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FOR COMPARATIVE PUBLIC LAW  
AND INTERNATIONAL LAW

# Zurechnungsfragen bei multinationalen militärischen Einsätzen

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# Struktur

- I. Zurechnung – Dogmatische und praktische Verortung
- II. Kernproblem: Multinationale militärische Einsätze und internationale Organisationen
- III. Multiple Zurechnung als innovative Lösung?
- IV. Sieben Thesen
- V. Diskussion

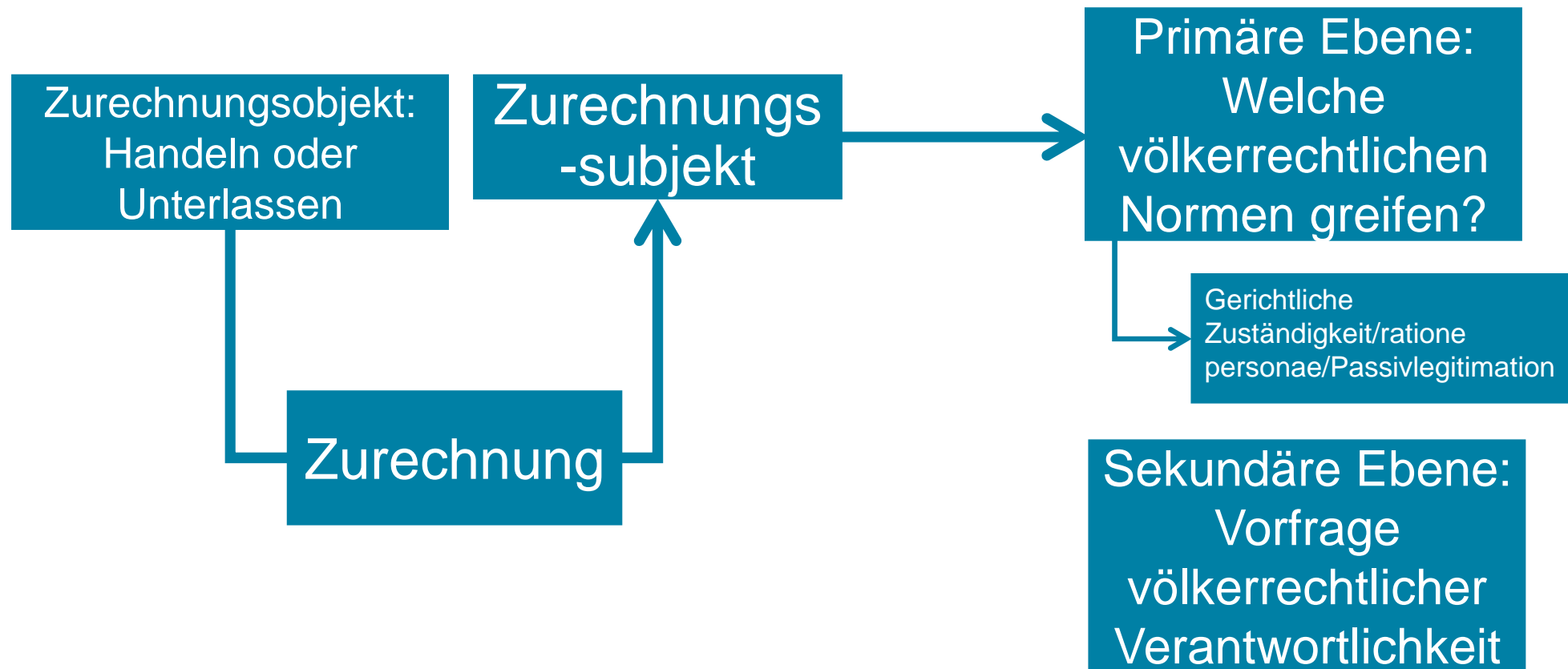


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# I. Zurechnung als normative Operation

23. September 2016





## Art. 2 ASR

Elements of an internationally wrongful act of a State

There is an internationally wrongful act of a State when conduct consisting of an **action or omission**:

- (a) is **attributable** to the State under international law; and
- (b) constitutes a breach of an international obligation of the State.



## Art. 4 ASR

“Conduct of organs of a State

1. The conduct of any **State organ** shall be considered an act of that State **under international law**, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the **internal law of the State.**”



## Art. 8 ASR

“Conduct directed or controlled by a State

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the **instructions of, or under the direction or control of**, that State in carrying out the conduct.”



