"NICOLAE TITULESCU" UNIVERSITY OF BUCHAREST

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PhD THESIS

THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

Summary

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Key words: *international responsibility, responsibility of international organizations, responsibility of states, imputability, jurisdiction, mixed agreements, peacekeeping operations, agent, attribution, exemption, International Court of Justice, European Court of Human Rights, International Law Comission, codification, authorization, international personality, wrongfull conduct.*

THE FUNDAMENTAL ISSUE

Responsibility has a central role in any legal system. It allows marking the difference between the behavior in accordance with the rules of law and the behavior in non-accordance by defining the legal effects that are specific to the second behavior. Any legal order provides the legal consequences that must derive from noncompliance with the rule of law, as a guarantee of its reality. In the case of absence of responsibility, « we should not, undoubtedly, ask questions regarding the nature of the system that we analyze». The legal nature itself would then be brought into discussion. In other terms, as stated by the International Court of Justice, « responsibility is the necessary corollary of law». All the more these consequences are essential for the international legal order characterized by the equal sovereignty of the states where « the international responsibility appears as being the essential and necessary mechanism for adjusting the mutual reports » of law subjects.

In the contemporaneous international society, the norms referring to the responsibility of states and international organizations as main entities of this society represent the rationale of existence of the ensemble of international law, as a legal system, the guarantee of an international legal order. Thus it is not surprising that, through its codification mission, **The UNO International Law Commission** has at large and with remarkable scientific rigor focused on the codification of the two sets of rules regarding the **responsibilty of states (*Project of articles 2001)*** and the **responsibilty of international organizations (*Project of articles 2011*)**. The CDI works and especially the works that, after several decades of laborious attempts, led to the articles regarding the responsibility of states, proved to be indispensable to the

present research, respectively to the second form of international responsibility, that of international organizations. The CDI articles regarding the responsibility of states have served as a source of inspiration and normative grounds for the international jurisdictions, long before their final implementation.

Being the owner of an own international legal personality, and thus distinct from that of the member states or of other law subjects, the international organization has the capacity to be held accountable for an imputable illicit action. With this premise as a starting point, the Project of articles 2011 keeps *mutatis mutandis* the same two elements/ conditions of the international responsibility as in the case of the states: illicit conduct and the imputability of this conduct to the organization, as a subject of law having own legal personality, distinct from the member states (Art. 4).

Responsibility is the backbone of any legal order. It is the condition of the legality of a certain system. Nevertheless, if, as claimed by Pierre-Marie DUPUY, responsibility is "the epicenter of a judicial system", then its importance derives from the principles governing over its imputability and, in particular, from their adaptation to the reality of the practice of law subjects. The effectiveness of the international responsibility law depends on its capacity of understanding the reality of the activity of international law subjects by the means of the imputability condition. Imputability, the fundamental element of the theory of international responsibility, is a classic study subject within the international law. At the same time, it is a subject that constantly records permanent evolutions subjected to reciprocal influences amid practice, jurisprudence, codification operation and doctrine.

PURPOSE AND OBJECTIVES OF THE RESEARCH

The purpose of the thesis is a potential contribution to marking certain benchmarks regarding the issue of imputability as analyzed from the perspective of the responsibility of international organizations.

The objective of the research thesis is to render an analytical, practical and theoretical frame regarding the responsibility of international organizations by

bringing focus to the subject of imputability. The rules of imputability deriving from the responsibility of states bring inspiration to the applicable rules of international organizations.

Attributing the behavior of a person to an organization also depends on the existence of a formal liaison or of a factual liaison based on control between the individual, the author of the behavior, and the organization.

Reaching the desired purpose by the means of the targeted objective assumes the analysis of the responsibility of international organizations, which brings specific issues into discussion regarding the question of imputability in the case of the international responsibility law. CDI had to handle certain complex issues where the international law did not bring a univocal response; it had to build its conclusions on a practice that was fragmented and marked by great pragmatism, and on a jurisprudence of limited importance and little conclusiveness. The complexity of the issue depends on the particularity of the action modes of the international organizations. In effect, they sometimes act by the means of member states or by using bodies of the same. At the same time, the member states exercise strong influence upon the functioning and decision making within the organization. The study of imputability of behaviors related to the activity of international organizations has to take into account the reciprocal control and power relations between the organization and its members. They have an impact on both the responsibility of international organizations and on the responsibility of member states, as a result of the actions of the organization.

The thesis approaches the questions of imputability of an illicit behavior to states or to international organizations, and the issue related to the attribution of responsibility. The subject implies the research of the person who is specifically accountable for an illicit behavior, bearing the consequences. It is necessary to go beyond the mere imputation of the action, which only represents a part of the subject. Attribution of responsibility takes into consideration the reports genuinely established between two subjects of international law. This is the case of the international organization where it must be taken into account the ensemble of relations amid the organization and the member states in order to determine which of them bears the consequences of the illicit action of responsibility, as a last resort.

