

Legal Responsibility of Regional Economic Integration Organizations under the Paris Agreement: Challenges to Enhancing the Participation of Developing Countries

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Regional economic integration organizations (REIOs) can ratify climate change agreements as mixed agreements, including the Paris Agreement, with their member states. A question may arise on what responsibilities can REIOs have under the Paris Agreement in relation to the member states. Analyzing the draft articles on the responsibility of international organizations reveals that REIO can have derived (indirect) responsibility for non-fulfilling the obligations by member states due to the normative control resulting from the adoption of binding resolutions. Also, under Article 4.18 of the Paris Agreement, REIO will be jointly responsible for non-realization of the goals communicated in the NDCs together with non-compliant member. This will make the non-compliant states responsible externally to the third parties and to REIO internally in achieving the goals of NDC and will encourage the compliant member states to participate in realizing the collective goal of REIO because of influence of not realizing the collective goal.

Keywords

REIO, Paris Agreement, Joint Responsibility, DARIO, NDCs, Climate Change, Economic Integration, International Organization

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I. Introduction

Climate change is a global issue, and its solution requires the participation of all actors, including international organizations.¹ All climate change agreements have emphasized the importance of international cooperation and the active role of international organizations in addressing this global challenge. The involvement of international organizations in the climate change regime has largely been limited to observer status at conferences,² issuing joint statements, and participating without assuming binding legal obligations.³ The only requirement for international organizations to hold legal obligations in the climate change regime, mainly based on international treaties,⁴ is to be a member of the agreements.

Only Regional Economic Integration Organizations (REIOs) are allowed to be members of the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement (PA), despite referring to sectorally focused institutions such as ICAO and IMO⁵ to monitor the implementation of the obligations by the member states.⁶ One legal consequence of REIO membership as a legal entity with international legal personality in treaties is its responsibility for breaches of obligations.⁷ Since “the subject of the responsibility of international organizations is of major importance in the relations of states and international organizations,”⁸ the International Law Commission (ILC) prepared the Draft Articles on the Responsibility of International Organizations (DARIO)⁹ in 2011 under the guidance of Special Rapporteur Giorgio Gaja. DARIO is not adopted as a binding document, but is subject to controversial rules of customary international law.¹⁰ The

¹ Maria Ivanova, *Politics, Economics, and Society, in THE PARIS AGREEMENT ON CLIMATE CHANGE: ANALYSIS AND COMMENTARY* 26 (Daniel Klein et al. eds., 2017).

² Intergovernmental organizations (IGOs) have observer status when they are accepted as observers to the UNFCCC by the Conference of the Parties. 173 international organizations were accepted as observers in COP 28.

³ Medani Bhandari, *The Role of International Organization in Addressing the Climate Change Issues and Creation of Intergovernmental Panel on Climate Change (IPCC)*, 1(1) *ADV. AGR. & ENV'T SCI.* 19-34 (2018).

⁴ DANIEL BODANSKY ET AL., *INTERNATIONAL CLIMATE CHANGE LAW* 55-70 (2017).

⁵ Katherine Michonski & Michael Levi, *Harnessing International Institutions to Address Climate Change* 10 (Working Paper, Council on Foreign Relations, 2010), https://cfr.org/sites/default/files/pdf/2010/03/IIGG_WorkingPaper_2_ClimateChange.pdf.

⁶ Kyoto Protocol art. 2.2.

⁷ Cedric Ryngaert & Holly Buchanan, *Member State Responsibility for the Acts of International Organizations*, 7(1) *UTRECHT L. REV.* 134 (2011).

⁸ U.N. Doc. A/RES/78/114 (Dec. 7, 2023).

⁹ U.N. Doc. A/CN.4/L.778 (May 30, 2011).

¹⁰ Ágoston Mohay, *The Responsibility of International Organizations and Their Member States: An Overview of*

rules on international organizations' responsibility remain somewhat of an uncharted area¹¹ in contrast to the Draft Articles on State Responsibility for Internationally Wrongful Acts (DARSIWA).¹² DARIO's content does not have the same legal authority as DARSIWA, but deserves credit for codification and progressive development of general rules.¹³ The climate change agreements have specific provisions regarding the responsibility of REIO and its member states in addition to these general rules of responsibility. Therefore, climate change will likely become a testing ground for the law of international responsibility in the 21st century.¹⁴

Although the EU, ASEAN, NAFTA, and APEC are the most noticeable REIOs, only the EU, as the only supranational organization including political integration, has become a party to climate change agreements. Even though regional solutions or "coalitions" of willing countries can be appropriate for some forms of climate policy,¹⁵ organized collective solutions to climate change are still largely absent.¹⁶ As for developing countries, it is more cost-effective for to act collectively rather than individually. In their interest to present a unified stance at the international level,¹⁷ they tend to adopt a cautious approach toward accepting new obligations and responsibilities arising from potential breaches.

The participation of developing countries through REIO in climate change treaties hinges on clarifying the scope of the obligations of REIOs and their member states, as well as resolving complex issues related to their joint responsibility in fulfilling the obligations. When a REIO joins an international agreement with the consent of its member states, although its obligations cannot be separated from the member states, but due to its independent legal personality, its legal responsibility is independent from the member states.. This situation complicates matters, as the failure of a member state to fulfill its obligations could hinder the organization's ability to meet

Outstanding Questions of Interpretation, 2020/II PECS J. INT'L & EUR. L. 94 (2020).

¹¹ Olga Gerlich, *Responsibility of International Organizations Under International Law* (2011), at 58, https://www.bibliotekacyfrowa.pl/Content/46558/01_Olga_Gerlich.pdf.

¹² U.N. Doc. A/56/10 (2001).

¹³ Pavel Šturma, *The Responsibility of International Organizations and Their Member States*, in *RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS* 323 (Maurizio Ragazzi ed., 2013).

¹⁴ René Lefeber, *Climate Change and State Responsibility*, in *INTERNATIONAL LAW IN THE ERA OF CLIMATE CHANGE* 349 (Rosemary Rayfuse & Shirley Scott eds., 2012).

¹⁵ Koko Warner, *Climate Change and Global Warming: The Role of the International Community* 1 (Background Paper for WDR 2014 on Managing Risk for Development, 2013), <https://openknowledge.worldbank.org/server/api/core/bitstreams/6d69510e-ed4a-5683-87ba-e827a4b18568/content>.

¹⁶ SÁDE HORMIO, *TAKING RESPONSIBILITY FOR CLIMATE CHANGE* 54 (2024).

¹⁷ Javier Larragán, *Liability of Member States and the EU in View of the International Climate Change Framework: Between Solidarity and Responsibility*, in *CLIMATE CHANGE LIABILITY* 55 (Michael Faure & Marjan Peeters eds., 2011).

its commitments.

