

# An investigation of the international responsibility of the Security Council from the perspective of the rule of law within the framework of the international legal system

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**Abstract:** The scope of activities of international organizations, including the United Nations and its organs, has undergone significant changes in recent years. Among these, the activities of the Security Council have seen remarkable qualitative and quantitative expansion. One aspect of this development is the increased likelihood of illegal or extralegal actions being taken, causing harm to other subjects of international law. For instance, while the Council's involvement in peacebuilding and peacekeeping operations has significantly contributed to maintaining international peace and security, it has also resulted in some violations of international rules during implementation. The undertaking of illegal and extralegal activities opens another window in the field of international law, namely international responsibility. The issue of the responsibility of international organizations in general, and the Security Council in particular, is important in the discussion of the rule of law governing this Council and should be considered as a practical outcome.

**Keywords:** International Organizations, United Nations Security Council, Peacekeeping Operations, International Law Violations, International Responsibility

## INTRODUCTION

International responsibility law is a fundamental branch of international law, closely interconnected with other sectors of international law. Although this branch of law primarily has a customary nature, relevant international judicial practices also exist. Additionally, the actions of the International Law Commission in drafting the laws on state and international organization responsibility have yet to be solidified into an international treaty. Traditionally, international responsibility focused on inter-state relations. However, this view has evolved with the inclusion of international organizations as subjects of international law. Nowadays, international responsibility and its consequences cannot be confined solely to inter-state relations.

What is crucial is that international law acknowledges the capacity of international organizations to incur international responsibility due to illegal acts or omissions

attributable to them. In assessing the international responsibility of international organizations, it is important to consider that illegal acts include any wrongful act or omission and that such acts must constitute a breach of an international obligation. These obligations may arise from treaties to which the international organization is a party or other sources of international law that are binding upon the organization.

#### A. Basis of Responsibility for International Organizations

The responsibility of international organizations stems from their recognition as legal entities. The United Nations and its organs, including the Security Council, possess international legal personality, granting them rights and obligations under international law. Thus, accepting their responsibility is one of the duties associated with their legal personality.

The International Court of Justice recognized the legal personality of international organizations in its advisory opinion of April 11, 1949, concerning certain expenses of the United Nations. The Court stated that the United Nations has the right to bring a legal claim against a country that has violated its international obligations and caused damage to the organization or its agents. In its advisory opinion of October 25, 1956, regarding judgments of the Administrative Tribunal of the International Labour Organization, the Court noted that if a legal entity has the right to initiate a lawsuit as a plaintiff, it logically could also be a defendant.

#### B. The Relationship Between Responsibility and Competence of International Organizations

The responsibility of international organizations is directly related to their competence. International organizations and their organs, such as the Security Council, have specific competences according to their charters. Sometimes, implicit competences are also considered for them. The existence and exercise of these competences, on one hand, fall within the scope of the Security Council's functions and responsibilities under the UN Charter. On the other hand, the discussion of their responsibility arises when they commit wrongful acts or omit necessary actions vis-à-vis other states with another international organization.

This relationship is a logical legal one where competence cannot be considered without responsibility. This logical relationship stems from the rule of law; otherwise, it would lead to arbitrariness. In this regard, the broader the competences of an international organization or organ, the higher the likelihood of committing wrongful acts or omissions by them, thereby increasing their responsibility.

Therefore, it is evident that an international organization cannot use its founding document and the authorities therein as justification to evade fulfilling a legal obligation. This principle is indeed one of the fundamental principles established in the field of international responsibility of states, which can logically be extended to the responsibility of international organizations through adaptation and logical necessity.

New definitions of the rule of law, such as the definition given by the UN Secretary-General in 2004, state that the rule of law entails that all individuals must be accountable to the law and accept the legal and social consequences of violating the law. However, it is unlikely that the rule of law can disregard responsibility mechanisms, even if these mechanisms, like the current state of international legal order, are decentralized.

### C. Examination of the Draft on International Organization Responsibility

In recent years, the International Law Commission has worked on drafting articles on the responsibility of international organizations, making significant progress. The Commission's work is a crucial resource in the field of international organization responsibility, based on state and international organization practices.

#### 1. Historical Development of the Draft:

The International Law Commission worked for about forty years on drafting the responsibility of states. These efforts culminated in 2001 with the preparation of a draft of the articles on the responsibility of states for wrongful acts. Following this success, the International Law Commission was tasked with addressing the important issue of the responsibility of international organizations.