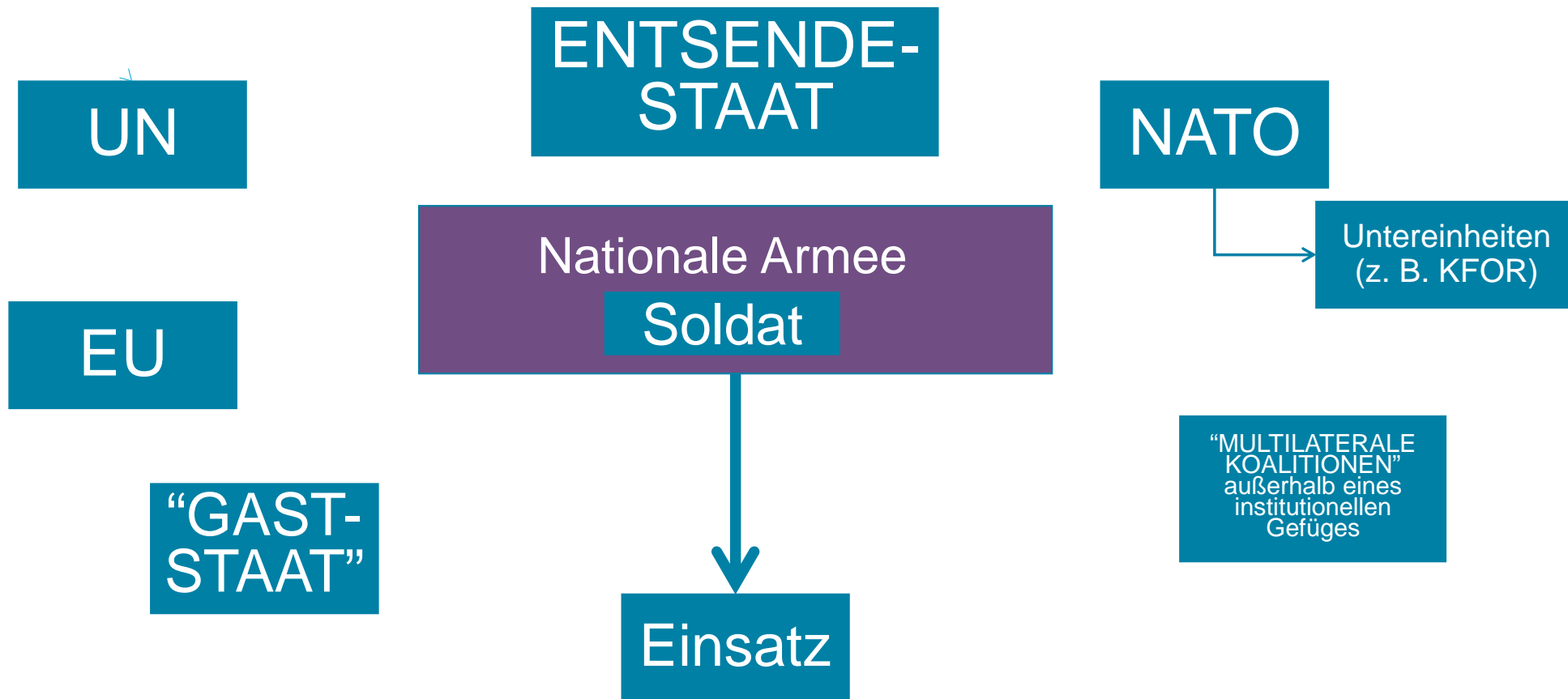
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# **II. Multinationale militärische Operationen und internationale Organisationen**

23. September 2016







## **Welche Grundsätze gelten? – Ein normativ volatiles Gebiet**

- International Law Commission: Draft Articles  
on the Responsibility of International  
Organizations - DARIO



## Art. 6 DARIO

“1. The conduct of an **organ or agent** of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization.