The primary purpose of this research is to explain and outline the limits of the responsibility of a REIO in fulfilling the climate change obligations by its member states under the Paris Agreement. A key consideration for developing countries is identifying the circumstances under which an REIO bears legal responsibility and determining how this responsibility aligns with the responsibilities of its member states. Therefore, the legal nature of REIO and its function in climate change mixed agreements are examined in the first part. The article examines the responsibility of REIOs under DARIO, followed by an analysis of their obligations within the framework of the Paris Agreement. The concluding part presents insights drawn from these analyses.

II. REIOs in Mixed Agreements

According to Article 1(6) of the UNFCCC, REIO means “an organization constituted by sovereign states of a given region, ..., to sign, ratify, accept, approve or accede to the instruments concerned.” This definition reflects the internationally recognized legal personality of REIOs,¹⁸ whereby REIOs and their member states may simultaneously be parties to a treaty. REIO was launched to allow an organization to participate in multilateral treaties as a contracting party.¹⁹ Today, many multilateral environmental agreements contain a REIO clause that sets out the conditions under which a REIO may become a party to the agreement.²⁰

REIO has the authority to make binding decisions for the member states under their governing. Such an organization operates through close coordination between itself and the authorities of its member states in implementing their international obligations.²¹ REIO concludes international agreements, while their implementation is primarily up to the authorities of the member states.²² Some authors have considered

¹⁸ Rowena Cantley-Smith, *Article 1 Scope of Obligations: Terms and Definitions*, in *THE PARIS AGREEMENT ON CLIMATE CHANGE* 64 (Geert Calster & Leonie Reins eds., 2021).

¹⁹ Esa Paasivirta & Pieter Kuijper, *Does One Size Fit All?: The European Community and the Responsibility of International Organisations*, 36 *NETH. Y.B. INT'L L.* 169 (2005).

²⁰ UNEP, *Mini Course on Regional Economic Integration Organizations* (2022), at 1, https://elearning.informea.org/pluginfile.php/48556/mod_resource/content/1/REIO_Workbook.pdf.

²¹ Pieter Kuijper & Esa Paasivirta, *EU International Responsibility and Its Attribution: From the Inside Looking Out*, in *THE INTERNATIONAL RESPONSIBILITY OF THE EUROPEAN UNION: EUROPEAN AND INTERNATIONAL PERSPECTIVES* 68 (Malcolm Evans & Panos Koutrakos eds., 2013).

²² Esa Paasivirta, *The Responsibility of Member States of International Organizations: A Special Case for the European*

rules on REIO to be *lex specialis*.²³ Despite being members, for example, REIO and its member states will not have the right to exercise their decisions under the agreements concurrently.²⁴ Voting rights in these agreements are exclusive to sovereign states. Although REIO is a member, it does not possess an independent right to vote; rather, it exercises voting rights on behalf of its member states, with the number of votes corresponding to the number of those states without any additional votes.²⁵ REIO shall not exercise its right to vote when any member states exercise its right, and vice versa. In addition, ratification instruments deposited by a REIO shall not be counted as additional to those deposited by the member states.²⁶ The agreements that REIO, along with its member states, can ratify are called mixed agreements such as the UNFCCC and the PA.

A mixed agreement is signed and concluded by REIO and its member states on the one hand and by a third party on the other.²⁷ In other words, within a single legal document, REIO and its member states express their intent to commit to a third party, which, in turn, recognizes both REIO and its member states as parties to the agreement.²⁸ Concluding mixed agreements can lead to the sharing of obligations by REIO and one or more member states, where they are all bound by an obligation with the same normative content related to the same set of facts.²⁹ The agreements have two types of parallel and shared mixity. Parallel mixity refers to a situation where REIO and its member states are parties to an agreement with full rights and obligations, so that the organization's participation does not directly affect the rights and obligations of the member states. However, shared mixity requires dividing specific rights and obligations under the agreement. The inherent nature of mixed agreements is further reflected in shared mixing.³⁰ Some refers to these agreements as "false mixed agreements," which are unnecessary but make it possible to resort to mixing.³¹

Union?, in INTERNATIONAL ORGANIZATIONS AND MEMBER STATE RESPONSIBILITY 161 (Ana Bartos et al. eds., 2015).

²³ Magdalena Ličková, *European Exceptionalism in International Law?*, 19(3) EUR. J. INT'L L. 197 (2008).

²⁴ UNFCCC art. 22; Kyoto Protocol art. 24; Paris Agreement art. 20(2).

²⁵ UNFCCC art. 18(2); Kyoto Protocol art. 22(2); Paris Agreement art. 25(2).

²⁶ Paris Agreement art. 21(4).

²⁷ Kuijper & Paasivirta, *supra* note 21, at 37.

²⁸ Marc Maresceau, *A Typology of Mixed Bilateral Agreements*, in MIXED AGREEMENTS REVISITED: THE EU AND ITS MEMBER STATES IN THE WORLD 12 (Christophe Hillion & Panos Koutrakos eds., 2010).

²⁹ Nataša Nedeski, *Shared Obligations and the Responsibility of an International Organization and Its Member States: The Case of EU Mixed Agreements* 18 (Amsterdam Law School Legal Studies Research Paper No. 2020-12, 2020).

³⁰ Gerlich, *supra* note 11, at 24.

³¹ Kuijper & Paasivirta, *supra* note 21, at 44.

The international responsibility between REIO and its member states should, in principle, follow the distribution of competence between them, especially in cases with a declaration of competence.³² REIO, as a member of the mixed agreement, is required to deposit a declaration of competencies upon ratification that defines the boundary between its competencies and the member states' competencies.³³ In addition, REIO must declare the extent of their competence concerning the matters governed by the agreement, as well as any substantive changes to this competence, to the other party.³⁴ The declaration aims to clarify externally the internal division of competencies.³⁵ The division of competencies between member states and REIOs in mixed agreements is an internal issue with an external impact on third parties.³⁶ Although it is theoretically convenient for REIO to issue a declaration specifying the scope of its competence over the matters covered by the treaty,³⁷ in practice, preparing this declaration is not straightforward, but external competence has to be considered.³⁸

Climate change agreements, including the UNFCCC, the Kyoto Protocol, and the PA, are mixed agreements that REIO and its member states can conclude with third parties.³⁹ The provisions of the PA regarding REIOs are modeled on similar requirements under the Protocol. Although identical to the EU proposal, they should be read, considering they may also apply to other REIOs.⁴⁰ REIO and its member states shall decide on their responsibilities for performing their obligations under Article 20(2) of the PA.⁴¹

³² PAUL CRAIG & GRÁINE DE BÚRCA, *EU LAW: TEXT, CASES AND MATERIALS* 334 (2011). See also Joni Heliskoski, *EU Declarations of Competence and International Responsibility*, in *THE INTERNATIONAL RESPONSIBILITY OF THE EUROPEAN UNION: EUROPEAN AND INTERNATIONAL PERSPECTIVES* 149 (Malcolm Evans & Panos Koutrakos eds., 2013).

³³ Council of EU, Council Decision of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change, OJ L/33/13 (1994), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1994:033:0011:0028:EN:PDF>.

³⁴ UNFCCC art. 18(2); Kyoto Protocol art. 24(3); Paris Agreement art. 20(3).

