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978-1-107-10708-3 - Distribution of Responsibilities in International Law

Edited by André Nollkaemper and Dov Jacobs

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DISTRIBUTION OF RESPONSIBILITIES IN INTERNATIONAL LAW

This is the second book in the series *Shared Responsibility in International Law*, which examines the problem of distribution of responsibilities among multiple states and other actors. In its work on the responsibility of states and international organisations, the International Law Commission recognised that attribution of acts to one actor does not exclude possible attribution of the same act to another state or organisation. However, it provided limited guidance for the often complex question of how responsibility is to be distributed among wrongdoing actors. This study fills that gap by shedding light on principles of distribution from extra-legal perspectives. Drawing on disciplines such as political theory, moral philosophy, and economics, this volume enquires into the bases and justifications for apportionment of responsibilities that can support a critique of current international law, offers insight into the justification of alternative interpretations, and provides inspiration for reform and further development of international law.

ANDRÉ NOLLKAEMPER is Professor of Public International Law at the Faculty of Law of the University of Amsterdam, Amsterdam Center for International Law (ACIL), and director of the SHARES research project.

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STUDIES ON SHARED RESPONSIBILITY IN INTERNATIONAL LAW

This series produces high-quality scholarship exploring questions of shared responsibility in international law. It provides new perspectives on the responsibility problems that arise from the increasing number of situations in which states, international institutions, and other actors engage in concerted action in the pursuit of common objectives. While such concerted action generally aims to provide beneficial outcomes, all too often it results in harmful ones. If that is the case, the multiplicity of actors involved in the concerted action may complicate the determination and implementation of international responsibility. Books in this series examine the grounds on which international law does and should allow for shared responsibility between all actors involved, and how it can be developed in a way that better enables the determination and implementation of shared responsibility.

The series includes both works on positive international law and works of a theoretical and interdisciplinary character.

The book series is part of the research project on Shared Responsibility in International Law (SHARES), which has been carried out at the Amsterdam Center for International Law (ACIL) of the University of Amsterdam from 2010 onwards.

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of Amsterdam

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University Printing House, Cambridge CB2 8BS, United Kingdom

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www.cambridge.org

Information on this title: www.cambridge.org/9781107107083

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First published 2015

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Distribution of responsibilities in international law / Edited by André Nollkaemper and Dov Jacobs ; Assistant editor: Jessica N.M. Schechinger.

pages cm

Includes bibliographical references and index.

ISBN 978-1-107-10708-3 (Hardback)

1. International law. 2. Responsibility to protect (International law) 3. Government liability (International law) I. Nollkaemper, André, editor. II. Jacobs, Dov, editor.

KZ3410.D577 2015

341.26--dc23 2015011590

ISBN 978-1-107-10708-3 Hardback

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EDITORS' PREFACE

This is the second volume to appear in the book series Shared Responsibility in International Law. It was produced as part of the research project on Shared Responsibility in International Law (SHARES), which has been carried out at the Amsterdam Center for International Law (ACIL) of the University of Amsterdam from 2010 onwards.

This book series provides new perspectives on responsibility problems that arise from the increasing number of situations in which states, international institutions, and other actors engage in concerted action in the pursuit of common objectives. While such concerted action generally aims to provide beneficial outcomes, all too often it has resulted in harmful ones. If that is the case, the multiplicity of actors involved in the concerted action may complicate the determination and implementation of international responsibility. The book series examines the grounds on which international law does and should allow for shared responsibility between all actors involved, and how it can be developed in a way that better enables the determination and implementation of shared responsibility.

This first volume of the book series, *Principles of Shared Responsibility in International Law: An Appraisal of the State of the Art* (2014) laid the groundwork for the series as a whole, by critically reviewing the established principles of international responsibility as developed by the International Law Commission (ILC) – that are widely considered to be the state of the art in the law of international responsibility – from the perspective of shared responsibility. That volume concluded that while these principles are highly flexible, and often will allow for the determination and/or implementation of shared responsibility, they do not provide much guidance for the often complex questions of distribution of international responsibility.

Against this background, the present (second) volume of the book series considers, from extra-legal perspectives, how responsibility can and perhaps should be distributed among multiple wrongdoing actors.

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Given that international law often provides no clear direction for such distribution, it engages in a fundamental enquiry into the normative bases and justifications for apportionment of responsibilities that could support an articulation of critique of current international law, and provide a basis for reform.

The third volume of the series (*The Practice of Shared Responsibility in International Law*) will explore the practice of shared responsibility in international law. Based on the recognition that the applicable rules and procedures for shared responsibility differ between particular issue-areas, it will map relevant practices of shared responsibility in more than forty issue-areas. This will enable an assessment of the fit of the prevailing principles of international responsibility, and provide further building blocks for a critique of the existing law, further development of the law, and eventually a broader theory of shared responsibility.

