a body or an agent of an international organisation placed at the disposal of another international organisation, the key criterion should be the exercise of effective operational control and command. It was emphasised that regulation of international responsibility is hardly possible based on general rules, considering the legal nature of international organisations, their specific features and uniqueness. The study proposed to revise the Articles in the light of the practice of their application since 2011, specifically, by judicial institutions, to give them the form of an international legal act and to further expand the practice of using agreements as an additional mechanism for attributing conduct in joint actions or when transferring bodies to another entity. The key provisions of this study will form the basis for further research in this area, the ultimate result of which should be an effective international legal regulation of international responsibility of international organisations in general and attribution of conduct to them, specifically, considering the sui generis nature of international organisations

Keywords: exercise of effective control; rules of an international organisation; agent of an international organisation; transfer of peacekeeping contingents to the United Nations; shared responsibility; delegated powers

INTRODUCTION

The issue of attribution of conduct has become particularly relevant due to the growing number of international organisations. Their engagement in international relations has intensified accordingly, and the issues of attributing conduct for internationally wrongful acts are becoming more frequent. The number of international organisations will continue to grow, their nature will change towards greater efficiency in achieving the

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goals and objectives of the organisation, and their role as a subject of international law will increase. Therefore, the issue of international legal regulation of their responsibility is one of the top priorities in modern international law.

International lawyers investigate the topic of international responsibility quite actively and in depth, albeit in the context of state responsibility. When it comes to international organisations, the researchers mostly limit themselves to a general analysis of the Articles on Responsibility of International Organisations (ARIO)[1]. However, firstly, they did not take the form of an international legal act. Secondly, by its nature, ARIO is not a codification act, such as the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)[2], but rather an example of the progressive development of international law. While ARSIWA codifies existing customary law, ARIO fills in the gaps that are not yet supported by practice. The lack of practice is a major problem in the issue of international responsibility of international organisations, and a certain part of it stays behind the scenes of the international organisation's activities and its relations with member states. ARIO is the only document that has collected both customary norms and norms of the progressive development of international law to fill in the gaps in the topic of international responsibility of international organisations.

Among the studies on the responsibility of international organisations in recent years, it is worth highlighting the research by K.S. Won (2020), who analysed the practice of double and multiple attribution of conduct, and M. Seršić (2022), who focused on the provisions of ARIO on the attribution of internationally wrongful acts. Special attention should be paid to the studies that explore the shared responsibility of international organisations and member states. Of fundamental nature is the study by A. Nollkaemper *et al*. (2020) on the Guiding Principles on Shared Responsibility in International Law, which attempted to systematise and expand the existing rules of international law in this area. To some extent, it is a complement to ARIO at the doctrinal level. It is also necessary to pay attention to the studies of L. Gasbarri (2020) and V. Lanovoy (2021) and their contribution to the development of the topic of the Guidelines in the context of modern international law. Even though L. Gasbarri (2020) criticises the Guidelines, noting that they complicate the already complex issue of attribution of responsibility in international law, both researchers note that such studies are positive in the context of the progressive development of international law.

It is necessary to mention the study by R. Collins (2023), which offers an in-depth analysis of the very nature of international organisations, their legal personality and responsibility, which arise from the uniqueness of an international organisation. Without an understanding of the special nature of international organisations, one cannot begin to discuss the attributing of conduct to them or their overall international responsibility. Studies on the activities of peacekeeping contingents and the attribution of behaviour for the damage they cause should be highlighted separately. Ch.F. Tsega (2021) analysed the practice of double attribution of responsibility in United Nations (UN) peacekeeping operations. E. Carli (2021) analysed the practice of multiple attribution of behaviour during European Union security missions. The subject of this study was the investigation of attribution of conduct, not responsibility.

The issue of attributing conduct to an international organisation is virtually unexplored in Ukrainian scholarship. Some of its aspects have been touched upon in the studies on international responsibility in general. Specifically, this is the thesis on attribution of conduct to the state, conducted by S.S. Andreychenko (2016). The research is interesting in that it directly examines the attribution of conduct, but of a different subject of international law – the state. The general principles of international responsibility and attribution of conduct to a state and an international organisation are comparable. It is also worth noting the study on international responsibility of intergovernmental organisations conducted by D.O. Denysova (2013), the subject of which was the international responsibility of international organisations, which is much broader than attribution of conduct, but the key elements of this study were the analysis of the practice of responsibility for damage caused by UN peacekeeping missions, which is interesting in the context of the present study. Even though these studies were published several years ago, they are still some of the few studies of overall international responsibility of international organisations and attribution of conduct to a subject of international law in the modern Ukrainian science of international law.

[1] Resolution of the General Assembly No. A/CN.4/L.778. "On Responsibility of International Organizations: Texts and Titles of Draft Articles 1 to 67 / Adopted by the Drafting Committee on 2nd Reading in 2011". (2011, May). Retrieved from https://digitallibrary.un.org/record/705710?ln=en&v=pdf.
[2] Resolution of the General Assembly No. A/RES/56/83 "On Responsibility of States for Internationally Wrongful Acts". (2002, January). Retrieved from https://digitallibrary.un.org/record/454412?ln=en&v=pdf.