2. The rules of the organization shall apply in the determination of the functions of its **organs and agents.**”

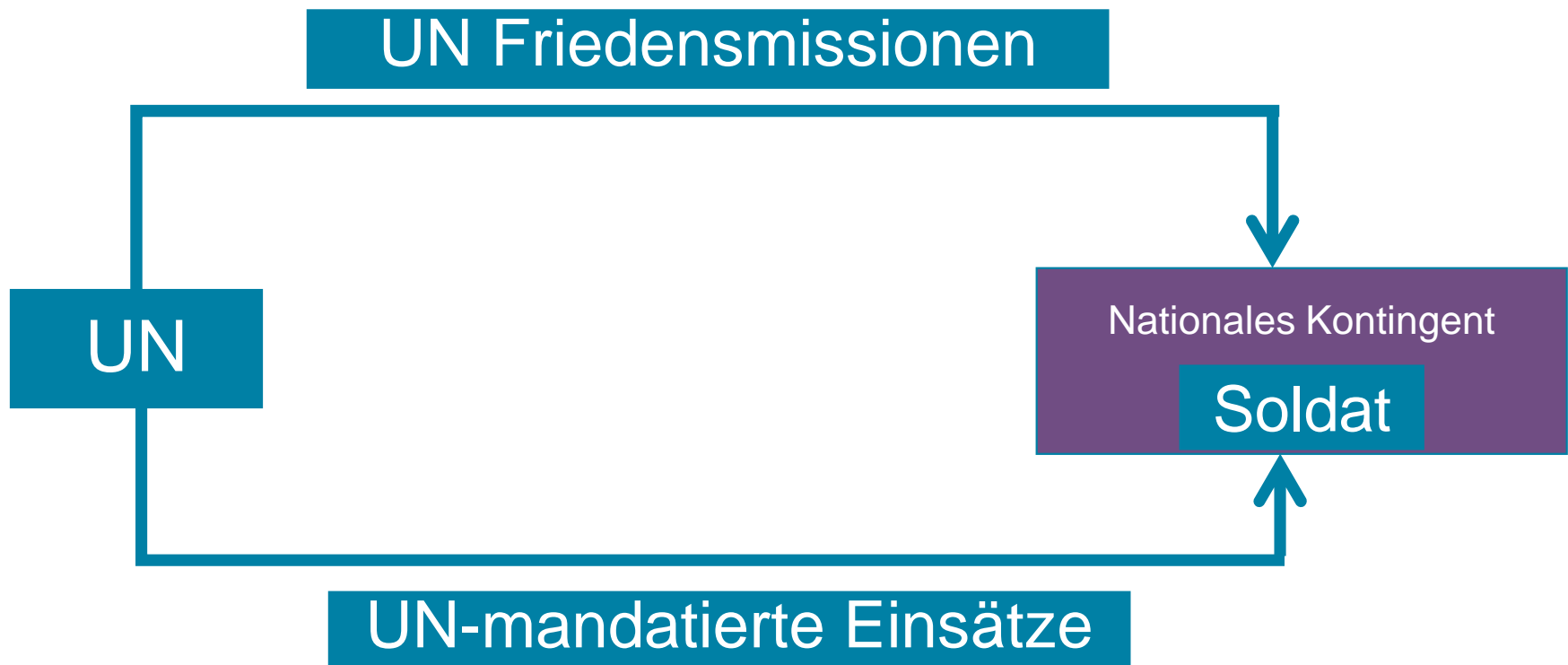


## Art. 7 DARIO

„The **conduct of an organ of a State** or an organ or agent of an international organization that is placed **at the disposal of another international organization shall be considered under international law an act of the latter organization** if the organization exercises **effective control** over that conduct.“