³⁵ Andre Nollkaemper, *Joint Responsibility between the EU and Member States for Non-Performance of Obligations under Multilateral Environmental Agreements* 15 (Amsterdam Law School Legal Studies Research Paper No. 2011-47, 2011).

³⁶ Marise Cremona, *External Relations of the EU and the Member States: Competence, Mixed Agreements, International Responsibility, and Effects of International Law* 20 (EUI Working Paper Law No. 2006/22, 2006), <https://cadmus.eui.eu/handle/1814/6249>.

³⁷ Paz María, *The European Union and the Law of Treaties: A Fruitful Relationship*, 30(3) *EUR. J. INT'L L.* 746 (2019).

³⁸ Ivan Smyth, *Mixity in Practice-A Member State Practitioner's Perspective*, in *MIXED AGREEMENTS REVISITED: THE EU AND ITS MEMBER STATES IN THE WORLD* 315 (Christophe Hillion & Panos Koutrakos eds., 2010).

³⁹ Paris Agreement arts. 4(16) & (18), 20(1)-(3), 21(3)-(4) & 25(2). These articles refer to REIOs.

⁴⁰ Harald Winkler, *Mitigation (Article 4)*, in *THE PARIS AGREEMENT ON CLIMATE CHANGE: ANALYSIS AND COMMENTARY* 161 (Daniel Klein et al. eds., 2017).

⁴¹ UNFCCC art. 22(2); Kyoto Protocol art. 24(3).

III. Responsibility of REIO under DARIO

Responsibility in the climate change regime is very complex and controversial.⁴² Different modes of responsibility are involved in climate change, from moral to legal.⁴³ Legal responsibility deals with the conditions and legal consequences of actions attributable to an REIO in cases of violations of international legal obligations. In this regard, DARIO was adopted by the ILC in 2011, consisting of 67 articles, largely based on DARSIVA. It is currently not binding, except to the extent that it reflects customary international law.⁴⁴ Some of its articles codify customary international law, while others represent the progressive development of international law. According to Article 64 of DARIO, its rules are *lex generalis* and will not prevent the application of specific rules of an organization, as *lex specialis*, to the relations between the organization and the member states. Some claim that the REIO rules about responsibility should be considered *sui generis* and *lex specialis* due to their particular attribution.⁴⁵ In particular, the EU⁴⁶ has repeatedly called for special rules on the attribution of behavior for REIOs.⁴⁷ It argues that in the Commentary to Article 47 of DARSIVA, for example, the responsibility of the EU and its member states under mixed agreements is regarded as a “special case.” Nonetheless, there is no particular rule of attribution applicable to REIO, or at least not yet,⁴⁸ and the general rules of responsibility of international organizations must be followed.⁴⁹

In general, the chain of attribution in the rules of international organizations can be complicated compared to the rules of states, and it is challenging to hold organizations responsible, whether for actions or omissions.⁵⁰ However, both

⁴² Michael Roos & Franziska Hoffart, *Climate Change and Responsibility*, in CLIMATE ECONOMICS: A CALL FOR MORE PLURALISM AND RESPONSIBILITY 125 (Michael Roos & Franziska Hoffart eds., 2021).

⁴³ Thorsten Moos & Megan Arndt, *Practices of Climate Responsibility*, 2(16) CLIMATE ACTION 3 (2023).

⁴⁴ Kristina Daugirdas, *Reputation and the Responsibility of International Organizations*, 25(4) EUR. J. INT'L L. 1016 (2014).

⁴⁵ Mohay, *supra* note 10, at 95.

⁴⁶ U.N. Doc. A/CN.4/545 (June 25, 2004), at 18; U.N. Doc. A/CN.4/637 (Feb. 17, 2011), at 7.

⁴⁷ UNGA, *Responsibility of International Organizations: Comments and Observations Received From International Organizations*, U.N. Doc. A/CN.4/545 (June 25, 2004), <https://documents.un.org/doc/undoc/gen/n04/406/10/pdf/n0440610.pdf>.

⁴⁸ Paolo Palchetti, *Unique, Special or Simply a Primus Inter Pares? The European Union in International Law*, 29(4) EUR. J. INT'L L. 1423 (2018).

⁴⁹ Ramses Wessel & Leonhard den Hertog, *EU Foreign, Security and Defense Policy: A Competence Responsibility Gap?*, in THE INTERNATIONAL RESPONSIBILITY OF THE EUROPEAN UNION: EUROPEAN AND INTERNATIONAL PERSPECTIVES 343 (Malcolm Evans & Panos Koutrakos eds., 2013).

⁵⁰ Jan Klabbers, *Reflections on Role Responsibility: The Responsibility of International Organizations for Failing to Act*, 28(4) EUR. J. INT'L L. 1134 (2017).

direct and indirect responsibility can be imagined in regard to REIO under climate change agreements. Direct responsibility occurs when REIO becomes a party to an international agreement without its member states, while indirect responsibility does when it is a party to an agreement with all or some of its member states.

A. Direct Responsibility of REIO

According to Article 3 of DARIO, every internationally wrongful act of an international organization entails the international responsibility of that organization. Responsibility for its own internationally wrongful act, or direct responsibility, relates to the relationship between the wrongdoer and the victim. Under Article 6 of DARIO, the conduct attributable to REIO can be the conduct of its organs or agents. Although, in some cases, the fulfillment of obligations by REIO will depend on the conduct of member states,⁵¹ with national authorities of member states acting quasi-as organs of REIO,⁵² REIO remains responsible for the acts or omissions of its institutions, bodies, offices, and agencies due to its exclusive competence in certain areas. For example, with the entry into force of the Lisbon Treaty in December 2009, the EU may assume responsibility for an internationally wrongful act arising from an act of its institution.⁵³ When an REIO holds exclusive jurisdiction over a matter, it bears responsibility rather than its member states.⁵⁴ Furthermore, REIO is also responsible for the acts or omissions of its member states.

Although the commitments in the climate change regime are related to four general areas (mitigation, adaptation, finance, and oversight), the main focus of climate change agreements is on mitigation.⁵⁵ Initially, there was no prohibition on activities emitting GHGs, nor was the mere emission of GHGs a violation of commitments. However, failure to comply with emission limits would breach the parties' obligations.⁵⁶ The emission of GHGs by the parties is not wrong, but the failure to reduce such emissions constitutes a breach of the organization.

⁵¹ Mohay, *supra* note 10, at 96.

⁵² Special Rapporteur, *Seventh Report on the Expulsion of Aliens*, U.N. Doc. A/CN.4/642 (May 4, 2011), at ¶ 31, https://legal.un.org/ilc/documentation/english/a_cn4_642.pdf.

⁵³ José Martín, *European Exceptionalism in International Law? The European Union and the System of International Responsibility*, in *THE INTERNATIONAL RESPONSIBILITY OF THE EUROPEAN UNION: EUROPEAN AND INTERNATIONAL PERSPECTIVES* 192 (Malcolm Evans & Panagiotis Koutrakos eds., 2013).