The purpose of this study was to analyse the provisions of Articles 6 and 7 of ARIO[1] regarding the attribution of conduct to an international organisation, the exhaustiveness of the provisions of these Articles and their application by judicial institutions in practice. Considering that the issue of attribution of conduct to an entity is quite broad, the scope of scientific research is narrowed to the conduct of bodies or agents attributed to an international organisation.

MATERIALS AND METHODS

The empirical basis of the study was the 2011 Articles on the Responsibility of International Organisations[2], the 2001 Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA)[3], the Guiding Principles on Shared Responsibility in International Law (2022), international treaties, court decisions, and international legal doctrine on the attribution of conduct to an international organisation. The theoretical framework included the studies according to the subject under study, such as L. Gasbarri (2021), M. Seršić (2022), etc. The study employed a multi-level concept of scientific methods, which includes philosophical, general scientific, and special legal methods. The deductive method was used to investigate the general norms of attribution of conduct to an international organisation, based on which conclusions were drawn on the main concepts, criteria, and gaps. To formulate the purpose and subject of the study, the method of comparative analysis of empirical data was used. The methods of induction, analysis, and synthesis were used to analyse the case law on the application of the provisions of the Articles on the International Responsibility of International Organisations with a view to identifying general trends in court decisions, and to distinguish certain criteria for attribution of conduct, such as the criterion of effective control and attribution of conduct based on the vesting of functions.

The method of analogy helped to identify common principles, features, and trends in attributing conduct to the state and an international organisation. The method of generalisation and analogy was also used in analysing the nature of international organisations and its impact on the specifics of their international responsibility and attribution of unlawful conduct. The method of analysis and synthesis helped to distinguish the concepts and general principles of attribution of unlawful conduct to the state and compare them with the concepts and general principles of attribution of unlawful conduct to an international organisation. Using the formal legal method, the study analysed the rules of international law on attribution of conduct to an international organisation, established their content and interrelationships, and established general principles. The logical legal method was employed to analyse the concepts, features, criteria, principles of attribution of conduct to an international organisation and to explain the logic of its attribution when applying the criterion of effective operational control. The logical legal method was also used to explain the logic of double or multiple attribution of conduct, which is interesting considering that there is no single approach to this issue. Summarising the findings using the method of generalisation, the study found that when attributing conduct to an international organisation, there is no difference between an organ and an agent, the principal criterion is the performance of the functions provided, judicial institutions are guided by the provisions of the Articles on the Responsibility of International Organisations when making decisions, and the attribution of conduct to international organisations is based on general rules and agreements.

RESULTS AND DISCUSSION

Attribution of conduct to an international organisation: General principles. In 2011, the United Nations General Assembly (UNGA) adopted the 2011 Articles on the Responsibility of International Organisations, developed by the International Law Commission (ILC), which it had been working on since 2002, by resolution A/RES/66/100[4]. Since the adoption of ARIO, the UN General Assembly (GA) has put the issue of giving it the form of an international legal instrument on its agenda in 2014, 2017, and 2020 (Analytical guide..., n.d.). And each time, it recommended that states and international organisations consider them and apply them when addressing issues related to the responsibility of international organisations. The General Assembly also instructed the UN Secretary-General to update the compilation of decisions of international judicial institutions relating to the responsibility of international organisations, as well as the practice of states and international organisations,

[1] Resolution of the General Assembly No. A/CN.4/L.778 "On Responsibility of International Organizations: Texts and Titles of Draft Articles 1 to 67 / Adopted by the Drafting Committee on 2nd Reading in 2011". (2011, May). Retrieved from https://digitallibrary.un.org/record/705710?ln=en&v=pdf.
[2] Ibidem, 2011
[3] Resolution of the General Assembly No. A/RES/56/83 "On Responsibility of States for Internationally Wrongful Acts". (2002, January). Retrieved from https://documents.un.org/doc/undoc/gen/n01/477/97/pdf/n0147797.pdf?token=kzJwhre9Uf9Bqp7ZTW&fe=true.
[4] Resolution of the General Assembly No. A/RES/66/100 "On Responsibility of International Organizations". (2011, December). Retrieved from https://digitallibrary.un.org/record/724634/files/A_RES_66_100-EN.pdf.

and to collect their written comments on this issue. Once again, the issue of the form of the Articles on the International Responsibility of International Organisations was included in the agenda of the 78th session of the UN General Assembly in 2023. On 12 November, the UN General Assembly adopted Resolution A/C.6/78/L.18[1], which once again invited states and international organisations to be guided by ARIO in resolving issues of responsibility of international organisations, and instructed the Secretary-General to update the compilation of court decisions and practice of application of ARIO and return to the issue of possible convention at the 81st session of the UN General Assembly, which will be held in 2026.

