

for IHL can only be achieved through their engagement. The need to find solutions for IHL compliance issues has led to the exploration of new paradigms in this regard. This book fulfils its purpose by reviewing practical problems and challenges related to the application of IHL in armed conflicts involving failed or failing states and fragmented or decentralized NSAGs. For the purpose of better protection of the victims, state-centric limits should be challenged in order to solve practical difficulties that arise in contemporary armed conflicts. Despite the shortcomings identified above – particularly the lack of strategies on how to enhance respect by states – this book provides useful tools for those who wish to gain insights into different existing mechanisms used to generate respect for IHL, notably including an understanding of the reasons for its violation and how important the direct engagement with the responsible parties is.

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Moritz P. Moelle, *The International Responsibility of International Organisations: Cooperation in Peacekeeping Operations*, Cambridge University Press, 2017, 373pp, ISBN 978-1-107-12415-8, £95.00 (hardback).
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Moelle's book is a welcome addition to a number of relatively recent studies on the responsibility of international organizations and collective security.¹ With globalization and an increasing number of stakeholders in international relations, international organizations have gained various new competencies, including in relation to collective security.² Their work and the manner in which they co-operate among themselves has also become much more complex. These include classic peacekeeping operations, hybrid peacekeeping/peace enforcement operations, and occasionally the full-fledged administration of territories.³

The author's *leitmotif* is not uncommon in scholarship today: how to ensure 'an effective administration of justice', transparency and accountability as the competencies of international organizations are increasingly shared? Can international organizations be jointly responsible for any internationally wrongful acts committed in the context of peacekeeping operations?⁴ I am not convinced the author

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¹ See, for example, L. Boisson de Chazournes, *Interactions between Regional and Universal Organizations: A Legal Perspective* (2017); A. Delgado Casteleiro, *The International Responsibility of the European Union: From Competence to Normative Control* (2016); G. Wilson, *The United Nations and Collective Security* (2014); N. Tsagourias and N.D. White, *Collective Security: Theory, Law and Practice* (2013); A. Orakhelashvili, *Collective Security* (2011); M. Forteau, *Droit de la sécurité collective et droit de responsabilité de l'Etat* (2006).

² M.P. Moelle, *The International Responsibility of International Organisations: Cooperation in Peacekeeping Operations* (2017), 2.

³ *Ibid.*, at 7.

⁴ *Ibid.*, at 10.

provides an exhaustive answer to this intellectual quest, particularly as the implementation of responsibility of international organizations remains scarce in practice. However, he has laid a rich groundwork for further scholarship by reviewing and comparing the complex co-operation mechanisms and arrangements between various international organizations in the field of collective security. More ambitiously, the author has also provided recommendations for future developments in this field.

The first two chapters of the book set out the legal framework of collective security, with a detailed analysis of the relations between Chapters VII and VIII of the UN Charter, what the author felicitously calls a ‘compromise between a universalist and a regionalist perception of collective security’.⁵ In these chapters, Moelle provides a thorough account of various co-operation agreements and policies in place among different organizations involved in peacekeeping operations, despite the rapid changes taking place in this field (note, for example, the significant developments in UN-AU relations exemplified by the signature of the Joint UN-AU Framework for Enhanced Partnership in Peace and Security in 2017).⁶ This account clearly shows that we are in the midst of a trend towards the regionalization of collective security, including a sharp ‘increase in the deployment of multiple simultaneous peace operations in the same conflict’ since the 1990s.⁷ It also shows that ‘cooperation now covers all levels from the training of troops to pre-planning to deployment on the ground’.⁸ The author’s key finding is that the organizations involved are increasingly acting as ‘equal partners, and therefore not in a subordinate-superior relationship’,⁹ which raises the question of whether these various organizations may be held jointly responsible in international law.

Chapter 3 deals with the core of the author’s thesis, by examining the implications of these various co-operation arrangements from the perspective of the law of international responsibility. Moelle does an effective job of deconstructing the relevant provisions of the 2011 ILC’s Articles on Responsibility of International Organizations for the Internationally Wrongful Acts (‘ARIO’) and testing whether these allow for ‘regulating adequately the highly complex field of peacekeeping operations’.¹⁰ His meticulous analysis of the bases of attribution of conduct (Art. 7 ARIO) and attribution of responsibility (Arts. 14 and 15 ARIO) leads him to conclude that these provisions do not successfully capture the modern forms of co-operation between international organizations involved in peacekeeping operations.¹¹ He also submits that Article 48 ARIO, which provides that one or several international organizations may be responsible for the same wrongful act, does not define when and how this

⁵ *Ibid.*, at 160.