⁵⁴ Cedric Ryngaert, *The Responsibility of Member States of International Organizations, Concluding Observations*, 12(2) INT'L ORG. L. REV. 219 (2015).

⁵⁵ BODANSKY ET AL., *supra* note 4, at 11-7.

⁵⁶ Catherine Redgwell, *The Wrong Trousers: State Responsibility and International Environmental Law*, in *THE INTERNATIONAL RESPONSIBILITY OF THE EUROPEAN UNION: EUROPEAN AND INTERNATIONAL PERSPECTIVES* 261 (Malcolm Evans & Panos Koutrakos eds., 2013).

The emission of GHGs occurs through the consumption of fossil fuels in industrial developments. Since REIOs do not have direct industrial activities, their emissions by their organs and agents are minimal. REIOs seek to integrate the economies of their member states but do not directly carry out economic activities that lead to the emission of GHGs. However, sometimes international organizations, not even members of climate change agreements, voluntarily commit to reducing GHG emissions released by their institutions and bodies. For example, on December 12, 2018, on the sidelines of Katowice (COP24) in Poland, fifteen international organizations, collectively responsible for over 2 million tons of CO₂ per year in emissions and employing more than 50,000 staff, announced their commitment to reduce GHG emissions by measuring their emissions, minimizing them as much as possible, and offsetting unavoidable emissions through carbon credits. Today, more than half of the bodies under the UN system, including the UN headquarters, which account for 39% of all UN emissions, are committed to being neutral.⁵⁷

Unlike mitigation obligations that apply to countries, other obligations such as international support, adaptation, and technology transfer can also be fulfilled through international organizations. REIOs like ASEAN are already involved in climate adaptation.⁵⁸ As climate change agreements have primarily focused on emissions, however, international responsibility is largely centered on mitigation, with adaptation and financial support receiving limited consideration.⁵⁹ Therefore, it is likely that REIOs will not bear direct responsibility, as these types of obligations inherently fall upon states due to their industrial activities.

B. Indirect or Derived Responsibility of REIO

Indirect responsibility, known as responsibility for the internationally wrongful act of another, secondary or derived responsibility,⁶⁰ occurs between the wrongdoer and the victim, the third intermediate subject related to the wrongdoer. In derived responsibility, one international legal person somehow influences another international legal person to conduct in a certain way.⁶¹ This exception allows for the

⁵⁷ UNFCCC (COP24), Leading International Organizations Commit to Climate Neutrality (Dec. 12, 2018), <https://unfccc.int/news/at-cop24-leading-international-organizations-commit-to-climate-neutrality>.

⁵⁸ Ece Kural et al., *International Organizations and Climate Change Adaptation: A New Dataset for the Social Scientific Study of Adaptation, 1990–2017*, 16(9) PLoS ONE 5 (2021).

⁵⁹ Larragán, *supra* note 17, at 81.

⁶⁰ Stian Øby Johansen, *Dual Attribution of Conduct to both an International Organization and a Member State*, 6(3) OSLO L. REV. 182 (2019).

⁶¹ Berenice Boutin, *Responsibility in Connection with the Conduct of Military Partners*, 56(1) MIL. L. & L. WAR REV. 61 (2017).

attribution of responsibility without prior attribution of conduct.⁶² Although indirect responsibility is an exception, it should not be misused, and recourse to it should be limited.⁶³ In the context of relations between an REIO and its member states, indirect responsibility can be conceptualized in two forms: the responsibility of REIO arising from the conduct of its member states and the responsibility of the member states arising from the conduct of the organization. Considering that the obligations contained in these agreements are mainly related to mitigation and REIOs do not have a considerable share in the emission of GHGs, the first situation appears to be hardly relevant for REIOs.⁶⁴ Therefore, Part 5 of DARIO (Responsibility of a State in connection with the conduct of an International Organization) is not considered. On the contrary, the more feasible point is “the responsibility of an international organization in connection with the act of a state” included in Chapter IV (Articles 15-18) of DARIO.

1. Causes of Indirect Responsibility

Under Chapter IV of DARIO, aid and assistance (Article 14), direct and control (Article 15), coercion (Article 16), and circulative (Article 17) are the attribution causes of the conduct of a member state to an organization. According to Article 19, the international responsibility of the member state of REIO remains in such situations. The causes can lead to the simultaneous responsibility of REIO and its member states.

Meanwhile, any kind of aid and assistance by the organization to the member state does not lead to the attribution of the wrongful act of the member state to the organization. In this case, the provided assistance must be material and not psychological.⁶⁵ Most of the practices⁶⁶ are primarily associated with either support for a military unit under the command of a member state,⁶⁷ or financial aid and assistance from organizations such as the IMF or the IBRD to a member state, which may lead to human rights violations affecting certain individuals.⁶⁸ This attribution method has been criticized,⁶⁹ because the purpose of establishing the organization is

⁶² NIKOLAOS VOULGARIS, *ALLOCATING INTERNATIONAL RESPONSIBILITY BETWEEN MEMBER STATES AND INTERNATIONAL ORGANIZATIONS* 7 (2019).

⁶³ *Id.* at 91.

⁶⁴ Nollkaemper, *supra* note 35, at 18.

⁶⁵ U.N. Doc. A/CN.4/307 (May 5, 1977).

⁶⁶ *Id.* A/CN.4/553 (May 3, 2005).

⁶⁷ ILC, *Draft Articles on the Responsibility of International Organizations, with Commentaries*, U.N. Doc. A/66/10 (Dec. 9, 2011), art. 14, ¶ 6, https://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf.

⁶⁸ August Reinisch, *Aid or Assistance and Direction and Control between States and International Organizations in the Commission of Internationally Wrongful Acts*, 7(1) INT'L ORG. L. REV. 67 (2010).

⁶⁹ Paolo Palchetti, *Applying the Rules of Attribution in Complex Scenarios: The Case of Partnerships among International*

to provide aid and assistance to the member states to achieve the organization's goals. Consequently, the EU suggested that it would be preferable for the Draft Articles and its commentary to be as limited as possible not to discourage international organizations from providing development assistance.⁷⁰

The rules related to the responsibility of international organizations should evolve in a way that, on the one hand, does not hinder their function to perform their duties concerning their member states and, on the other hand, prevents them from escaping responsibility when member states have committed a wrongful act by the provided aid and assistance.⁷¹ Under Article 14 of DARIO, however, the responsibility of REIO can be imagined when it provides material aid and assistance, such as financial support, to member states for investing in GHG-emitting economic projects.