According to Article 4 of the ARIO, attribution of conduct under international law to an international organisation is one of the two essential elements of the commission of an internationally wrongful act. In ARIO, Chapter II (Articles 6-9) is devoted to the attribution of conduct to an international organisation. It considers the attribution of conduct of organs or agents of an international organisation (Article 6), conduct of organs of a state or organs or agents of an international organisation placed at the disposal of another international organisation (Article 7), abuse of authority or violation of instructions (Article 8) and conduct recognised and adopted by an international organisation as its own (Article 9)[2].

Thus, under international law, an international organisation is assigned the conduct of its organs and agents in the performance of functions, regardless of the position held by the organ or agent in relation to the organisation. The conduct of a state, organs, or agents of an international organisation placed at the disposal of another international organisation shall be considered as an act of the latter, provided that it exercises effective control over this conduct. If the conduct of an organ or agent acting officially and within the functions of an organisation exceeds its authority or violates instructions, it is considered under international law to be an act of an international organisation. An international organisation is also attributed the conduct that it recognises and adopts as its own. In 2020, international researchers attempted to develop Guiding Principles on Shared Responsibility in International Law. The authors were guided by the fact that under the existing rules of international responsibility law, it is sometimes exceedingly difficult to divide responsibility and allocate compensation between states and/or international organisations that together cause damage to a third party. The guidelines define the conditions for shared responsibility, the consequences of shared responsibility (including the possibility of shared responsibility) and the ways in which shared responsibility can be implemented (Nollkaemper *et al.*, 2020). They rely on existing rules of international responsibility law and sometimes propose new interpretations. The Guidelines are, in fact, an attempt to regulate the consequences of double or multiple attribution of conduct, since first there is attribution of conduct, and then responsibility arises based on this attribution. It is also important to distinguish between attribution of conduct and attribution of responsibility.

Conduct of bodies and agents of an international organisation. According to Article 6 of ARIO, under international law, an international organisation is attributed the conduct of its organs and agents in the performance of functions, regardless of the position held by the organ or agent in relation to the organisation. When determining the functions of the organisation's bodies and agents, the rules of the organisation are applied, which, according to Article 2 of ARIO, include the constituent acts, decisions, resolutions, and other acts of the international organisation adopted according to these documents, and the established practice of the organisation[3]. The attribution of conduct to an international organisation does not depend on the name – "body", "agent" – but on the characteristics of the acting official or body. In the 1949 ICJ Reparation for Injuries opinion, the term "agent" is interpreted as any person, whether or not they are an official receiving remuneration and whether or not in the regular service, who is entrusted by an organ of an organisation to perform or assist in the performance of one of its functions, in short, any person through whom it carries out its activities[4].

In addition, in its advisory opinion on the Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations of 1989, the ICJ noted that the UN grants privileges and immunities to individuals not depending on their administrative status, but on the nature of their mission, even

[1] Draft of Resolution of the General Assembly No. A/C.6/78/L.18 "On Responsibility of International Organizations". (2023, November). Retrieved from https://documents.un.org/doc/undoc/ltd/n23/349/70/pdf/n2334970.pdf?token=Xo3pIXFfohXvI9vgLf&fe=true.
[2] Resolution of the General Assembly No. A/RES/66/100 "On Responsibility of International Organizations". (2011, December). Retrieved from https://digitallibrary.un.org/record/724634/files/A_RES_66_100-EN.pdf.
[3] Ibidem, 2011.
[4] Reparation for injuries suffered in the service of the United Nations. (1949, April). Retrieved from https://www.icj-cij.org/case/4.

without granting them official status[1]. According to the 1999 advisory opinion Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, the conduct of the UN that can be attributed to it, in addition to the conduct of its principal and subsidiary organs, includes the act or inaction of its "agents", whether in an official capacity or acting for the UN by virtue of functions entrusted to them by the organisation[2].

Based on the analysis of the practice of international organisations and the commentaries to ARIO[3] and court decisions, it can be argued that for the purpose of attributing conduct to an international organisation, there is no distinction between organs and agents, and regardless of the place of the organ or agent in the structure of the international organisation. Conduct is assigned when a person performs a function, but not when they act as a private individual. An international organisation determines which functions are entrusted to an organ or agent based on the organisation's "rules", although this is not the only basis. The wording of Article 6 leaves open the possibility of considering, in exceptional circumstances, the functions entrusted to an organ or agent as entrusted to them, even if this was not based on the rules of the organisation. This includes individuals and groups that are factually acting at the direction or under the control of an international organisation – i.e., they are considered to have the functions of an international organisation, even if this does not comply with its rules. The term "agent" in the Articles has a broad meaning according to the ILC interpretation – it covers generally all persons and entities that have the authority. The interpretation and application of Article 6 usually does not raise any questions in the international law doctrine, since it attributes the conduct of an organ of an international organisation or its official (agent), effectively, based on an internal institutional link arising from the relationship between the international organisation and an entity within it.