⁶ Joint United Nations-African Union Framework for Enhanced Partnership in Peace and Security, 19 April 2017, available at unoau.unmissions.org/sites/default/files/joint_un-au_framework_for_an_enhanced_partnership_in_peace_and_security.pdf

⁷ Moelle, *supra* note 2, at 160.

⁸ *Ibid.*, at 154.

⁹ *Ibid.*, at 162.

¹⁰ *Ibid.*, at 5.

¹¹ *Ibid.*, at 165–78.

dual or multiple attribution would operate, i.e., which criterion of attribution should apply.¹² Moelle argues that:

in the specific area of peacekeeping operations, international organisations engage in cooperation arrangements which derogate from the general rules that the ARIO seek to codify as they are outside the scope of the scenarios of joint responsibility regulated in the articles.¹³

As a result, Moelle submits that ‘legal regulation of peacekeeping operations from the point of view of international responsibility requires a new criterion of attribution to allocate responsibility to two or more international organisations’.¹⁴

The most important contribution to this area of scholarship lies precisely in the author’s proposal of ‘normative control’ as a new criterion of attribution of conduct in the context of co-operation between international organizations in peacekeeping operations. To Moelle, normative control means political or institutional influence by one organization over another, without the former being necessarily implicated in the military chain of command of a peacekeeping operation. For example, the author suggests that:

the large degree of control the UN and the EU can exercise over the AU in the form of the financing of AU peacekeeping operations not only raises the question as to whether these actions would be sufficient per se to attribute responsibility to both organisations, but it might simultaneously justify the holding of these two organisations responsible despite a lack of cooperation or an insufficient basis of cooperation in other areas of a given mission.¹⁵

In sum, Moelle argues that the acts committed by a peacekeeping force under the operational command and control of one organization can be concurrently attributed to another organization which exercises normative control over the former through its political, institutional or financial influence.

While Moelle acknowledges the distinction between the attribution of conduct and of responsibility, it is unclear from the author’s argument whether the external organization (i.e., the one exerting normative control) is directly responsible *for* the internationally wrongful act of the peacekeeping forces or *in relation* to an internationally wrongful act committed by another organization that deploys the peacekeeping operation. The distinction is important both for the legal and factual basis of a finding of responsibility and the remedies available to the victim from each of the actors involved. If the conduct is attributed to the organization and constitutes a breach of its obligation, that organization bears full responsibility for the legal consequences flowing therefrom. If responsibility is attributed to the organization, because it has been implicated in the conduct at issue, whether through financial, logistical or other support, it will only be held responsible to the extent of the support it has provided (i.e., as in cases of derivative responsibility). Moelle

¹² Ibid., at 177.

¹³ Ibid., at 178.

¹⁴ Ibid.

¹⁵ Ibid., at 159.

appears to be arguing that in the context of peacekeeping operations conduct that would ordinarily trigger only derivative responsibility may be sufficient to generate joint responsibility, meaning that the conduct is concurrently attributable to two or more international organizations.¹⁶

According to Moelle, the normative control threshold would be met by showing both political control and the exercise of influence through institutional relations between the organizations in question, for example in the form of co-operation arrangements between the UN and regional organizations that effectively deploy peacekeeping operations. He posits that if the involvement of an external organization 'is of such an intensity as to justify the application of the normative control criterion',¹⁷ then its responsibility may be engaged alongside the organization which is in charge of the chain of command. If on the facts the involvement is less intense, making it more difficult to prove intent, Moelle argues that there would be a *lacuna* in the ARIO, as such involvement would not constitute aid or assistance pursuant to Article 14 ARIO.¹⁸ This is a rather hasty conclusion. The question of whether or not it is necessary to prove intent is a controversial one, and while the commentary to the ARIO does refer to the requirement that the aid or assistance be intended for the commission of an internationally wrongful act, the text of the Article only speaks of the knowledge of the circumstances of the wrongful act.