In practice, the most imaginable cause for attributing the behavior of a state to REIO is the factor of directing and controlling the state by REIO under Article 15 of DARIO. Adopting a binding decision by REIO could constitute, under certain circumstances, a form of direction or control in the commission of an internationally wrongful act.⁷² An international organization can be held responsible because it directs and controls a member state to commit a wrongful act by adapting binding decisions.⁷³ International organizations are purposeful institutions that can control member-state activities.⁷⁴ The term 'control' in this context refers to cases of domination over the commission of wrongful conduct rather than mere oversight. Simultaneously, the word 'directs' signifies actual operational direction and does not extend to mere incitement or suggestion.⁷⁵ Although, in the commentary on Article 15 of DARSIIWA, the ILC claimed that the phrase "directs and controls" is understood as actual control, this argument was not used in DARIO, and the ILC does not clearly distinguish between actual and normative control in DARIO.⁷⁶

As the binding decisions of an organization can be considered normative control, the wrongful acts of a member state, which are committed by following the binding decisions of the organization, can be attributed to the organization. This cause can

Organizations, 13(1) INT'L ORG. L. REV. 51 (2016).

⁷⁰ U.N. Doc. A/CN.4/637 (May 14, 2009), at 25.

⁷¹ Reinish, *supra* note 68, at 72.

⁷² ILC, *supra* note 67, art. 15, ¶ 4.

⁷³ Martin, *supra* note 53, at 193.

⁷⁴ Hannes Stephan & Fariborz Zelli, *The Role of International Organizations in Global Environmental Governance*, in THE ENVIRONMENT ENCYCLOPEDIA AND DIRECTORY 1 (2009).

⁷⁵ ILC, *supra* note 67, art. 15, ¶ 4.

⁷⁶ Christiane Ahlborn, *The Rules of International Organizations and The Law of International Responsibility*, 8(2) INT'L ORG. L. REV. 458 (2011).

be realized by directing and controlling peacekeeping forces consisting of national forces by organizations such as NATO and the UN.⁷⁷ REIOs are mainly transnational organizations that have been conferred extensive powers in various fields by member states, whereby REIOs can control the norms of their member states through their binding decisions.⁷⁸ Therefore, if an REIO issues a binding decision that compels a member state to engage in conduct inconsistent with its international obligations under climate change agreements, the REIO will bear responsibility for the actions of that member state.

Another means of attributing conduct to an organization is implemented through the organization's coercion of a state, as outlined in Article 16 of DARIO. In 'coercion,' factual relationships may trigger the application of the derivative responsibility.⁷⁹ Coercion is equal to *force majeure*, by which the perpetrator's act does not create responsibility because it is not wrong.⁸⁰ Coercion, as an extreme form of control, is unlikely to overlap with control and direction, although the ILC does not exclude this possibility.⁸¹ While drafting DARIO, Germany proposed that Article 16 on coercion apply only when a binding decision is accompanied by additional and illegal action, such as a threat or use of force. As this suggestion was not included in the final draft, the scope of coercion in DARIO became so wide that even a binding decision by an international organization could lead to coercion in exceptional circumstances.⁸² Coercion occurs when a decision leaves the coerced member state with no effective choice but to comply with the decision of the coercing organization.⁸³ However, it is also possible to imagine a coercive act that is not illegal *per se*.⁸⁴ The realization of coercion seems impractical and is primarily theoretical because the derived responsibility seems more appropriate when the international organization and its member states act in concert.⁸⁵ Including these materials in DARIO was just based on adherence to the text of the DARSIVA.⁸⁶ Given that the decisions of an REIO are binding on its member states and generally allow them little discretion, in exceptional

⁷⁷ Reinisch, *supra* note 68, at 75.

⁷⁸ Martín, *supra* note 53, at 199.

⁷⁹ Andre Nollkaemper & Nataša Nedeski, *Responsibility of International Organizations in Connection with Acts of States*, 9(1) INT'L ORG. L. REV. 40 (2012).

⁸⁰ VOULGARIS, *supra* note 62, at 121.

⁸¹ *Id.* at 129.

⁸² ILC, *supra* note 67, at 68.

⁸³ *Id.*

⁸⁴ U.N. Doc. A/66/10/Add.1 (May 14, 2009), at 91, ¶ 52.

⁸⁵ Johansen, *supra* note 60, at 197.

⁸⁶ Šturma, *supra* note 13, at 316.

circumstances, if the member state is forced to fail to comply with its emission reduction obligations due to compliance with the decisions of REIO, this behavior can be attributed to REIO. However, the coerced state may invoke a circumstance to preclude wrongfulness, thereby eliminating any basis for joint responsibility.⁸⁷

Under Article 17 of DARIO, the organization would be responsible if the member states, under the organization's decisions, had to carry out a wrongful act according to the international obligations.⁸⁸ Since an international organization exists as an entity separate from its members, theoretically the organization can influence its members to achieve a goal that the organization itself cannot legally accomplish directly.⁸⁹ The term 'circumvention' implies an intention on the part of the international organization to take advantage of the separate legal personality of its members to avoid compliance with an international obligation.⁹⁰ Article 17 uses the expression "incurs responsibility," which shows that this type of responsibility does not require realizing attribution as the second element of responsibility. Given that some international organizations have the authority to issue binding decisions for their members, while most organizations can only influence member conduct through non-binding acts,⁹¹ Article 17, Paragraph 1 addresses cases where an international organization issues a binding act directed at one or more member States. Paragraph 2 is related to non-binding actions like recommendation. An international organization may be responsible when it recommends a particular action to a member state on the assumption that members are unlikely to systematically disregard such recommendations.⁹² Unlike binding decisions, authorizations leave a margin of discretion for member states in implementing laws. While authorizations do not establish legal obligations, they differ from recommendations for their fundamentally distinct normative criteria.⁹³ Since the REIO decisions are binding for member states and do not have a recommendation aspect, the provisions of Article 17.2 are not very applicable. Therefore, if REIO makes a binding decision whereby a member state fails to reach its emission target, it will be responsible for the conduct of the member state because of the circumvention of its binding decisions.

⁸⁷ Nollkaemper, *supra* note 35, at 17.

⁸⁸ Paasivirta & Kuijper, *supra* note 19, at 2018.

⁸⁹ ARNOLD PRONTO, RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS 451 (2019).

⁹⁰ ILC, *supra* note 67, at 106, ¶ 4.

⁹¹ *Id.* at ch. IV, ¶ 4.

⁹² U.N. Doc. A/66/10/Add.1 (May 14, 2009), at 92, ¶ 56.

⁹³ VOULGARIS, *supra* note 62, at 144.

2. Normative Control

The most crucial factor in attributing a member state's conduct to an REIO is the binding decisions issued by REIO. The main feature of REIO is its competence in making binding decisions for the member states. This authority is high compared to other international organizations, so they can ratify treaties and accept obligations from member states. The process of guiding and controlling member states through binding decisions is called normative control, in which the control link is not real or operational but purely legal. The control link is related to the member states through a *de jure* relationship. When this happens, *de jure* control equals *de facto* control, giving rise to derivative responsibility.⁹⁴ Since REIOs seek to direct and control member states mainly through binding decisions, aid and assistance along with coercion are only relevant in exceptional circumstances. The conduct of a state acting under the normative control of a REIO may be attributed to the organization.⁹⁵ REIO should bear responsibility for actions carried out under its normative control by member states. Thus, all international organizations have normative control over their members to some extent, depending on their competencies.⁹⁶ Thus, the level of control exercised must be akin to force, and mere dominance will not suffice. In other words, control should be overwhelming.⁹⁷ However, REIOs including the EU, possess the most authoritative binding decisions under international law.