Conduct of an organ of a state, organ, or agent of an international organisation placed at the disposal of another international organisation. An international organisation is attributed the conduct of an organ of a state or of an organ or agent of an international organisation placed at the disposal of another international organisation (Article 7 of ARIO)[4]. This is not a complete transfer to the control of another international organisation, but rather a case where a body or agent stays part of an international organisation but is temporarily placed at the disposal of a state or another international organisation to perform certain tasks. In such cases, the question may often arise as to whether the conduct of the body or agent in question should be attributed to the organisation of which it is a part or to the state or international organisation to which it is placed. Sometimes there can be double or multiple attribution of conduct. For instance, the conduct of a state to which an organ or agent is placed at its disposal can be attributed to the international organisation of which it is a member, and vice versa. It is also possible for two or more international organisations to simultaneously attribute conduct to each other, for instance, when they establish a joint body and act through it (Responsibility of international organisations, 2011).

Even though ARIO makes provision for options for dual attribution of conduct, the judiciary has not taken a unified stance on this issue. According to K.S. Won (2020), this is mainly caused by the lack of practice and the nature of the primary rules on the responsibility of international organisations, with which the authors of this study can fully agree. The practice of attributing conduct to a subject in such cases can be analysed on the example of the transfer of peacekeeping contingents by a UN state for peacekeeping operations. The state retains disciplinary powers and criminal jurisdiction over members of the national contingent, which is usually stipulated in an agreement between the UN and the contributing state. Often in such cases, the question arises whether the conduct of such an organ should be attributed to the international organisation to which it has been transferred or to the contributing state or international organisation. The issue of international responsibility for the actions of peacekeeping contingents is stipulated in the agreement between the parties. The treaty provides that the UN is responsible for the loss of UN property or damage to it, compensation for death, injury, or illness arising

[1] Convention "On The Privileges and Immunities of the United Nations in the Case of Mr. Dumitru Mazilu, Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights". (1989, December). Retrieved from https://www.icj-cij.org/case/81#:~:text=It%20reached%20the%20conclusion%2C%20inter.

[2] Decision of the Secretary-General of the United Nations No. 1998/297 "On the Privileges and Immunities of the United Nations to a Special Rapporteur of the Commission on Human Rights, and on the legal Obligations of Malaysia in that Case". (1998, August). Retrieved from https://www.icj-cij.org/case/100.

[3] Resolution of the General Assembly No. A/RES/66/100 "On Responsibility of International Organizations". (2011, December). Retrieved from https://digitallibrary.un.org/record/724634/files/A_RES_66_100-EN.pdf.

[4] Ibidem, 2011.

out of the performance of official duties on behalf of the UN, and loss of personal property[1].

The principles of attribution of international responsibility to an international organisation are also reflected in court practice. For the first time, the European Court of Human Rights (ECHR) considered a case related to the conduct of military personnel within the framework of the UN Interim Administration Mission in Kosovo (UNMIK) and the Kosovo Force (KFOR) in the case Behrami and Behrami v. France and Sarmati v. France, Germany, and Norway[2]. The Court was guided by the ILC's work on the responsibility of international organisations and decided that the determining criterion was whether the UN Security Council (SC) retained real power and control, as it had delegated operational command. The Court acknowledged the effectiveness of NATO's operational command over KFOR and noted that KFOR was deployed in Kosovo based on a UN Security Council resolution. And concluded that KFOR exercised validly delegated powers under Chapter VII of the UN Charter, and the actions could be attributed to the UN under Article 4 of ARIO[3]. The principal criterion in making the decision was the criterion of effective control, which is essentially the so-called operational control and involves participation in the act. General control, on the other hand, does not usually involve direct participation in an act. In 2008, in his report on UNMIK, the UN Secretary-General also distanced himself from the criterion of overall ultimate control, limiting the UN's responsibility to the effective operational control it exercises (Report of the secretary-general..., 2008).

In contrast to the cases of Behrami and Behrami v. France and Sarmati v. France, Germany, and Norway[4], it is worth mentioning the case Al-Jedda v. the United Kingdom, which was first considered by the House of Lords and then by the ECHR[5]. A case involving the detention of an individual by British military personnel in Iraq, whose stay there was authorised by a UN Security Council resolution[6]. The case notes that even though the House of Lords upholds the conclusions of the ECHR in Behrami and Sarmati[7], there are considerable differences between the facts and circumstances, which makes it impossible to conclude that the US and UK forces were under effective UN command when they arrested the applicant. This conclusion is precisely in line with the principal criterion for attributing conduct – the exercise of effective control. In this case, effective operational control was actually exercised by the forces of national contingents.

After the judgment in the Al-Jedda case[8], the applicant applied to the ECHR. In its judgment in this case, the ECHR referred to Article 7 of ARIO[9], which had not yet been approved by the ILC and the General Assembly, and noted that the UN Security Council exercised neither effective operational control nor ultimate control over the actions and inactions of foreign troops that were part of a multinational force, and therefore the responsibility for the applicant's detention could not be attributed to the UN. Al-Jedda was detained in custody in a prison in Barca controlled exclusively by the British Armed Forces, and therefore the responsibility for his detention should lie with the respondent State, as he was under the custody and control of the United Kingdom at all times. The UN acknowledges that it exercises effective control over the deployment of national contingents in peacekeeping forces. Thus, on 3 February 2004, the UN Legal Counsel stated in a memorandum that since UN forces are a subsidiary organ of the UN, their actions are, in principle, attributable to the UN, and if they violate international