THE SCIENTIFIC NOVELTY OF THE THESIS

The analysis of the issue of imputability within the responsibility of international organizations represents, by itself, a new and so far unexplored idea within the Romanian doctrinaire context. The main results of the research, which shall be indicated as follows, represent its innovativeness.

-thorough analysis of the concept of imputability, of the doctrine and of the international jurisprudence in the context of the responsibility of international organizations;

-selection, systematization and analysis of a vast jurisprudence, of the International Court of Justice, of the European Court on Human Rights, as well as of other international and national courts;

-highlight of major lacunae present in the codification documents of the responsibility of international organizations, mainly the lack of a unique imputation criterion, especially determined by the great variety of modes of action in practice for the subjects of international law;

-emphasis on the determining role of the maneuver margin of the subjects on international law and of the subjects' capacity to adopt an autonomous behavior in the case of commitment to international responsibility.

Imputability is a transversal subject which allows the analysis of aspects of the international law, at the same time fundamental and extremely different. Imputability plays a « role of juncture in the conjunction of the international legal system » because it allows the liaison amid primary norms by prescribing or prohibiting a certain behavior and the subjects to which it refers. As a result of its central position, the analysis of this subject sheds a new light upon issues such as defining the state within the international law, the legal personality of international organizations, the roles of the internal and international laws, or the reciprocal reports between international organizations and its members. « On an international level, the state is attributed actions of the members of its organization », that is of its actual, real

organization defined as such by international law, and not only ascertained as such by the state. The rules of imputability allow to « actually identify » the state, that is « the individuals through the actions of which it exercises its existence »

It is imputable to the state the behavior of persons who are part of its instrument, in broad sense, that is the persons by the instrumentality of which the state takes action, or who act on its account. The state incarnates in its agents. To the international responsibility law, the state is largely defined and it comprises both the head of the state and the person temporarily classifiable as « practical official ». Other branches of the international law may have different concepts regarding the « action of the state » or its bodies. According to the public international law, the state can be regarded as a « figure of variable geometry ». The responsibility law, by the rules of imputability, is somewhat formal; the condition for its concreteness is its capacity to comprise the state in the reality of diversity of its means of action. The state is freely organized and, due to this fact, the international law draws the consequences in terms of attribution. The international right comprises the real organization of the state, and not the purely formal one.

In the virtue of the international law, it is imputable the behavior of all persons or groups of persons through which the state acts, related to its bodily device, in the broadest sense. This principle implies the definition of the conditions according to which, in the view of the international law, a person or a group of persons is considered to be acting in account of the state, that is when the state acts by the means of these persons. Thus, the behavior of de facto bodies, and that of certain persons who cannot be considered as bodies, is imputable to the state in accordance with the international law. The state is therefore responsible for the behavior adopted by persons within the exercise of public positions. It is also responsible for the behavior of private persons whom it uses for reaching its goals and whom are subject to its instructions or who act under its control. It regards the persons whom the state uses voluntarily, but it must also account for certain behaviors which « it » (its government, higher authorities) did not desire, but they were spontaneously committed by private persons within the exercise of the public power prerogative, in the lack of official authorities.

According to the international responsibility, the state cannot be resumed to the organization given to it by its authorities. The international law defines the criteria of imputability, which are irrespective of the will of the state; according to the international law, the concept of state is defined by the international law itself. For that matter, defining the imputability criteria depends on the international law. The fact that the state considers a certain behavior to be its own action or not does not depend on it. The rules regarding the imputability mainly refer to the international right, the organization of the state itself; however, certain bases of imputation render the autonomy of the rules of imputability as to the state. The concreteness of international law depends on the capacity of the international responsibility law through the means of rules regarding imputability, meaning sanctioning what is genuinely classifiable as « action of the state », even in the cases when the state aims to avoid responsibility by making use of persons who are not bodies or agents of the state. The relations between action and law are often regarded as opposable; in this case, law comprises the action in order to ensure its effectiveness.

This procedure implies the necessity to study the reports of reciprocal dependence, control, authority amid the organization and one or more member states. These reports result in hypotheses of organization's responsibility as a result of an action imputable to a body of a member state, as well as in the cases of responsibility of member states as a result of an action imputable to the organization.

As an important component, during the entire course of research, it was imposed the confrontation of the results of **codification** with the recent evolutions of international **practice** and **jurisprudence**, as well as the doctrinaire interpretations of these three components. These developments are due to the new requirements of the international practice, especially within the relations amid a state or organization and the persons susceptible of being qualified as their agents or action bodies, and mostly within the situations when the responsibility of international organizations is involved.

