

## SHARED RESPONSIBILITY IN PARTNERSHIPS AMONG INTERNATIONAL INSTITUTIONS

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### Background and aims of the seminar

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The aim of the seminar is to explore how responsibility and accountability are shared in partnerships between international institutions.

The term 'partnerships' refers to arrangements in which international institutions cooperate in order to advance common interests. These partnerships exist in many fields of international law, including global finance, global health, and peace and security. They involve a wide variety of types of cooperation, including the exchange of information and knowledge, providing equipment or logistical aid, financial assistance, and setting up a joint institution. Partnerships can be established on the basis of a formal agreement, on the basis of an informal instrument (e.g. a Memorandum of Understanding), or evolve out of practice (a combination is possible as well). In addition to partnerships between formal international organizations, partnerships also may involve more informal international institutions and private organizations.

While invariably partnerships seek to contribute to beneficial outcomes, in some situations their activities (or their failure to act) may result in harm for third parties.

In such cases, the question may arise whether and how responsibility is, or can be, shared between the participating institutions. The term 'responsibility' is used broadly, and encompasses both responsibility for wrongdoing in the sense of the perspective of the ILC Articles on the Responsibility of International Organizations (ARIO), and softer forms of accountability that may assess practices of partnerships against standards of international law.

Theoretically, shared responsibility in a partnership can derive from a single wrongful conduct that can be attributed to more than one institution, a combination of separate wrongful acts, or from the contribution of one institution to another's wrongful conduct.

However, in the specific context of partnerships several unexplored questions arise. Examples include the following:

- Are all participating institutions, or the partnership as such, bound by the same obligations, and, if not, how does this affect questions of responsibility?

- What is the role of the instrument establishing the partnership in determining the obligations of the participating institutions?
- What is the role of such instruments in allocating obligations and responsibility between the partners, in particular with a view to third parties?
- Are the criteria defined by the ILC on 'derived responsibility' useful in the context of partnerships? For instance, if a financial institution lends money to another institution that uses it in a way that results in harm to third parties, the question is how the requirement of 'knowledge' of the other institution's conduct in the sense of Article 14 ARIO can be established. What is in this context the relevance of consultation and monitoring mechanisms?
- How do the criteria of direction or control apply in the context of partnerships, and what is in this context the role of the instrument establishing the partnership? An example is the African Union (AU)/United Nations (UN) hybrid operation in Darfur (UNAMID), where the UN accepted to pay for all damages caused by the mission, even though the troops are under joint command of the UN and the AU.

The practices of partnerships among international institutions in general, and the questions of responsibility in particular, has so far received very little attention in scholarship.<sup>1</sup>

Against this background, the seminar seeks to contribute to our understanding of:

- The actual practices of partnerships among international institutions and the situations in which such partnerships may result in harm for third parties.
- The arrangements or practices that have been developed in partnerships for addressing responsibility for such harm.
- The relevance of general principles of responsibility, as developed by the ILC, for the sharing of responsibility in partnerships among international institutions. This is both relevant from the perspective of addressing questions concerning the practice of partnerships, and for our assessment of the contents and relevance of the law of responsibility.

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<sup>1</sup> See for rare exceptions Laurence Boisson de Chazournes, 'United in Joy and Sorrow: Some Considerations on Responsibility Issues Under Partnerships Among International Financial Institutions', in Maurizio Ragazzi (ed.), *Responsibility of International Organizations: Essays in Memory of Sir Ian Brownlie* (Martinus Nijhoff Publishers, 2013); Lisa Clarke, *Public-Private Partnerships and Responsibility under International Law. A Global Health Perspective* (Routledge, 2014).