[1] Report of the Secretary-General No. A/46/185 "On Model Agreement Between the United Nations and Member States Contributing Personnel and Equipment to United Nations Peace-Keeping Operations". (1991, May). Retrieved from https://digitallibrary.un.org/record/114426?ln=en.
[2] Information note on the Court's case-law No. 97 "On Behrami and Behrami v. France and Saramati v. France, Germany and Norway". (2007, May). Retrieved from https://hudoc.echr.coe.int/fre?i=002-2745.
[3] Resolution of the General Assembly No. A/RES/66/100 "On Responsibility of International Organizations". (2011, December). Retrieved from https://digitallibrary.un.org/record/724634/files/A_RES_66_100-EN.pdf.
[4] Information note on the Court's case-law No. 97 "On Behrami and Behrami v. France and Saramati v. France, Germany and Norway". (2007, May). Retrieved from https://hudoc.echr.coe.int/fre?i=002-2745.
[5] Application of The European Court of Human Rights No. 27021/08 "On Case of Al-Jedda v. the United Kingdom. (2011, July). Retrieved from https://hudoc.echr.coe.int/eng?i=001-105612.
[6] Opinions of the Lords of appeal for judgment in the cause No. UKHL 58 "R (on the application of Al-Jedda) (FC) (Appellant) v Secretary of State for Defence (Respondent)". (2007, December). Retrieved from https://publications.parliament.uk/pa/ld200708/ldjudgmt/jd071212/jedda-1.htm.
[7] Information note on the Court's case-law No. 97 "On Behrami and Behrami v. France and Saramati v. France, Germany and Norway". (2007, May). Retrieved from https://hudoc.echr.coe.int/fre?i=002-2745.
[8] Application of The European Court of Human Rights No. 27021/08 "On Case of Al-Jedda v. the United Kingdom. (2011, July). Retrieved from https://hudoc.echr.coe.int/eng?i=001-105612.
[9] Resolution of the General Assembly No. A/RES/66/100 "On Responsibility of International Organizations". (2011, December). Retrieved from https://digitallibrary.un.org/record/724634/files/A_RES_66_100-EN.pdf.

obligations, this entails the international responsibility of the Organisation and obliges it to pay compensation[1]. This statement summarizes UN practice in relation to the UN operation in the Congo[2,3,4,5,6,7], of the UN peacekeeping forces in Cyprus[8], as well as other operations carried out later. There is also a statement by the UN Secretariat in its comments to draft Article 6 on a series of reasons, primarily political, for which the UN will continue to be guided by the principle of its own responsibility with respect to third parties in connection with peacekeeping operations[9]. However, as the wording of the documents shows, the UN, like judicial institutions, considers the exercise of operational control to be the principal criterion. Or, in other words, real power at that moment over the subjects who committed the internationally wrongful act. Therefore, it is necessary to consider each situation separately, considering the full context, determining the limits of real effective operational control of each party. A. Mohay (2020) notes that the concept of effective control is valid, but the criterion itself needs to be detailed for more successful application, the provisions on double attribution of conduct need to be regulated in detail, and the practice of attribution of conduct specifically, and international responsibility of international organisations in general, should prevail over the ARIO provisions[10]. The authors of the present study fully agree with these theses, considering the lack of practice and understanding that general theoretical provisions in the field of international responsibility cannot replace it.

The activities of UN peacekeeping contingents are just one example of the duality of attribution of conduct in cases of joint actions by an international organisation and a state or other international organisation. The principles applicable to UN peacekeeping forces can also be extended to other bodies placed at the disposal of the UN and other international organisations, such as disaster relief units. The Guide principles provide that shared responsibility arises in cases of assistance, concerted action, and in cases of control (Nollkaemper *et al*., 2020). From these joint actions comes the attribution of conduct to an international organisation. By analogy with the UN, the European Union is also attributing conduct to the EU. According to N. Nedeski (2021), the practice of concluding agreements between the EU and its member states is indicative of the joint obligations and responsibilities of the EU and its member states. There is an overlap in their obligations in the treaties, and it is worth distinguishing between two types of joint obligations – when the Member State is responsible and when the EU is responsible. In fact, this refers to the same two ways of attributing conduct as in the two aforementioned ECHR judgments – Behrami and Behrami v. France and Sarmati v. France, Germany, and Norway and Al-Jedda v. the United Kingdom. In security operations, the EU is also guided by Article 7 of ARIO, which derives from the aforementioned concept of effective control. Accordingly, the same scenarios of attribution of conduct are possible in the context of EU Common Security and Defence Policy missions as in the case of UN peacekeeping operations (Carli, 2021).

The main principle of international responsibility is reparation, and therefore the issue of double or multiple

[1] Interoffice memorandum No. 10 A/58/10 "To the Director of the Codification Division, Office of Legal Affairs and Secretary of the International Law Commission Regarding the Topic Responsibility of International Organizations". (2004,September). Retrieved from https://legal.un.org/unjuridicalyearbook/pdfs/english/by_volume/2004/chpVI.pdf.