REIO decisions are binding only if they limit the freedom of action of a member state and predetermines the exact course of action. Such decisions must leave the member state without choice but to take the specific action leading to a breach of obligation. "Binding decision" does not mean to impose a general or abstract obligation, but to impose a targeted obligation. A decision is non-binding when it imposes obligations on member states without predetermining the exact course of action.⁹⁸ Legally binding decisions of international organizations can be considered "direct and control" when such decisions do not allow any discretion in their implementation.⁹⁹ Article 15 of DARIO covers only those situation where the the RIEO decision binds a member state to breach its obligations. Hence, the overlap between clauses 17.1 and 15 on direction and control is only partial.

⁹⁴ *Id.* at 130.

⁹⁵ Frank Hoffmeister, *Litigating against the European Union and Its Member States – Who Responds under the ILC's Draft Articles on International Responsibility of International Organizations?*, 21(3) EUR. J. INT'L L. 746 (2010).

⁹⁶ Ahlborn, *supra* note 76, at 452.

⁹⁷ Jean d'Aspremont, *Abuse of the Legal Personality of International Organizations and the Responsibility of Member States*, 4(1) INT'L ORG. L. REV. 111-2.

⁹⁸ VOULGARIS, *supra* note 62, at 129.

⁹⁹ ILC, *supra* note 67, art. 15, ¶ 4.

Furthermore, a REIO's responsibility in connection with a state's act has been discussed in several cases in international courts or other institutions, but has not been examined by those courts or institutions due to the lack of jurisdiction *ratione personae*.¹⁰⁰ In general, there are two views regarding the possibility of attributing the behavior of the member states to REIO in the EU case law. First, the WTO dispute settlement mechanisms would attribute the conduct of member states to the EU. In this vein, the member states are *de facto* organs of the EU, so that the EU should bear responsibility under the WTO rules and general principles of international law.¹⁰¹ Second, under the procedure of the European Court of Human Rights, actions taken by member states to implement binding EU decisions cannot be attributed to the organization, even when their implementation allows no discretion to the member states.¹⁰²

IV. Responsibility of REIO under the PA

In addition to DARIO, climate change agreements have some rules regarding the responsibility of REIOs. The rules in the PA regarding the responsibility of REIOs are not considered *lex specialis* to the general rules of DARIO. They are applicable as an exception,¹⁰³ but rather complementary to the DARIO rules in the specific context of REIOs. Therefore, without sufficient procedure and practice to substantiate the claim that the responsibility rules for REIOs constitute *lex specialis*, the rules of the PA should be subject to and interpreted under the DARIO framework.¹⁰⁴

The primary obligation of REIO and its member states is to prepare, communicate, and maintain successive Nationally Determined Contributions (NDCs) contained in Article 4.2. REIO and its member states are required to present the individual and collective NDC simultaneously. To understand the responsibility arising from violating this commitment, it is necessary to recognize the nature of this commitment. Firstly, preparing and communicating with NDC is a legally binding "obligation to

¹⁰⁰ *Id.* at ch. IV, ¶ 4.

¹⁰¹ Panel Report, *EC-Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuff-Complaint by the United States*, WTO Doc. WT/DS174/R (Mar. 15, 2005), at ¶ 7.725.

¹⁰² Martín, *supra* note 53, at 195; *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v. Ireland*, App. No. 45036/98, 42 E.H.R.R. 1 (2006).

¹⁰³ ILC, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, U.N. Doc. A/CN.4/L.682 (Apr. 13, 2006), at 2.

¹⁰⁴ Martín, *supra* note 53, at 192.

conduct” regardless of whether the final target is achieved.¹⁰⁵ In other words, it is a legal duty to exercise due diligence.¹⁰⁶ Compliance is compulsory, while achieving the communicated goals is not mandatory.¹⁰⁷ If a party cannot achieve its target, it will not be responsible. If it does not take adequate steps toward achieving that target, however, it will be responsible regardless of whether it achieves the target.¹⁰⁸ Secondly, obligations to conduct are divisible, and their breach necessarily gives rise to the individual responsibility of the parties. In contrast, obligations of the result are indivisible commitments, and failure to achieve them will be attributed to all parties bearing the obligation, potentially leading to the shared responsibility of REIO and its member states.¹⁰⁹ Therefore, in principle, the failure of the state to achieve its NDC goal should only lead to its responsibility. However, Article 4.18 of the PA, which recognizes the individual responsibility of member states and REIO, is an exception. This provision was included in the PA primarily due to concerns from developing countries that certain developed countries might evade responsibility for failing to meet their NDC targets by invoking the independent legal personality of REIO.¹¹⁰

A. The Exclusive Responsibility of REIO

Under Article 20(2) of the PA, “any REIO which becomes a party to the Convention *without* any of its member states being a party shall be bound by *all* the obligations under the agreement.”¹¹¹ [Emphasis added] In the unlikely case that the member states of REIO are not members of the PA, fulfilling all obligations is solely the responsibility of the REIO. The agreements concluded by REIO alone are called non-mixed agreements.¹¹² International obligations that solely bind REIO do not constitute shared responsibility.¹¹³ In such a case, REIO is expected to prepare and

¹⁰⁵ Benoit Mayer, *Obligations of Conduct in the International Law on Climate Change: A Defense*, 27(1) REV. EUR. COMPAR. & INT’L ENV’T. L. 135 (2018).

¹⁰⁶ Marcel Brus et al., *The Normative Status of Climate Change Obligations under International Law* 28 (Policy Department for Citizens’ Rights and Constitutional Affairs, PE 749.395, 2023), [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/749395/IPOL_STU\(2023\)749395_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/749395/IPOL_STU(2023)749395_EN.pdf).

¹⁰⁷ Daniel Bodansky, *The Legal Character of the Paris Agreement*, 25(2) REV. EUR. COMPAR. & INT’L ENV’T L. 146 (2016).

¹⁰⁸ Leonie Reins & Geert Van Calster, *Introduction, in THE PARIS AGREEMENT ON CLIMATE CHANGE 2* (Geert Van Calster & Leonie Reins eds., 2021).

¹⁰⁹ Christiane Ahlborn, *To Share or Not to Share? The Allocation of Responsibility Between International Organizations and Their Member States* 230 (Amsterdam Law School Legal Studies Research Paper No. 2013-73, 2013).

¹¹⁰ Nedeski, *supra* note 29, at 30.

¹¹¹ UNFCCC art. 22(2); Kyoto Protocol art. 24(2).

¹¹² Allan Rosas, *International Responsibility of the EU and the European Court of Justice, in THE INTERNATIONAL RESPONSIBILITY OF THE EUROPEAN UNION: EUROPEAN AND INTERNATIONAL PERSPECTIVES* 152 (Malcolm Evans & Panos Koutrakos eds., 2013).