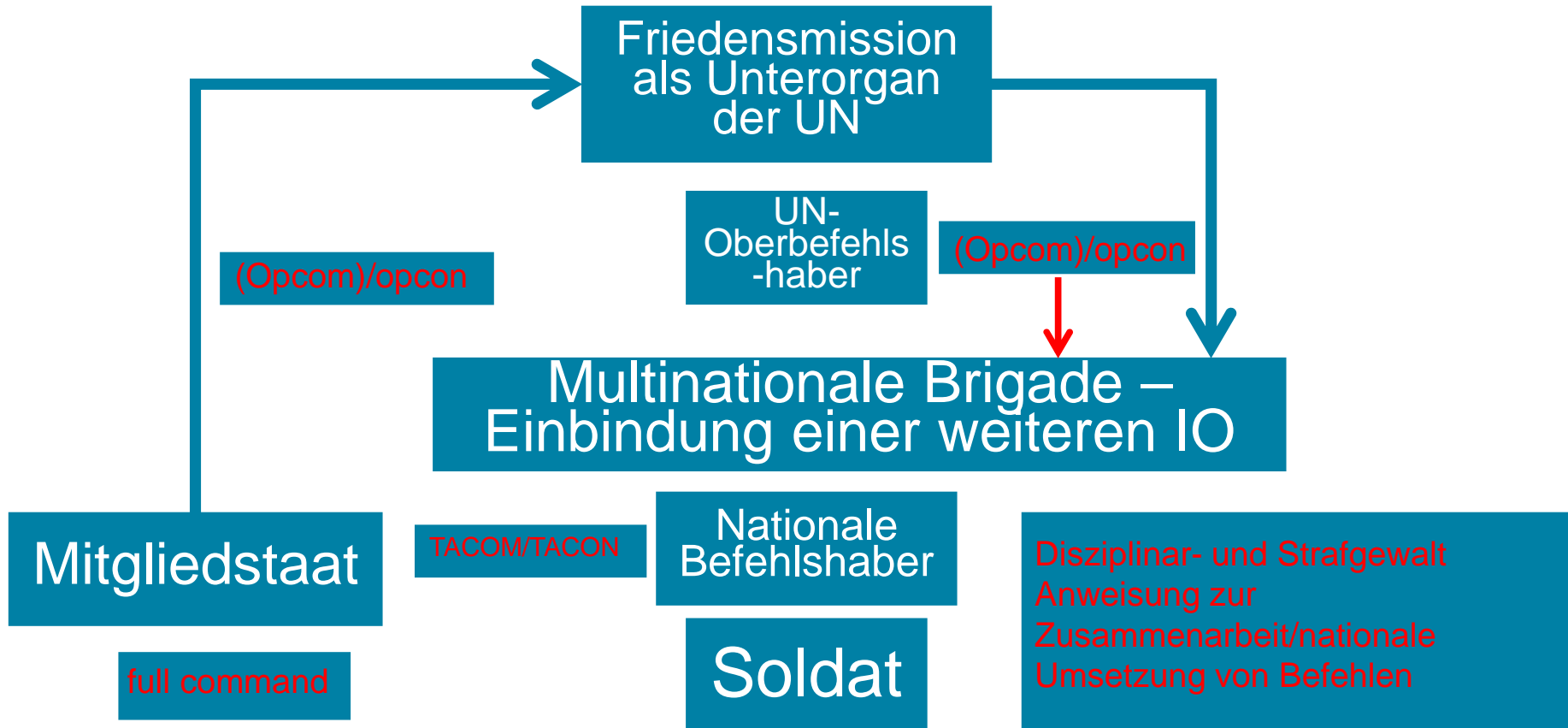


## Multilaterale Einsätze im Rahmen der UN



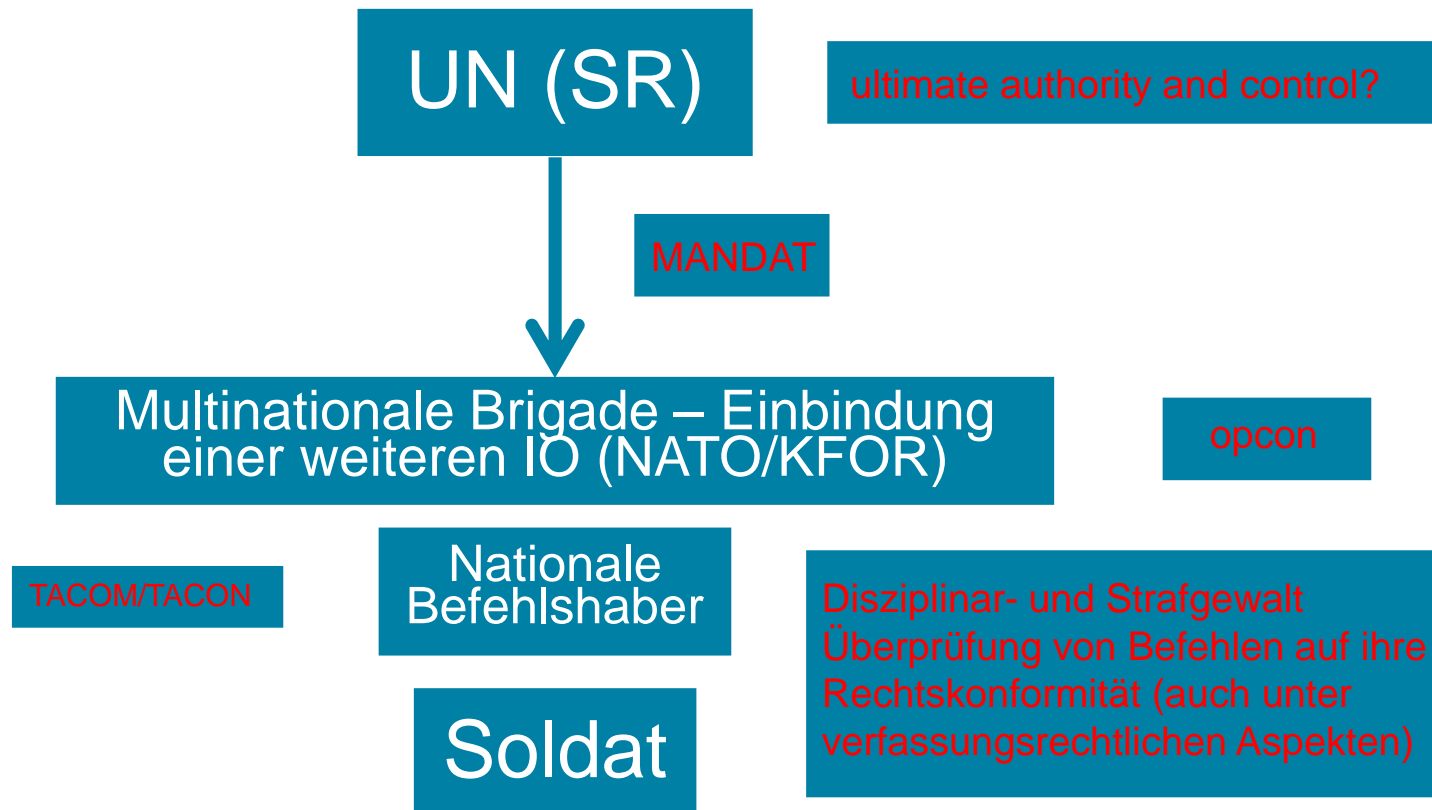


## Institutionelle Einbettung und Befehlsstruktur von UN Friedensmissionen





## Institutionelle Einbettung und Befehlsstruktur von UN-mandatierten Missionen





## Verhältnis NATO – KFOR – Truppenstellende Staaten





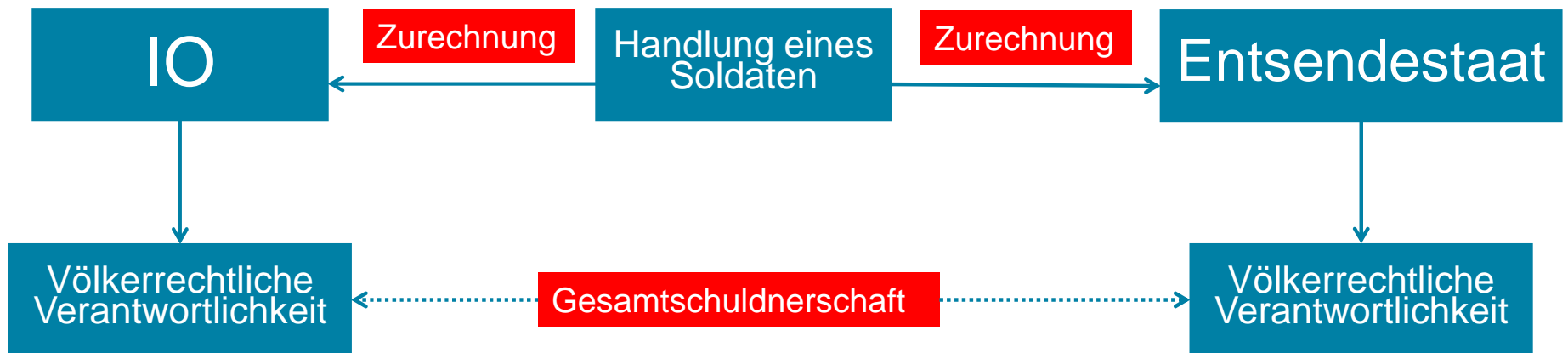


## “Effektive Kontrolle” – Ein sinnvoller Maßstab?

- Konsistenz mit den Prinzipien zur Staatenverantwortlichkeit
- „effective control“ in Bereich weiterer völkerrechtlicher Teilfragen anerkannt
- Prinzip der effektiven Kontrolle erlaubt durch seinen Einzelfallbezug und seine faktische Ausrichtung den Gegebenheiten eines Falls gerecht zu werden
- Standard der „ultimate authority and control“ bedingt „Haftungslücken“
- Effektivität als Prinzip der Staatenverantwortlichkeit: Verletzungen können idR am besten durch die Entität verhindert werden, bei der die effektive Kontrolle angegliedert ist