[2] Agreement of the United Nations and Belgium No. 7779 "On the Financial Questions Outstanding as Regards the Former Belgian Military Bases in the Congo". (1965, February). Retrieved from https://treaties.un.org/Pages/showDetails.aspx?objid=080000028012d802&clang=_en.

[3] Agreement of the United Nations and Greece No. 8230 "On the Settlement of Claims Filed Against the United Nations in the Congo by Greek Nationals". (1966, June). Retrieved from https://treaties.un.org/Pages/showDetails.aspx?objid=080000028012b785&clang=_en.

[4] Agreement of the United Nations and Greece No. 8525 "On the Settlement of Claims Filed Against the United Nations in the Congo by Italian Nationals". (1967, January). Retrieved from https://treaties.un.org/Pages/showDetails.aspx?objid=080000028012a032&clang=_en.

[5] Ibidem, 1967.

[6] Agreement of the United Nations and Luxembourg No. 8487 "On the Settlement of Claims Filed Against the United Nations in the Congo by Luxembourg Nationals". Retrieved from https://treaties.un.org/Pages/showDetails.aspx?objid=080000028012a205&clang=_en.

[7] Agreement of the United Nations and Switzerland No. 621 "On the Settlement of Claims Filed Against the United Nations in the Congo by Swiss Nationals". Retrieved from https://treaties.un.org/Pages/showDetails.aspx?objid=080000028012b828&clang=_en.

[8] Agreement of the United Nations and United Kingdom of Great Britain and Northern Ireland "On the Service with the United Nations Peace-Keeping Force in Cyprus of the National Contingent Provided by the Government of the United Kingdom of Great Britain and Northern Ireland". (1966, February). Retrieved from https://legal.un.org/unjuridicalyearbook/pdfs/english/by_volume/1966/chpII.pdf.

[9] Document No. A/CN.4/637 and Add.1 "On Responsibility of International Organizations". (2011, February). Retrieved from https://legal.un.org/ilc/documentation/english/a_cn4_637.pdf.

[10] Resolution of the General Assembly No. A/RES/66/100 "On Responsibility of International Organizations". (2011, December). Retrieved from https://digitallibrary.un.org/record/724634/files/A_RES_66_100-EN.pdf.

attribution of conduct will have prospects for development in judicial practice and in the practice of states and international organisations. However, at the moment, the issue of attribution of conduct of a state organ or an organ or agent of an international organisation placed at the disposal of another international organisation is the most controversial, considering the factual absence of international legal regulation of this issue. International treaties are one way to further regulate the attribution of responsibility. The study has already mentioned above the treaties between the UN and its member states on peacekeeping missions. Such agreements are also concluded by other international organisations in their joint actions with states or international organisations. This way of additional legal regulation is quite logical and closes many gaps, as noted by N. Nedeski (2021), as it allows thoroughly regulating and distributing the obligations of the Member State and the EU. At the same time, N. Nedeski (2021) opposes the common approach of joint obligations and proposes to distinguish between them within such agreements, which makes it possible to clearly distinguish not only obligations but also, as a result, attribution of conduct and responsibility, which is difficult to agree with – except for the EU.

Ch.F. Tsega (2021), investigating the responsibility of international organisations for internationally wrongful acts during UN peacekeeping operations, stressed that the introduction of dual responsibility is a step forward in ensuring accountability for violations of international legal obligations. K.S. Won (2020) supported this opinion, noting that joint attribution of conduct to an international organisation and a state or other international organisation ensures reparation to the injured party. E. Carli (2021), studying the multiple attribution of conduct, concluded that this phenomenon considerably strengthens the guarantees of accountability, but at the same time notes that this requires an international legal framework that is currently absent. C. Ferstman (2019) shared an analogous opinion. One can fully agree with the opinions of the above researchers on multiple attribution of conduct, but without fail noting that additional international legal regulation is needed, which is currently lacking, as mentioned by E. Carli (2021). Examining UN reparations for massive violations during peacekeeping operations, the researcher notes that the UN should not shift responsibility to Member States and their national contingents, while attribution of responsibility should be dual or multiple to ensure that the injured party is compensated. When conduct is attributed to one of the entities involved in a joint operation, it is not always possible to guarantee compensation for damage, which is contrary to the above-mentioned principle of mandatory compensation for damage. L. Gasbarri (2021) supported this opinion, noting that the analysis of the ECHR case law shows that the Court is looking for various ways to avoid attributing conduct to an international organisation, often referring to the rules of the international organisation. But first and foremost, all entities are guided by international law, and then by their own internal regulations. If the principle of double or multiple responsibility is denied, individuals will be left without compensation, as there are no mechanisms that would allow individuals to apply to international organisations exclusively through the state (due diligence). In fact, if conduct is not attributed to a state, attribution of conduct to an international organisation does not always entail responsibility.