¹¹³ Nedeski, *supra* note 29, at 147.

present its collective NDC under Article 4.2 of the PA. Although the NDC is based on the individual information of the member states because they are neither members of the PA, nor required to submit the individual NDC, REIO is responsible for the failure to achieve the collective NDC exclusively. However, under the internal rules of REIO, the organization may hold a member state accountable if its actions have led to REIO's failure to achieve its collective goal.

B. The Joint Responsibility of REIO

When the legally binding obligations of REIO are at stake, it is essential to know who is legally responsible.¹¹⁴ Under Article 4.18 of the PA, each member state is responsible for failing to achieve its level of emissions as notified in an external agreement with third parties. In addition, REIO is jointly responsible for its member states' emission levels against external third parties.

Joint responsibility is a sub-category of shared responsibility that applies to mixed agreements. Shared responsibility refers to a situation where each actor's responsibility is proportional to its share of involvement. In contrast, joint responsibility refers to cases where a group of actors does not bear collective responsibility and are individually responsible for wrongdoing.¹¹⁵ Joint responsibility allows third parties to bring a claim against REIO, one or more member states, and leave it to them to sort out the consequences internally.¹¹⁶ This method is conducive to protecting the interests of the joint wrongdoers.¹¹⁷ In cases of joint responsibility, a third party can invoke the responsibility of all liable parties for the entire damage,¹¹⁸ but REIO and its member states are not obliged to fulfill their obligations twice.

According to Article 20(2) of the PA, REIO and its member states shall decide on their responsibilities to implement their obligations. Under Article 20(3), they shall declare and inform the depositary of the extent of their competence and the future probable substantial modification concerning the matters governed by the agreement. The concept of competence refers to the general powers that the member states have conferred on REIO to adopt legal obligations through the conclusion of international treaties. They are essentially divided into exclusive and non-exclusive competencies.¹¹⁹

¹¹⁴ FARHANA YAMIN & JOANNA DEPLEDGE, *THE INTERNATIONAL CLIMATE CHANGE REGIME: A GUIDE TO RULES, INSTITUTIONS AND PROCEDURES* 133 (2004).

¹¹⁵ SARAH BAYANI, *INTERNATIONAL LEGAL RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS IN THE ILC DRAFT ARTICLES AND BEYOND* 318 (2022).

¹¹⁶ Nollkaemper, *supra* note 35, at 2.

¹¹⁷ Ahlborn, *supra* note 76, at 407.

¹¹⁸ *Id.* 419.

¹¹⁹ Paasivirta, *supra* note 22, at 161.

Joint responsibility would arise only if the obligations of the organization and its member states are non-exclusive, such as the obligation to prevent the emission of GHGs.¹²⁰ In the case of exclusive competence, every holder is solely responsible for fulfilling its obligations.

Article 20(3) of the PA advises on the need for REIO to clearly state the scope and nature of its authority in treaty-making.¹²¹ Under Article 20, REIO and the member states are obliged to provide the partner with information on which the partner is responsible for breaching a specific article of the mixed agreement.¹²² Article 6 of Annex 9 of the UNCLOS provides that “any State Party may request information from an international organization or its member states, which are State Parties, regarding who holds responsibility for any specific matter.” If REIO and its members fail to provide this information within a reasonable time or the declaration of competence is unclear or contradictory,¹²³ REIO and its member states will be jointly responsible for implementing their obligations under a mixed agreement against third states.¹²⁴ Therefore, REIO and member states will have a joint responsibility if there is no declaration of competence or if it exists but is vague and uncertain.¹²⁵ Joint responsibility acts as a default position to protect third parties without the declaration.¹²⁶ However, the state will presumably retain competence in all cases where the transfer of competence to the organization has not been specifically announced or notified to the depositary.¹²⁷ This rule is intended to protect the interests of third parties in front of the organization and the member states.¹²⁸

Eventually, REIO and its member states will have joint responsibility for their emission levels included in NDCs, provided that: first, REIO and its member states join the PA simultaneously (Article 20.2); second, they agree to undertake joint action (Article 4.16); third, they issue a declaration of competence (Articles 20.2 and 20.3); and fourth, the matter does not fall under the exclusive competence of either REIO or its member states.

¹²⁰ Nedeski, *supra* note 29, at 147.

¹²¹ Rowena Cantley-Smith, *Article 20 Concluding The Paris Agreement: Signature and Consent to Be Bound*, in *THE PARIS AGREEMENT ON CLIMATE CHANGE* 382 (Geert Van Calster & Leonie Reins eds., 2021).

¹²² Council of the EU, Council Decision of 25 April 2002 Concerning the Approval, On Behalf of the European Community, of the Kyoto Protocol, Council Decision 2002/358, 2002 O.J. (L 130) 1 (EC) (Apr. 25, 2002).

¹²³ UNCLOS, annex IX.

¹²⁴ *European Parliament v. Council*, Case C-316/91, E.C.R. I-625, ¶¶ 24–35 (Feb. 2, 1994).

¹²⁵ BAYANI, *supra* note 115, at 282.

¹²⁶ Cremona, *supra* note 36, at 25.

¹²⁷ Heliskoski, *supra* note 32, at 199.

¹²⁸ Paasivirta, *supra* note 22, at 166.

C. Different Scenarios of Responsibility for REIO and Its Member States

The PA contains two articles addressing the international responsibility of REIO and/or its member states for fulfilling the obligations outlined in their NDCs. Under Article 4.17, if a REIO and its member states are the members of the PA, but the member states act outside the framework of the REIO and instead act jointly with third parties under a separate agreement, each member state will bear responsibility for its emission levels as specified in that agreement.¹²⁹ In this case, REIO will not be responsible for the emission level of its member states. Reciprocally, the member state will not be responsible for not achieving its NDC against REIO because there is no agreement between REIO and the member state regarding joint action.

According to Article 4.18 of the PA, REIO and its member states, acting jointly, are committed to fulfilling the legally binding obligations of a domestic reduction of GHG emissions. Under Article 4.2, meanwhile, REIO and its member states are committed to presenting individual and collective NDCs to reach the goal of the PA. REIO can present an NDC on its behalf and that of its member states. Submitting NDCs is a legally binding procedure for the parties.¹³⁰ The NDCs will be revised and strengthened over time,¹³¹ but the relationship between individual and collective NDCs is not clarified in the PA. In addition, the Paris outcome relies on REIOs for voluntary information, and there is no obligation requiring REIOs to provide information on applying relevant rules and procedures individually and collectively.¹³² However, the following cases can occur regarding the responsibility of REIO and its member states for failure to achieve individual and collective targets included in NDCs.

The first case occurs when REIO and its member states reach their individual and collective targets, respectively. In such a case, there is no room to implement responsibility rules as secondary rules. Responsibility would arise for REIO or its member states when at least one of them fails to fulfill its obligations. The second case occurs when the member state does not reach its individual emission reduction goal within the set timeline, but the collective target of REIO is achieved. If REIO has fulfilled its obligations, it will not be held collectively responsible. In such a case, it is

¹²⁹ YAMIN & JOANNA DEPLEDGE, *supra* note 114, at 133.