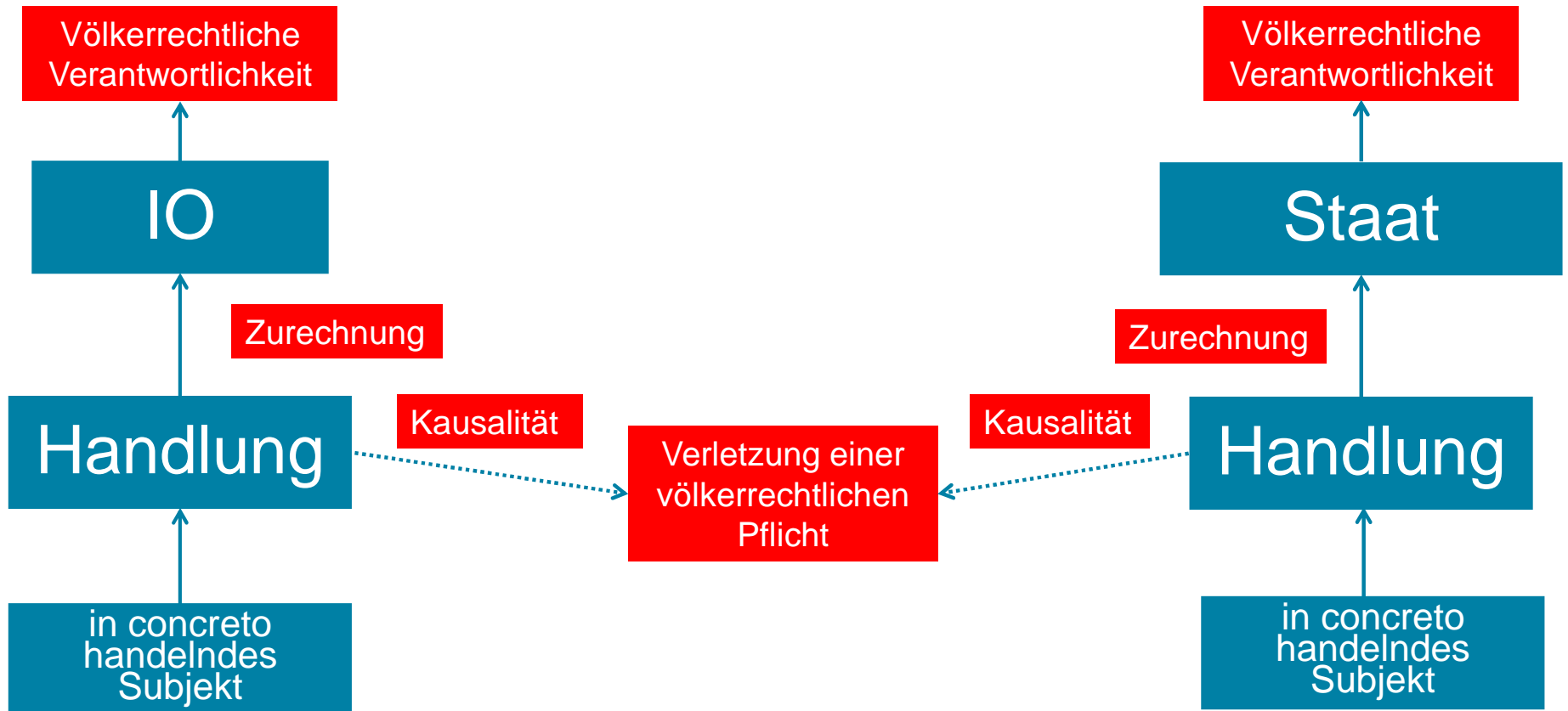


## III. Multiple Zurechnung als innovative Lösung?



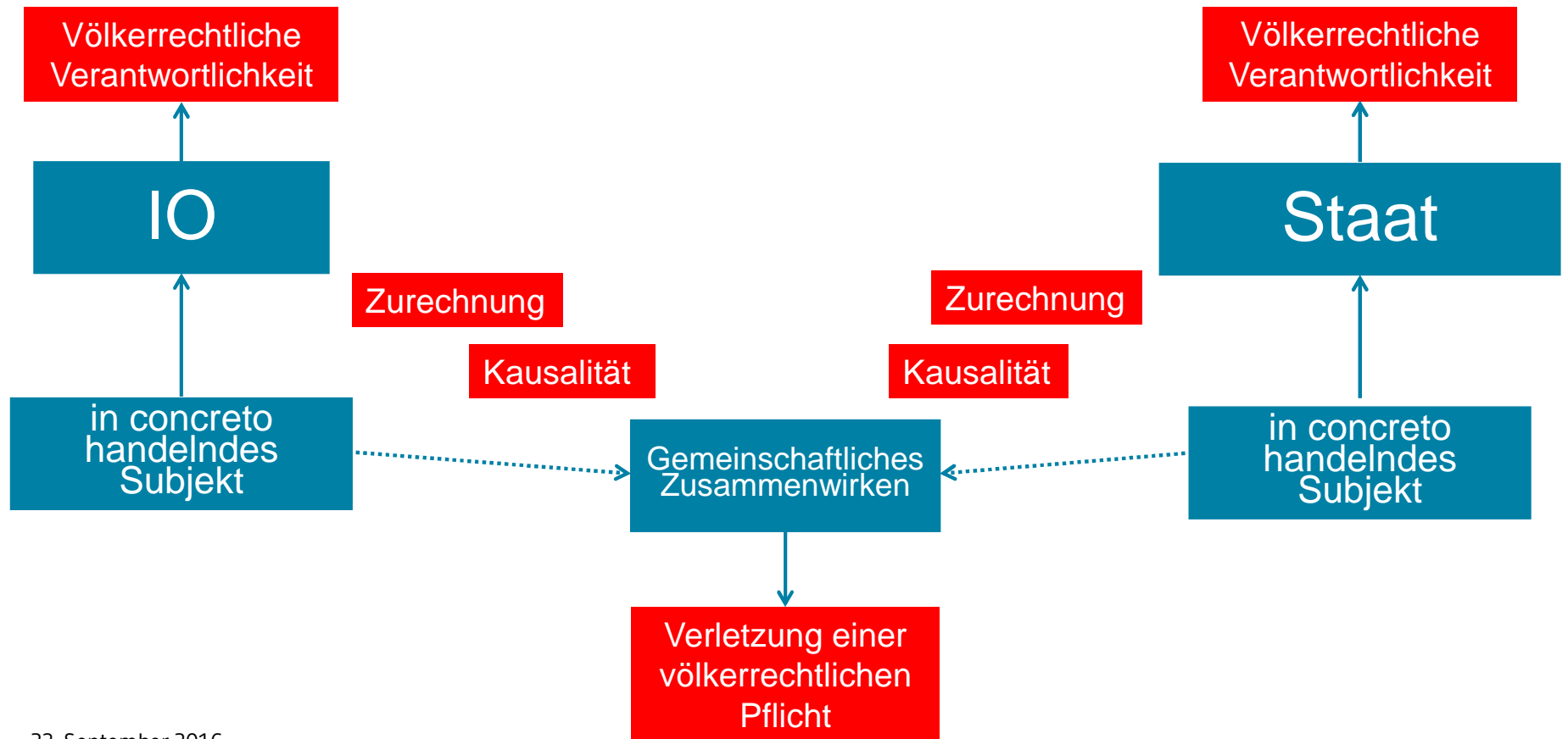


## Abzugrenzen von Konstellation I





## Abzugrenzen von Konstellation II





## Art. 48 DARIO

1. Where an international organization and one or more States or other international organizations are responsible for the same internationally wrongful act, the responsibility of each State or organization may be invoked in relation to that act.
2. Subsidiary responsibility may be invoked insofar as the invocation of the primary responsibility has not led to reparation.
3. Paragraphs 1 and 2:
  - (a) do not permit any injured State or international organization to recover, by way of compensation, more than the damage it has suffered; 11
  - (b) are without prejudice to any right of recourse that the State or international organization providing reparation may have against the other responsible States or international organizations.



## Art. 14 DARIO

An **international organization which aids or assists a State** or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for doing so if:

- (a) the organization does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that organization.