On the basis of the material in these first three volumes, a separate volume will consolidate the insights on the state of the law, and the possibilities for further development, into a new theory for shared responsibility in international law.

The present volume comprises fifteen substantive chapters, including a comprehensive introductory chapter. Drafts of the chapters for this volume were discussed at a seminar on 30 and 31 May 2013 in Amsterdam.

The research leading to this book has received funding from the European Research Council under the European Union's Seventh Framework Programme (FP7/2007–2013)/ERC grant agreement n° 249499, as part of the SHARES research project carried out at the ACIL.

We thank the members of the SHARES research team as a whole for their input during various stages of the project leading up to this volume, and in particular Jean d'Aspremont, Nienke van der Have, Ilias Plakokefalos, and Isabelle Swerissen for their comments on the introductory chapter. We also thank Giuseppe Dari-Mattiacci for his constructive comments on the organisation and contents of this volume. Our particular thanks go to Jessica N.M. Schechinger for her coordinating work in support of this volume and to Laura Chafey and Belinda Macmahon for editorial assistance. Finally, our thanks go to everyone at Cambridge University Press for their assistance during the production process of the volume.

André Nollkaemper and Dov Jacobs
Amsterdam
20 December 2014

Cambridge University Press

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Cambridge University Press

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Edited by André Nollkaemper and Dov Jacobs

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ABBREVIATIONS

ACIL	Amsterdam Center for International Law
AER	American Economic Review
AJARE	Australian Journal of Agricultural and Resource Economics
AJIL	American Journal of International Law
AJP	Australasian Journal of Philosophy
ANYAS	Annals of the New York Academy of Sciences
APSR	American Political Science Review
APQ	American Philosophical Quarterly
AREE	Annual Review of Energy and the Environment
ARIO	Articles on the Responsibility of International Organizations
ARSIWA	Articles on Responsibility of States for Internationally Wrongful Acts
ASIL	American Society of International Law
ASILP	American Society of International Law Proceedings
Atmos Chem Phys	Atmospheric Chemistry and Physics
Berk JIL	Berkeley Journal of International Law
BGS	British Geological Survey
BJPS	British Journal of Political Science
BoP	burdens of proof
BRICs	major developing economies of Brazil, Russia, India, and China
Brook JIL	Brooklyn Journal of International Law
BYIL	British Yearbook of International Law
Cal LR	California Law Review
CBDR	common but differentiated responsibility
CDM	Clean Development Mechanism
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CESCR	Committee on Economic, Social and Cultural Rights
Chic JIL	Chicago Journal of International Law
CJICL	Cambridge Journal of International and Comparative Law
CJP	Canadian Journal of Philosophy

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CLF	Criminal Law Forum
CLP	Current Legal Problems
CmtEDAW	Committee on the Elimination of Discrimination Against Women
CO ₂	carbon dioxide
Col JEL	Columbia Journal of Environmental Law
COP	Conference of the Parties
CP	Climate Policy
CRISPP	Critical Review of International Social and Political Philosophy
CS	Current Science
DD	Development Dialogue
DES	diethylstilbestrol
DF	Disarmament Forum
DLJ	Duke Law Journal
DRC	Democratic Republic of the Congo
EC	European Communities
ECtHR	European Court of Human Rights
EIA	Ethics & International Affairs
EJBEOS	Electronic Journal of Business Ethics and Organization Studies
EJIL	European Journal of International Law
EJIR	European Journal of International Relations
EJLE	European Journal of Law and Economics
EP	Energy Policy
ET	Economic Theory
EU	European Union
EU ETS	EU's Emissions Trading System
FA	Foreign Affairs
Frontex	Frontières extérieures – European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
FRY	Federal Republic of Yugoslavia
GATT	General Agreement on Tariffs and Trade
Geo JIL	Georgetown Journal of International Law
GFC	Global Financial Crisis
GHG	greenhouse gas
GLJ	German Law Journal
Glob Gov	Global Governance: A Review of Multilateralism and International Organizations
GNI	gross national income
GoJIL	Goettingen Journal of International Law