Moelle's in-depth analysis of five case studies in Chapter 4 on how the internationally wrongful conduct of peacekeepers may be attributed to international organizations, namely in Kosovo (KFOR), Darfur (UNAMID), South Sudan (UNMISS and UNISFA), Mali (AFISMA and MINUSMA) and in the Central African Republic (MISCA and MINUSCA), is helpful. However, in performing this analysis, the author also demonstrates, perhaps unwittingly, that the division of labour between international organizations varies in significant ways from one peacekeeping mission to another. This, in turn, makes it hard to generalize the application of a normative control standard that would trigger the responsibility of an organization which is not strictly within the chain of command, but only exerts a degree of political or institutional influence.¹⁹ Granted, the notion of effective control, as conceived in the context of state responsibility, may be too limited and may ignore 'the fact that such a notion cannot be operational in a system which becomes gradually more institutionalised and complex'.²⁰ The author submits that the complexity of modern peacekeeping operations, as well as arguments of justice and equity support the need for a normative control standard.²¹ However, the author's normative control standard of attribution of conduct (i.e., in the form of political or institutional influence over the organization directly in charge of the peacekeeping operation) risks dissuading organizations from providing lawful financing and other operational

¹⁶ Ibid., at 177.

¹⁷ Ibid., at 208.

¹⁸ Ibid., at 208; see also at 173–5.

¹⁹ Ibid., at 270–1.

²⁰ Ibid., at 183–6; see also at 169–72.

²¹ Ibid., at 185.

and logistical support for the purposes of peacekeeping operations, and potentially undermining their success.

In addition, notwithstanding the appeal of Moelle's normative control framework as a means to ensure a greater degree of accountability of organizations involved in peacekeeping operations, it is unlikely that an international court or tribunal would ever be willing to make a finding of responsibility on such a basis. As the author himself acknowledges, '[t]he lack of adjudicative power by international courts and tribunals over international organisations likewise prevented further elucidation of the applicable legal rules'.²² Moreover, the limited case law in which questions of attribution of conduct to international organizations have been examined closely follows the corresponding questions in an inter-State context. International courts and tribunals tend to look for the effective control over the actual operation resulting in the wrongful acts, rather than taking account of broader considerations of institutional or political design. That said, it is possible that the multiplication of co-operation agreements in the area of peacekeeping may in the long term create a *lex specialis* criterion of attribution of conduct for organizations involved in international peacekeeping.²³ However, in my view, the practice discussed in the book is not sufficient to lead to the conclusion that such normative control, as a new criterion of attribution of conduct, is already *lex lata*.

Chapter 5 deals with a variety of primary obligations that apply to the activities of peacekeeping forces which, according to Moelle, 'increase the likelihood of international organisations being jointly responsible'.²⁴ Moelle argues that international organizations have obligations under international human rights law and international humanitarian law both directly and through the obligations of their member states. He provides a detailed account of the leading theories that justify the applicability of human rights law obligations to international organizations.²⁵ The author's discussion on how jurisdictional requirements for the application of human rights law to international organizations may be tailored is especially insightful. In particular, the author develops an intriguing argument that the 'exercise of jurisdiction by international organisations under human rights law can be compared to the extraterritorial exercise of jurisdiction under human rights law by states'.²⁶ Moelle appears to be advocating for a functional approach to the exercise of jurisdiction by international organizations under human rights law, which would combine both the personal and spatial models of jurisdiction.²⁷

Time will show whether Moelle's recommendations, which are certainly commendable, are practicable. In addition to his theory of normative control, Moelle submits, for example, that the UN Security Council could request an advisory opinion from the ICJ regarding the application of human rights law to international

²² Ibid., at 162.

²³ Ibid., at 323.

²⁴ Ibid., at 271.

²⁵ Ibid., at 273–98.

²⁶ Ibid., at 285.

²⁷ Ibid., at 284–98 and 319–20.

organizations.²⁸ He also recommends that the UN and regional organizations should provide for the distribution of responsibility for breaches of international law in their co-operation agreements and, better yet, develop a model agreement that would also clarify the existing rules applicable to their peacekeeping operations.²⁹ As the scholarship in the area of responsibility of international organizations and collective security develops, I am confident that Moelle's book will remain a valuable reference.

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²⁸ Ibid., at 325.

²⁹ Ibid., at 328–9.

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