¹³⁰ Morten Broberg, *Interpreting the UNFCCC's Provisions on 'Mitigation' and 'Adaptation' in Light of the Paris Agreement's Provision on Loss and Damage*, 20(5) CLIMATE POL'Y 527-33 (2020).

¹³¹ MARC WILLIAMS & DUNCAN MCDUIE-RA, *COMBATTING CLIMATE CHANGE IN THE PACIFIC: THE ROLE OF REGIONAL ORGANIZATIONS* 110 (2018).

¹³² Winkler, *supra* note 40, at 161.

possible to easily identify the wrongdoing state.¹³³

Principally, the third countries affected by climate change can hold source countries responsible for non-compliance with their obligations to conduct under Article 4.2 of the PA.¹³⁴ The state shall be responsible to third parties externally under the PA and REIO under the agreement communicated internally. Since the member state has fulfilled its obligations in the third case, it holds no responsibility for third parties or internal responsibility toward the REIO. However, as the REIO failed to meet its collective emission target, it remains responsible to third parties. While member states could, in principle, escape responsibility as long as they complied with their targets, the REIO could not escape responsibility if the overall target was missed. Considering that the responsibility of REIO will ultimately fall on all member states due to non-compliance by some member states, however, it will have internal effects for all member states, including even adherent member states.¹³⁵ Holding a member state solely responsible for its contribution does not seem efficient when the overall target is unmet.¹³⁶ Such a case is more conceivable regarding the effects of the decisions of the enforcement branch of the Kyoto Protocol because the sanctions taken against REIO could ultimately affect all its member states.

The most controversial and particular case would arise when both REIO and its member state do not meet their individual and collective targets. If the common target is not met, each non-compliant member state will be individually responsible for its emission levels alongside the REIO for the collective target. Furthermore, REIO is jointly responsible for the member states and collective targets against third parties. Third parties can invoke the responsibility of any non-adherent member state with REIO whose collective target is not achieved or invoke only the responsibility of REIO.¹³⁷ In this case, the responsibility of REIO to third parties could be an example of attribution of responsibility without attribution of conduct.¹³⁸ Double attribution of conduct is unnecessary to establish joint responsibility for REIO. Article 4.18 of the PA was included to avoid the possibility of non-adherent member states evading responsibility by invoking the independent legal personality of REIO when REIO cannot achieve its collective emission level. Claiming joint responsibility is always a

¹³³ Redgwell, *supra* note 56, at 262.

¹³⁴ Julia Pleiel & Kirsten Schmalenbach, *Climate Change Responsibility and Liability in International Law*, in CLIMATE CHANGE, RESPONSIBILITY AND LIABILITY 115 (Schulev-Steindl et al. eds., 2022).

¹³⁵ Nollkaemper, *supra* note 35, at 14.

¹³⁶ Larragán, *supra* note 17, at 64.

¹³⁷ *Id.*

¹³⁸ James Fry, *Attribution of Responsibility*, in PRINCIPLES OF SHARED RESPONSIBILITY IN INTERNATIONAL LAW: AN APPRAISAL OF THE STATE OF THE ART 106 (André Nollkaemper & Ilias Plakokefalos eds., 2014).

temptation for the member states, especially if there is no division of competence.¹³⁹ In this case, the responsibility of REIO is not subordinate to the member state's responsibility that violates international law.¹⁴⁰ Ultimately, the responsibility of REIO and some or all member states for an undivided result is distributed to them separately rather than resting on them collectively.¹⁴¹

Since failure by REIO to comply with the aggregate limit will have consequences for all member states,¹⁴² the solution provided in Article 4.18 of the PA encourages all the member states to make additional efforts to achieve REIO's collective goal. Given that adherent and non-adherent member states, as members of REIO, bear responsibility, they will assist each other in fulfilling their obligations.¹⁴³ As it would be in the interest of all member states to help REIO achieve the collective target, they need to participate seriously in negotiations and take a stronger collective position.

V. Conclusion

Solving the issue of climate change requires the participation of international organizations alongside states in the legal regime of climate change because international organizations have considerable legal and political capacities to solve global problems. As mixed agreements, climate change agreements have allowed membership in a particular type of international organization called REIOs. While increasing their accountability in the mitigation field, the simultaneous membership of REIO and its member states also increases the risk of ambiguity, overlap, and complexity of their responsibilities. Even though the developing countries seek to form a strong coalition and convergence in the regime to avoid accepting new obligations and responsibilities, they adopt a conservative approach regarding REIOs' membership in climate agreements. For this reason, by now, the only REIO that has ratified environmental agreements is the EU.

The responsibility of REIO and its member states can be assessed under the general rules of responsibility outlined in DARIO and the provisions of the PA,

¹³⁹ Paasivirta & Kuijper, *supra* note 19.

¹⁴⁰ Matthias Hartwig, *International Organizations or Institutions, Responsibility and Liability*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 7 (2011).

¹⁴¹ Nollkaemper, *supra* note 35, at 6.

¹⁴² Larragán, *supra* note 17, at 65.

¹⁴³ *Id.* at 64.

which are considered complementary to, rather than exceptions from, the general rules. Considering that most of the commitments contained in the climate change agreements are aimed at mitigation, and REIO does not have significant emissions, their direct responsibility for mitigation by their organs and agents would not be realized. Their primary responsibility depends on the acts of the member states, mainly due to the normative control and exercises of REIO through its binding decisions. In such cases, the derived responsibility of REIO for violating the emission reduction obligations of the member states is raised.

This issue will not negate the responsibility of the wrongdoer state. In addition, under the PA, both REIO and the member states jointly take responsibilities for non-compliance with the obligations contained in the NDC according to Article 14.8, whereby the state and REIO are individually and collectively responsible for the emission level of the member state. Although the responsibilities should ultimately be divided, and the final responsibility rests with the non-compliant state, the effects of not achieving the collective NDC goal of REIO can be imposed on all the member states.

While preventing the non-compliant state from evading responsibility for not reaching its NDC goals, this article has provided the grounds for the simultaneous adherence of the states against the third party according to the PA (externally) and REIO according to the agreement communicated (internally). In addition, this article has encouraged other countries to do more to meet the collective goal of REIO by accepting collective responsibility for the failure of a member state to meet its individual goal. Therefore, according to the rules of DARIO and the PA, no new obligations and responsibilities are created for the member states since REIO is not a GHG emitter. However, REIO will be responsible for the third party and the member state that do not fulfill its obligation in NDC. Although the compliant state will be affected by REIO's responsibility for non-compliance, the non-compliant state will ultimately bear the responsibility.

The EU and its member states have achieved their collective and individual goals while submitting the single NDC and updating it twice. As REIOs of developing countries may not be as advanced or organized like the EU, the EU's experience as the only REIO party to the PA can serve as a valuable model.

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