N. Voulgaris (2019) noted that the attribution of conduct stems from the control or organic connection between the subject and the conduct. In fact, this is an interpretation of Articles 6 and 7 of ARIO. However, in some cases, these two criteria will not allow compensation to the injured party, and in this case, the position of member states should be considered, since they are entitled to ultimate control over the international organisation. In cases where an organisation is unwilling or unable to take responsibility for its actions, the final decision stays with states. However, the researcher is against the position that the state is responsible in such cases. S.Ø. Johansen (2019) believes that the attention to double attribution of conduct is exaggerated by theorists, because in practice it is exceedingly rare when actions are carried out jointly and joint responsibility for the commission of an internationally wrongful act by both parties may arise. Otherwise, it is more often a question of attributing conduct to the party that exercised effective control, which is quite logical. One can disagree with this, because if in the past cases of joint actions of an international organisation and states or other international organisations were rather infrequent, there is a clear trend towards an increase in the number of such actions.

An interesting question of attributing responsibility to an international organisation is raised in the thesis of R. Jorritsma (2021). Thus, the researcher investigated the practice of human rights judicial institutions and concluded that they are not guided by ARSIWA, but by customary rules of international responsibility, and do not follow the principles of lex specialis when attributing conduct. Considering that the general principles in ARSIWA and ARIO are common, it can be assumed that the same will apply to international organisations when such cases are considered by human rights courts. The biggest problem with the international responsibility of international organisations in general, and with attribution of conduct specifically, is the lack of sufficient practice. Furthermore, at the moment, the attribution of

conduct is based on several articles of ARIO[1] (Articles 6-9), which have never been adopted as an international legal instrument, and on judicial practice. When attributing responsibility, one can also use an exclusively doctrinal source – the Guiding Principles on Shared Responsibility. When it comes to ARIO, it is a well-balanced draft international legal act. According to M. Seršić (2022), despite the criticism of certain provisions of the draft articles, the positive contribution of the ILC to the international responsibility of international organisations should be recognised, and the authors of the present study fully agree with this. The prevailing opinion in the international legal literature is that the ILC has created a harmonised and consistent system of rules on the responsibility of international organisations for internationally wrongful acts. If one considers the Shared Responsibility Guidelines, many questions arise. Thus, L. Gasbarri (2020) believes that the Guidelines complicate the already complex issue of the responsibility of international organisations compared to ARIO. At the same time, V. Lanovoy (2021) noted that even though the Guidelines do not provide answers to all questions, their very emergence is another step that brings the modern concept of international responsibility closer to effective international legal regulation.

M. Milanovic (2020) noted that the attribution of conduct to an international organisation is based on the same principles as the attribution of conduct to a state. Difficulties usually arise when the conduct is the result of cooperation between an international organisation and a state or between an international organisation and a private organisation, which is much less common. One should definitely agree with the researcher that the ARIO provisions alone are not enough to resolve these issues. The researcher emphasises that the concept of effective control applied to the attribution of conduct to international organisations by judicial institutions is often ineffective, and the authors of the present study cannot disagree with this. It is effective, efficient, and based on this concept it is even possible to establish the subject's share of responsibility, or rather internationally wrongful behaviour, but it lacks international legal regulation, as mentioned above. The basis for attributing responsibility to an international organisation is currently ARIO[2] – the result of the work of the ILC, considering the comments of all stakeholders, which has not yet taken on an international legal form. S. Bayani (2022) insisted that the general rules for attributing conduct are acceptable enough and do not have substantial gaps, but the author refers to the responsibility of states and ARSIWA. When it comes to the rules for attributing conduct to international organisations, there is a significant difference – ARSIWA is based on practice, while for ARIO it was not enough, although the general rules are analogous for both entities. In fact, the practice of attributing conduct to international organisations is currently being developed. The author makes a good point, which can be transferred to ARIO, that despite the shortcomings of the Articles on Responsibility – ARSIWA and ARIO – they perform a unifying function and allow integrating the rules of international responsibility into a system and prevent their fragmentation.

The doctrinal provisions of the Guiding Principles on Shared Responsibility in International Law can be partially used. An important role is played by judicial decisions on the attribution of conduct to international organisations, in which judicial institutions are guided by ARIO[3], thus reinforcing its application and filling in gaps (Krieger *et al*., 2021). In such circumstances, it is only a matter of time before the ARIO international legal act takes the form of an international legal act. Another problem arises here – whether a convention on the international responsibility of international organisations would be sufficient if ARIO is used as a basis. International organisations differ not only from states, but also from each other, as they do not have general competence and are created to perform specific tasks and functions. R. Collins (2023) refers to their "elusive identity" and believes that to fully understand the nature of international institutions, something special, unique, sui generis needs to be included in this conceptual mix. M. Milanovic (2020) emphasised that considering the specific features of attributing conduct to international organisations of a supranational and integrative nature, primarily the EU, the concept of effective control may be subject to controversy and ambiguity. A. Mohay (2020) believes that the issue of international responsibility should be analysed through the lens of the unique nature of international organisations, such as the European Union, and the authors of this study fully agree with this. While fully supporting the opinion of these researchers, each international organisation has a unique nature, and therefore it can be assumed that ARIO will not be able to regulate all issues of responsibility of international organisations with general rules. It appears impossible to consider the specific features of all international organisations in a single international

[1] Resolution of the General Assembly No. A/CN.4/L.778 "On Responsibility of International Organizations". (2011, May). Retrieved from https://digitallibrary.un.org/record/705710?ln=en&v=pdf.
[2] Ibidem, 2011.
[3] Ibidem, 2011.

legal act. Clearly, international treaties as an additional means of regulation will still be necessary for a complete settlement. However, this does not diminish its significance as a basic document in this area and an instrument for the progressive development of international law.