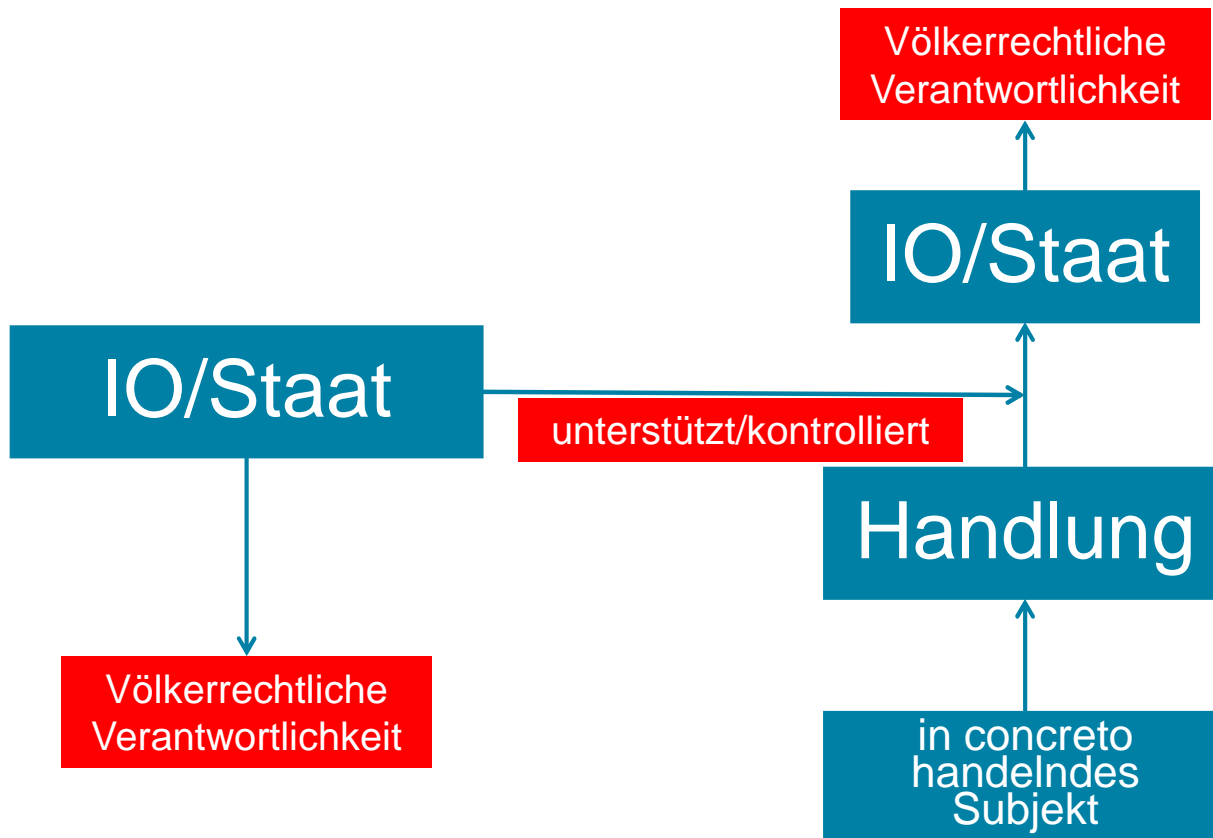
## Art. 15 DARIO

An **international organization which directs and controls** a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for that act if:

- (a) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that organization.



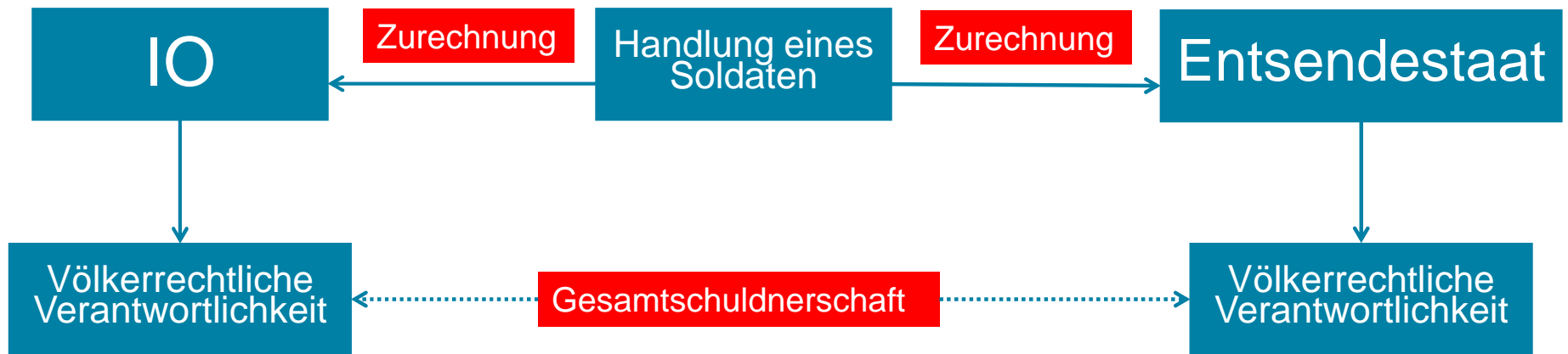
## Abzugrenzen von Konstellation III: Indirekte Verantwortlichkeit (Art. 14, 15, 58, 59 DARIO)







# Multiple Zurechnung als innovative Lösung?





## IV. Sieben Thesen

- I. Zurechnungsfragen im Kontext multinationaler militärischer Einsätze bewegen sich im Bereich normativer Volatilität.
- II. “Effektive Kontrolle” ist das völkerrechtlich etablierteste Zurechnungskriterium.
- III. “Effektive Kontrolle” ist nicht mit exklusiver Kontrolle gleichzusetzen.
- IV. “Effektive Kontrolle” ist einzelfallbezogen zu bestimmen. Es verbieten sich schematische Klassifikationen.



## IV. Sieben Thesen

- V. Die Komplexität der Kommandostrukturen wird unter Zurechnungsgesichtspunkten beherrschbarer, wenn die Verletzungshandlung genau bestimmt wird.
- VI. Die sekundären Tatbestände der “abgeleiteten Verantwortlichkeit” (Art. 14, 15 DARIO) sollten nicht aus dem Blickfeld geraten.
- VII. Die Figur einer “mehrfachen Zurechnung” ist dogmatisch haltbar und birgt großes Innovationspotential, zugleich aber auch rechtliche sowie praktische Herausforderungen.



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# V. Diskussion

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# Herzlichsten Dank für Ihre Aufmerksamkeit!

23. September 2016



## Art. 58 DARIO

1. A State which aids or assists an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:
  - (a) the State does so with knowledge of the circumstances of the internationally wrongful act; and
  - (b) the act would be internationally wrongful if committed by that State.
2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of this article.



## Art. 59 DARIO

A State which directs and controls an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

(a) the State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of this article.