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GP	Global Policy
GR2P	Global Responsibility to Protect
Grif LR	Griffith Law Review
GS	Global Society
GWP	global warming potentials
Harv ELR	Harvard Environmental Law Review
Harv ILJ	Harvard International Law Journal
Harv ILJO	Harvard International Law Journal Online
Harv LR	Harvard Law Review
HHR	Health and Human Rights
HRC	Human Rights Committee
HRQ	Human Rights Quarterly
Hydrogeo J	Hydrogeology Journal
IA	International Affairs
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICLQ	International & Comparative Law Quarterly
ICLR	International Criminal Law Review
ICRC	International Committee of the Red Cross
ICSID	International Centre for Settlement of Investment Disputes
ICTY	International Criminal Tribunal for the former Yugoslavia
IEA	International Environmental Agreements: Politics, Law and Economics
ILC	International Law Commission
ILDC	International Law in Domestic Courts
ILM	International Legal Materials
Ill LR	University of Illinois Law Review
IMF	International Monetary Fund
Ind J Dermat	Indian Journal of Dermatology
Indiana JGLS	Indiana Journal of Global Legal Studies
IO	International Organization
IOLR	International Organizations Law Review
Iowa LR	Iowa Law Review
IPCC	Intergovernmental Panel on Climate Change
IR	International Relations
IRRC	International Review of the Red Cross

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IS	International Security
ISJ	International Studies Journal
Isr LR	Israel Law Review
IT	International Theory
ITLOS	International Tribunal for the Law of the Sea
IUPJGPP	The IUP Journal of Governance and Public Policy
JE	The Journal of Ethics: An International Philosophical Review
JEEA	Journal of the European Economic Association
JEEM	Journal of Environmental Economics and Management
JICJ	Journal of International Criminal Justice
JIE	Journal of International Economics
JIS	Journal of Intervention and Statebuilding
JLE	Journal of Law and Economics
JLEO	Journal of Law, Economics, & Organization
JLS	Journal of Legal Studies
JP	The Journal of Philosophy
JPE	joint public enterprise
JPP	Journal of Political Philosophy
JRR	Journal of Risk Research
JSL	joint and several liability
JSP	Journal of Social Philosophy
JTLP	Journal of Transnational Law & Policy
LIBOR	London Interbank Offered Rate
LJIL	Leiden Journal of International Law
LOSC	United Nations Convention on the Law of the Sea
LP	Law & Policy
LT	Legal Theory
MATCH	ad hoc group for the modelling and assessment of contributions to climate change
MIJIL	Michigan Journal of International Law
Minn JIL	Minnesota Journal of International Law
MINUSTAH	United Nations Stabilization Mission in Haiti
MIT	Massachusetts Institute of Technology
MJIS	Millennium: Journal of International Studies
MNCs	multinational corporations
MoUs	Memoranda of Understanding
MSP	Midwest Studies in Philosophy
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NCC	Nature Climate Change
NGOs	Non-governmental organisations
Nord JIL	Nordic Journal of International Law

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NRCC	Nature Reports Climate Change
NSAs	non-state actors
NWCR	Naval War College Review
NYUJILP	New York University Journal of International Law and Politics
ODSs	ozone-depleting substances
OJEU	Official Journal of the European Union
OJLS	Oxford Journal of Legal Studies
OREP	Oxford Review of Economic Policy
PAQ	Public Affairs Quarterly
PB	Political Behavior
PBA	Proceedings of the British Academy
PD	prisoners' dilemma
Penn LR	University of Pennsylvania Law Review
Pepp LR	Pepperdine Law Review
PNAS	Proceedings of the National Academy of Sciences of the United States of America
PP	Philosophical Papers
PPA	Philosophy & Public Affairs
ppm	parts per million
PPR	Philosophy and Phenomenological Research
PS	Political Studies
PT	Political Theory
PTA	Philosophical Transactions of the Royal Society A
QJE	The Quarterly Journal of Economics
R2P	responsibility to protect
RAND JE	RAND Journal of Economics
RCADI	Recueil des cours de l'Académie de droit international de La Haye
RECIEL	Review of European Community and International Environmental Law
REE	Resource and Energy Economics
REDD	Reducing Emissions from Deforestation and Forest Degradation
RIAA	United Nations Reports of International Arbitral Awards
RIS	Review of International Studies
RtoP	responsibility to protect
SDC	Sovereign Debt Crisis
SEP	Stanford Encyclopedia of Philosophy
SHARES	Shared Responsibility in International Law
SR	Social Research
SSC	social cost of carbon

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Stan ELJ	Stanford Environmental Law Journal
Stan JIL	Stanford Journal of International Law
Stan LR	Stanford Law Review
SUV	sport utility vehicle
TD	Theory and Decision
TWQ	The Washington Quarterly
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNGAOR	United Nations General Assembly Official Records
UNICEF	United Nations Children’s Fund
UNODC	United Nations Office of Drugs and Crime
UNTS	United Nations Treaty Series
US	United States
USD	United States dollar
Utr LR	Utrecht Law Review
VRS	Vojaska Republike Srpske [Bosnian Serb Army]
Wash LR	Washington University Law Review
WILJ	Wisconsin International Law Journal
WMLR	William & Mary Law Review
WTO	World Trade Organization
WTR	World Trade Review
YJIL	Yale Journal of International Law
YLJ	Yale Law Journal