With the active development of the practice of international responsibility by international organisations, many questions regarding the international responsibility of international organisations will disappear. It is possible that the ILC will then be able to find a common denominator for such heterogeneous subjects of international law and make another attempt to codify their international responsibility. Even so, this international legal act will be of rather limited use due to the active and rapid development of international organisations. One way or another, all researchers agree on one thing – it is imperative that the development of international law moves faster in this area. There are issues that require detailed regulation to fill the currently existing gaps.

CONCLUSIONS

Summarising the above, when attributing conduct to an international organisation, there is no distinction between bodies and agents and their place in the organisation's structure. The key criterion is the performance of functions based on the rules of an international organisation or those entrusted outside them. In judgments attributing the conduct of an organ or agent placed at the disposal of another entity, the key criterion is the exercise of effective control at the time of the internationally wrongful act. The attribution of conduct to international organisations is governed by general norms and agreements based on which joint actions are taken or a body is made available to another entity. In such agreements, there is a duplication of obligations of the parties, which provides additional legal grounds for assigning double or multiple conduct. Judicial institutions are guided by the ARIO in their decision-making, even though it has not yet taken the form of an international legal instrument, reinforcing the ARIO norms and creating a practice of its application that will eventually fill many gaps. It is clear that ARIO in its current form is not sufficient to regulate the overall international responsibility of international organisations, and the attribution of conduct to an international organisation specifically. The legal nature of modern international organisations is very heterogeneous, which is shaped by their unique goals, functions, and tasks assigned to them by their member states. And even if ARIO is given an international legal form, its general rules will not be able to effectively regulate the international responsibility of all international organisations.

It is necessary that the development of international law in this area should be rapid, considering the dynamics of international organisations and their practice of bearing responsibility. The system of norms of international responsibility of international organisations should be based on the principle of reparation. At this stage, it is possible to revise ARIO to consider current practice at the time of its adoption in the form of an international legal act and use agreements as an additional regulatory mechanism. This study is part of a comprehensive investigation of international responsibility of international organisations in modern international law. Considering the wide scope of the issue of responsibility of international organisations, the next stage of the study is to analyse the responsibility of international organisations for the acts of other states or another international organisation, as well as for the acts of member states.

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CONFLICT OF INTEREST

The authors of this study declare no conflict of interest.

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Присвоєння поведінки міжнародній організації: теорія та практика застосування

Анотація. Зростання ролі міжнародних організацій в здійсненні міжнародних відносин та їх швидкий розвиток спонукає до створення цілісної міжнародно-правової бази, яка зможе забезпечити несення відповідальності цими суб'єктами міжнародного права в повному обсязі. Присвоєння поведінки міжнародній організації є важливим кроком, який передує присвоєнню відповідальності. Автор проводить аналіз Статей про відповідальність міжнародних організацій щодо присвоєння поведінки міжнародній організації, судової практики їх застосування з метою з'ясувати, чи достатнім буде застосування загальних норм для присвоєння поведінки міжнародним організаціям. Аналіз низки судових рішень щодо присвоєння поведінки міжнародним організаціям встановив, що судові установи керуються положеннями Статей. Відзначено, що присвоєння поведінки міжнародним організаціям відбувається на загальних принципах та за угодами між державами та міжнародною організацією чи між міжнародними організаціями. Обґрунтовано, що при присвоєнні поведінки органу держави, органу чи агента міжнародної організації, наданих в розпорядження іншої міжнародної організації, основним критерієм має бути здійснення ефективного оперативного контролю та командування. Підкреслено, що регулювання міжнародної відповідальності навряд чи можливе на підставі загальних норм, враховуючи правову природу міжнародних організацій, їхні особливості й унікальність. Пропонується перегляд Статей з урахуванням практики їх застосування з 2011 року, зокрема, судовими установами, надання їм форми міжнародно-правового акту та подальше поширення практики використання угод як додаткового механізму присвоєння поведінки при здійсненні спільних дій чи передачі органів у розпорядження іншого суб'єкта. Основні положення статті ляжуть в основу подальших досліджень в цій царині, кінцевим результатом якої має стати ефективне міжнародно-правове врегулювання міжнародної відповідальності міжнародних організацій загалом та присвоєння їм поведінки, зокрема, враховуючи sui generis міжнародних організацій

Ключові слова: здійснення ефективного контролю; правила міжнародної організації; агент міжнародної організації; передача миротворчих контингентів у розпорядження Організації Об'єднаних Націй; спільна відповідальність; делеговані повноваження