Chapter 9

The Responsibility of International Organisations for Military Missions

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1. Introduction

International Organisations (IOs) are very active in organising and in deploying military missions. The United Nations (UN) is the organisation with primary responsibility in peace and security but a plethora of other organisations exist which can deploy forces independently from, in conjunction with or under the authority of the UN. The multiplication as well as diversification of such missions has increased the risk of human rights or humanitarian law violations being committed. Such violations will engage the responsibility of the sending IO if they constitute breaches of its obligations and are attributed to that particular IO.

This chapter will not deal with the obligations of IOs but will rest on the assumption that IOs have both customary International Humanitarian Law (IHL) and Human Rights Law (HRL) obligations, and a customary law obligation to ‘respect and ensure respect’ of such obligations. Instead, this chapter will focus on

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1 Chapter VII of UN Charter (24 October 1945) 1 UNTS XVI.
2 Ibid. Chapter VIII.
the conditions under which wrongful conduct can be attributed to an IO for international responsibility purposes and, in this regard, it will also examine issues of multiple attribution and responsibility in view of the multinational character of military missions. The final section will deal with consent, self-defence and necessity as circumstances precluding wrongfulness.

2. Attribution of Conduct

It is a well-established principle in the law of international responsibility that a State or an IO is responsible for the acts of its organs or agents.\(^6\) Regarding UN peacekeeping forces, they are subsidiary organs of the UN if they have been established by the General Assembly or the Security Council and have been placed under the UN chain of command,\(^7\) comprising the United Nations Secretary-General (UNSG) who exercises executive and administrative authority over the force through his Special Representative, and the Force Commander, who exercises operational authority.

The UN confirmed this in its submissions to the International Law Commission (ILC), according to which ‘a United Nations peacekeeping force established by the Security Council or the General Assembly is a subsidiary organ of the United Nations\(^8\) and in the same vein it submitted to the European Court of Human Rights (ECtHR) that ‘UNMIK was a subsidiary organ of the UN…, it was headed by a Special Representative of the Secretary-General and reported directly to the UN Security Council via the Secretary-General’.\(^9\)

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6. Article 5 DARIO (n 4) and Article 4 ASR (n 4).
9. Application no. 71412/01 by Agim Behrami and Bekir Behrami against France and Application no 78166/01 by Ruzhidi Saramati against France, Germany and Norway, European Court of Human Rights, Grand Chamber Decision as to the Admissibility (4 May 2007) 45 EHRR SE10, para. 118 (hereinafter referred to as Behrami/Saramati).