The complexity of legal reports amid an organization and the states with the will of which it was created, the evolution of the practice of these reports within the contemporary society, imply a more attentive analysis of the issue of international

responsibility of organizations in the light of the element of **imputability of wrongfull conduct**.

In the case of the thematic organization of the thesis, in order to analyze the distribution of responsibility amid the organization and the member states, **the principles governing the imputability** of an illicit conduct are retained as the main issue, the central axis of this research.

RESEARCH METHODOLOGY

We might state that the research phases consist of: establishing the objectives of the research topic, compiling a preliminary thesis plan, the activity of bibliographic research, actual research and the final effected phase of thesis compilation.

As the first phase of scientific research, we have exercised the bibliographic research by analyzing the international legal regulations regarding the responsibility of international organizations, especially the documents compiled by the International Law Commission within the codification process, the international and national jurisprudence (of some states), treaties, monographs, studies, articles, international documents and Internet.

For the thesis research and compilation we have used different methods of scientific research in the view of reaching the stated goal and objectives.

Here we mention the historical method (used, for instance, regarding the evolution of regulations in the field of the law of responsibility of international organizations and more), the logical method (used for expressing opinions, own conclusions and also for synthetizing certain points of view expressed by foreign authors regarding the investigated topic) and the comparative method (used throughout the thesis for the analysis of the international jurisprudence of various courts regarding the same topic).

THE STRUCTURE OF THE THESIS

The thesis is thematically organized into two main Parts. We believe that the choice of sequence of the two answers to the conclusion already announced above regarding the different aspects of imputability.

PART I. - THE STATE'S RESPONSIBILITY REGARDING THE CONDUCT OF AN INTERNATIONAL ORGANIZATION TO WHICH IT BELONGS AS A MEMBER.

Chapter I of this Part focuses on the ***PRINCIPLE OF RESPONSIBILITY EXEMPTION OF MEMBER STATES*** regarding the illicit conduct suspected to be attributed to the organization; it analyzes the legal position of an international organization to which an illicit conduct is imputable; this conduct is suspected to have been achieved by involving certain member states or even third parties. Such a legal situation is possible, given the fact that international organizations are not entirely independent and sovereign subjects, they are compound of states and they remain united and with multiple liaisons with the states that form them; they are even strongly dependent in many aspects. If it is generally accepted that *the organization bears the primary responsibility* for its actions, it cannot be omitted the examination of a potential *subsidiary responsibility* of member states or third parties, as a result of the illicit conduct of the organization. The question of a subsidiary responsibility of member states appeared especially when there were difficulties in obtaining reparations from an organization (Sect.I.2. of Chapter I).

Chapter II analyzes the ***CASES OF THE RESPONSIBILITY OF THE STATE FOR AN ACTION OF THE ORGANIZATION***, in the light of the degree of autonomy of the organization in relation to the member states and, to this perspective, the potential responsibility of the member states for help and assistance, leadership and control, or coercion exercised upon the organization. This chapter also analyzes the sharing of responsibility amid states and organization in the case of *mixed*

agreements.

By the use of a comprehensive compilation, the **Conclusions** of the First Part of the thesis state that the Member states of an international organization can observe their responsibility committed to actions imputable to the organization ***if and when they have used the international personality of the latter, and*** the determination of the imputable behaviors is compulsory by clarifying the distribution of responsibility amid the organization and the member states.

PART II of the thesis - **DETERMINATION OF RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION FOR AN ILLICIT ACTION** - analyzes the **direct responsibility** of an international organization in terms of two hypotheses:

-Chapter III - ***IMPUTABILITY OF THE BEHAVIOR OF ORGANIZATION'S AGENTS AND BODIES, AS WELL AS OF BODIES AT ITS DISPOSAL.*** In relation to this legal situation, it is widely analyzed the practice of the **United Nations in the field of Peacekeeping operations**; UNO generally admits that the responsibility for the damage caused by the members of the forces of the United Nations **is imputable to the Organization.** All Peacekeeping operations are developed under the authority of the Secretary General of the organization and, more precisely, under the authority of its special Representative who has "general authority upon all activities of the United Nations", within the host state of the operation. As soon as they find themselves under the operational authority of the United Nations, the commanders of national contingencies and of the mission personnel are under the orders of the Force Commander and they must not act as to the directives of their national state, especially if such a behavior could have a negative impact on achieving the mission statement or if it is contrary to the directives of the United Nations, which apply to that mission. This situation is characteristic due to the exclusive character of the control of the organization upon the activities of its agents, respectively of the direct responsibility of the organization (the distinction between operational control/ bodily control).

- Chapter IV - ***THE ATTRIBUTION OF RESPONSIBILITY FOR AN ACTION OF MEMBER STATES WHICH ACT IN THE APPLICATION OF AN AUTHORIZATION OR DECISION OF AN INTERNATIONAL ORGANIZATION.*** There are analyzed two specific cases: the attribution of responsibility as a result of an ***authorization given*** by the international organization to a member state (IV.1.) and the attribution of responsibility as a result of a ***decision of the international organization*** regarding a member state (IV.2.).