In its fifty-second session in 2000, based on the recommendation of its long-term work program group, the Commission concluded that it was appropriate to include the issue of the responsibility of international organizations in its long-term work program. The United Nations General Assembly took note of the Commission's report in 2000 and requested in 2001 that the Commission begin its work. In 2002, the Commission decided to include this topic in its work program, appointed Mr. Gaja as the special rapporteur for this issue, and formed a working group.

Subsequently, from 2003 to 2008, the Commission received reports from the special rapporteur and opinions from states and international organizations, and it regularly examined and drafted the articles on the responsibility of international organizations in all its sessions.

In 2009, the sixty-first session of the Commission was held. In this session, the seventh report of the special rapporteur and the opinions received from international organizations were reviewed by the Commission. The Commission approved draft articles 1 to 4, 8, 15, 18, 19, 28, and 54 to 64. Ultimately, the Commission approved a set of 66 draft articles on the responsibility of international organizations and their commentaries, completing the first reading. The Commission decided to send the draft articles to states and international organizations through the Secretary-General for their comments and observations, requesting that these comments be submitted to the Secretary-General by January 1, 2011.

The comments from states and international organizations were registered in two forms: general comments and specific comments related to a particular draft article.

These comments were reviewed at the sixty-third session of the Commission in 2011. In this session, the Commission completed the second reading of the draft articles and their commentaries. In its report to the General Assembly, the Commission submitted the 67-article draft along with the commentaries and recommended that a resolution be issued regarding this draft and that consideration be given to preparing a convention based on this draft.

## 2. Content of the Draft Articles:

One of the criticisms directed at the work of the International Law Commission regarding the preparation of the draft articles on the responsibility of international organizations is that the Commission has used the articles on the responsibility of states in all instances, merely replacing the term "state" with "international organization." The Commission's special rapporteur has acknowledged this criticism, stating that they began the work with this assumption. Such issues highlight the particular complexity and difficulty in drafting regulations on the responsibility of international organizations.

A review of the draft articles prepared by the International Law Commission concerning the responsibility of international organizations and their commentaries reveals that the drafting of all these articles has been contentious. This is due to the unique characteristics of international organizations, which distinguish them from other subjects of international law, particularly states. Some of these contentious issues include the attribution of wrongful acts to international organizations, invoking the responsibility of international organizations and the loss of the right to invoke it, invoking the responsibility of an international organization by an injured non-governmental entity or international organization, diplomatic protection, the rule of exhausting local remedies, the multiplicity of injured entities, the multiplicity of responsible entities, the international responsibility of member states, countermeasures, compensation, and methods of compensation.

### Necessity of Applying Responsibility Rules to the Security Council

One of the main aspects of the responsibility of international organizations is the application of responsibility rules. This issue is particularly important concerning the Security Council because, on one hand, the Security Council itself is not considered an international organization, and on the other hand, due to its unique characteristics and conditions, there are challenges in applying responsibility rules to it.

#### A. Applying Responsibility Rules to the Security Council as One of the Organs of the United Nations

It should be noted that when discussing the application of responsibility rules to the Security Council, this topic falls within a broader framework, namely the responsibility of the United Nations. This is because, as is evident, the Security Council is not an international organization itself but one of the organs of the United Nations.

Therefore, its wrongful act can be attributed to the United Nations, resulting in the responsibility of this organization. Although there are no definitive legal rules in this regard, the draft articles on the responsibility of international organizations, the second reading of which was completed by the International Law Commission in 2011, can be utilized.

Article 6 of these draft articles is dedicated to the general rule of attributing conduct to an international organization and states:

1. The conduct of an organ or agent of an international organization in performing its functions shall be considered the act of that organization under international law, regardless of the position the organ or agent holds in that organization.

2. The rules of the organization shall apply in determining the functions of its organs and agents. Furthermore, Article 8 of the draft articles, titled "Exceeding Authority or Contravening Instructions," states that "The conduct of an organ or agent of an international organization acting in that capacity and within the scope of its functions shall be considered an act of that organization under international law even if the conduct exceeds the authority of that organ or agent or contravenes the instructions issued."

Therefore, the conduct of the Security Council in performing its functions is considered the act of the United Nations. Additionally, the conduct of the Security Council, when acting within its capacity, must also be considered the act of the United Nations. If the Security Council commits a wrongful act, regardless of its special status as the main political organ of the United Nations with the responsibility to maintain international peace and security, it will result in the responsibility of the United Nations.

#### B. Challenges in Applying Responsibility Rules to the Security Council

In the discussion on the responsibility of international organizations, a realistic view exists that believes international organizations do not possess true independence. This means that the actions of international organizations are the result of the actions of their member states, and the organization acts when its member states compel it to do so. From this perspective, accepting the independent responsibility of the organization becomes challenging. For instance, the inaction of the Security Council and the United Nations during the Rwandan genocide in 1994 was due to the opposition of the United States and Belgium, the two major contributors of peacekeeping forces. However, if the issue of the responsibility of international organizations is accepted, this inaction and the resulting international responsibility should be attributed to the United Nations and the Security Council, not the member states. This issue is one of the main reasons why attributing wrongful acts in the realm of international organizations' responsibility is highly contentious.

The issue of the Security Council's responsibility is also noteworthy and contentious from another aspect. In the Security Council's decision-making process, five countries possess a special privilege and veto power. However, if the Council adopts a decision that violates international law and creates responsibility, the United Nations must be accountable, not the five specific countries. Although these five states play a major role in making a decision that leads to responsibility, all member states of the organization share the responsibility and the burden of compensation. This point is not the main issue; rather, attention should be given to the possibility that this tool might be misused. This means that the five permanent members of the Security Council might face an individual issue that would undoubtedly result in the responsibility of that state if it acted alone. Therefore, knowing this, they might pursue the issue through the Security Council, distributing the responsibility for violating international law among the UN members. Such cases, while falling within the framework of responsibility law that represents the rule of law, also conflict with the essence of the rule of law because they pave the way for misuse of law and responsibility.

In other words, the Security Council should be regarded as an organ of the United Nations, with the responsibility for its actions falling under the domain of the United Nations, not any specific state or Security Council members. This stems from the independence and existence of the international organization as an independent subject of international law. The contentious point pertains to decision-making and the implementation of decisions in the Security Council, which should be done in a manner that minimizes the potential for abuse by specific states. The veto power is one of the factors that can pave the way for misuse. If such a situation occurs, the rule of law will be established both in form and content. Another issue relates to the mechanism of responsibility within the rule of law. In any legal system, courts are a natural mechanism of responsibility, ensuring effective and equal application of the law. They possess several advantages, including independence, legitimacy, enforceability, and accessibility for individuals. However, international courts are not accessible to individuals and are generally conservative bodies where the application of rules is more static. Moreover, they usually defend individual interests, which may not align with public interests such as environmental protection.

From the perspective of public international law, the International Court of Justice is the only organ with general jurisdiction to address issues of international law. However, its limitations in resolving disputes between states and the lack of compulsory jurisdiction reduce its credibility as a mechanism of responsibility in the international legal order. On the other hand, the emergence of the phenomenon of the fragmentation of international law has resulted in the presence of numerous decentralized international legal systems with their own responsibility mechanisms. Finally, it should be noted that the responsibility of the United Nations, and

consequently the Security Council, falls within the elements of the international rule of law. As mentioned in the first chapter of this study, the elements of the rule of law can be divided into elements related to the existence and characteristics of laws and institutional and structural elements. The issue of responsibility, in terms of its rules, falls within the first category, and in terms of implementation and mechanisms, it falls within the second category. Given the challenges in this area, including the lack of codified and globally accepted regulations and specific issues arising from the implementation of responsibility concerning certain organs like the UN Security Council, it can be stated that the rule of law, in terms of its elements in this area, faces challenges.

### Conclusion

In conclusion, the responsibility of the United Nations Security Council poses significant challenges in the realm of international law, primarily due to the lack of true independence of international organizations and the unique decision-making privileges of the Council's permanent members. The Security Council's actions, influenced heavily by its member states, particularly those with veto power, complicate the attribution of responsibility. This dynamic allows for potential misuse, where individual states may evade direct responsibility for actions that violate international law by channeling them through the Security Council. Consequently, while the rule of law aims to ensure accountability and equitable application of legal principles, the current mechanisms, including the limited accessibility and conservative nature of international courts, fall short in addressing these complexities effectively. The fragmentation of international law and the absence of universally codified regulations further exacerbate these issues, highlighting the need for reforms to ensure the Security Council's accountability aligns with the principles of the international rule of law.

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