In all these cases, the responsibility of international organizations finds its origins in a behavior attributed to the states. It is necessary for a clear distinction to be made between this hypothesis and that of the responsibility of the international organization for *the action of its bodies* or of the bodies at its disposal, as it regards **their own action**, meaning their authorization or decision. The issue is analyzed in practice and in doctrine from the perspective of ***imputability of behavior***, of attribution of responsibility, and of organization's own responsibility for its authorization or decision. The organization's own responsibility can be explained by the fact that it must not be able to evade its international obligations by using its member states in order to achieve an action which could be illicit if committed by it itself. Even though it is not the case of a hypothesis of imputation or attribution of responsibility, the responsibility of the organization does exist for its authorization or decision. Assigning the international responsibility depends on the structure of the international organization and the relations amid the organization and its members. However, **Art.** 16 of the CDI Project on the responsibility of international organizations provides that an international organization can engage responsibility as a result of a decision by which it ordered to a member state to adopt a behavior which could represent a violation of an international obligation of the organization if it were committed by itself. In the light of the CEDO jurisprudence, the generality of the enunciation used in Art 16 allows the possibility of understanding that, in theory, the states make use of a margin of appreciation regarding putting in practice of a decision of an international organization to which they belong as members, and that their responsibility cannot be excluded de plano.

In the **Conclusions of Part II**, to be remembered the fact that the principles

governing imputability, appeared within the responsibility of States, had to cope with the development of international organizations and of state activities developing within them. The proper definition of agents and bodies of international organizations is a continuously evolving issue. This conclusion leads again to the importance of the principles of imputability, which impose the distinction between the State conduct and the international organization's conduct, concretely meaning the conduct of all persons who acted on their account, which calls for the adoption of certain principles of imputability, appropriate to these situations.

RESEARCH CONCLUSIONS

The principles governing imputability, appeared within the responsibility of States, in the case of international organizations, had to cope with the activities specific to the same in their relations with the member states.

The proper definition of agents and bodies of international organizations is essential for this analysis; it adapts the criteria developed within the responsibility of States. Moreover, it summarizes their main characteristics by encompassing all officials and other persons or entities that create the means of action of the organization. This formula states the principle governing imputability, namely that of approaching the conduct of the State or international organization, concretely meaning the conduct of all persons that acted on their account. However, the activities of international organizations are not limited to those undertaken by their agents. They are often achieved together with the Member states. At the same time, the latter maintain an important power of leadership related to the international organization.

These perspectives cause the issue to fundamentally differ from the imputability of a behavior to the State, excluding the frame of the organization, and they make necessary for the adoption of certain proper principles of imputability.

The common action of the international organizations and of the State, especially by the means of putting at disposal by the state bodies or by the direct action of Member states, with the recommendation or authorization of the

organization, is subject to the principles established by the international practice. However, the questions of attributing the responsibility due to structural characteristics of the international organization, especially those related to exercising the competences transferred by the State or as a result of the State's power of decision within the organization, stand at the origin of complex issues that have not been resolved in a satisfactory manner. There have been envisioned solutions in the specific frame of certain organizations, predominantly European, which bring the issue of the possibility of their extension to the general international law, besides the issue of own efficiency. Their processing by the International Law Commission leaves doubts regarding the practical applicability of these solutions within the general frame of international relations.

The dispositions regarding these issues are undoubtedly the ones to mostly illustrate the progressive development of the international law, rather than the codification of the existing law, as a result of the quasi absence of the common rules. The diversity and particularity of the international organizations make it extremely hard to adopt a system regarding the attribution of responsibility, valid for all organizations.

Generally, according to its wide meaning which encumbers the attribution of the illicit action and responsibility, imputability is based on formal liaisons and factual liaisons. The first case means that a certain conduct is imputable to the subject - State or organization - because, by rendering it the statute of body, it accepted beforehand to be considered legal as author of its behavior.

The issue of imputability of conduct contrary to the international law of an international organization of its member states illustrates the entire complexity of the international reports amid these various subjects. However, a clear idea results from the contents of this research, and namely that responsibility depends on the margin of maneuver of the international law subject, of its capacity to adopt an autonomous behavior. A subject entirely subdued to the will of another cannot be held accountable. Therefore, in theory, the member states are not accountable as to the actions imputable to the international organization, except for the situation when they do not exercise control to it so that it cannot be considered a rightful subject, as a

result of the lack of existence of a will that is distinct from that of the states.

The activity of international organizations or states pertaining to an international organization is suspected of engaging the responsibility of all actors, as to the manners depending on the actual degree of control upon committing the illicit action.

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