**RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS**

[Agenda item 3]

DOCUMENT A/CN.4/597

Sixth report on responsibility of international organizations,* by

Mr. Giorgio Gaja, Special Rapporteur

[Original: English]
[1 April 2008]

**CONTENTS**

| Multilateral instruments cited in the present report | 17 |
| Works cited in the present report | 18 |
| INTRODUCTION | 1–5 19 |

**Chapter**

I. **INVOCATION OF THE RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION** 6–40 19

- Draft article 46. Invocation of responsibility by an injured State or international organization .................................................. 10 20
- Draft article 47. Notice of claim by an injured State or international organization ........................................................... 14 21
- Draft article 48. Loss of the right to invoke responsibility .................................................. 14 21
- Draft article 49. Plurality of injured entities .................................................. 23 22
- Draft article 50. Plurality of responsible entities .................................................. 27 23
- Draft article 51. Invocation of responsibility by an entity other than an injured State or international organization .... 40 25

II. **COUNTERMEASURES** 41–66 25

- Draft article 52. Object and limits of countermeasures .................................................. 48 27
- Draft article 53. Obligations not affected by countermeasures .................................................. 52 27
- Draft article 54. Proportionality .................................................. 55 28
- Draft article 55. Conditions relating to resort to countermeasures .................................................. 55 28
- Draft article 56. Termination of countermeasures .................................................. 55 28
- Draft article 57. Measures taken by an entity other than an injured State or international organization .... 66 30

**Multilateral instruments cited in the present report**

<table>
<thead>
<tr>
<th>Source</th>
</tr>
</thead>
</table>

*The Special Rapporteur gratefully acknowledges the assistance given in the preparation of this report by Stefano Dorigo (PhD, University of Pisa, Italy), Paolo Falchetti (Associate Professor, University of Macerata, Italy) and Gerhard Thallinger (LLM, New York University).*
Works cited in the present report

ALVAREZ, J. E.

AMERASINGHE, C. F.

AMBRAHALLI, Borhan

ARASIANI, Mahnoush H.

CANÇADO TRINDADE, A. A.

DAVI, Angelo

DE VISSCHER, Paul

EAGLETON, Clyde

EHLERMANN, Claus-Dieter

GRAMLICH, Ludwig

HELISKOSKI, Joni

INTERNATIONAL LAW ASSOCIATION

KLEIN, Eckart

KLEIN, Pierre

MENG, Werner

O’KEEFFE, David and Henry G. SCHERMERS, eds.

PALCHETTI, Paolo

PÉREZ GONZÁLEZ, Manuel

PITSCHAS, Christian

REY ANEROS, Adela

RITTER, Jean-Pierre

RIVIER, Raphaèle (and Philippe LAGRANGE)

SCHERMERS, Henry G. and Niels M. BLOCKER

SIMMONDS, R.

STEURA, Pavel

TOMUSCHAT, Christian

VACAS FERNÁNDEZ, Félix

VERHOEVEN, Joe


WELLENS, Karel
Introduction

1. In its work on the responsibility of international organizations the International Law Commission has so far adopted 45 draft articles. These build up Part One (arts. 1–30) and Part Two (arts. 31–45), respectively concerning “The internationally wrongful act of an international organization” and “Content of the international responsibility of an international organization”.

2. Many of these articles have been the object of comments after their provisional adoption, especially in the debates held in the Sixth Committee on the report of the Commission and in written statements made by States and international organizations. Moreover, certain articles have been examined in judicial practice. Articles 3 and 5 were considered by the European Court of Human Rights in two recent decisions, first in Behrami and Behrami v. France and Saramati v. France, Germany and Norway and then in Berić and Others v. Bosnia and Herzegovina. Article 5 and the related commentary were referred to by the House of Lords in its judgment in R (on the application of Al-Jedda) v. Secretary of State for Defence.

3. As was observed by the present writer in his fifth report and for the reasons there stated, the Commission should be given an opportunity, before completing its first reading of the present draft, to review the texts that have been provisionally adopted in the light of all the available comments. The next report will contain a comprehensive survey of those comments and make some proposals for revising certain articles. The same report will also address all extant issues and propose a few general provisions to be included in part four. One of those remaining issues is the question of the existence of special rules which may take into account the peculiar features of certain organizations.

4. The present sixth report continues the examination of matters relating to the international responsibility of international organizations following the general pattern that the Commission adopted in the articles on responsibility of States for internationally wrongful acts. Part three of those articles considers “The implementation of the international responsibility of a State”; the corresponding part in the present study discusses issues relating to the implementation of international responsibility of international organizations. After the introduction, it includes two chapters, respectively headed “Invocation of the responsibility of an international organization” and “Countermeasures”.

5. Certain critics of the current draft articles have used as a mantra the refrain that the Commission is basically replacing the term “State” with “international organization” in the articles on responsibility of States for internationally wrongful acts. It may therefore be useful to recall once again that neither the Special Rapporteur nor the Commission has started from a presumption that the solutions adopted with regard to States should also apply to international organizations: the Special Rapporteur had already said as much in his first report. Any question was going to be, and has been, examined on its merits. Only when a question relating to the responsibility of international organizations appeared to be parallel to one that had already been examined with regard to States, and there was no reason for stating a different rule, was an identical solution adopted. Needless to say, some of the Commission’s conclusions may seem questionable. There is no wish on the part of the Special Rapporteur to discourage informed criticism and suggestions for improvements on the part of any commentator. The present endeavour is a collective work, the purpose of which is to produce a text that could be of some use in international relations.

Chapter I

Invocation of the responsibility of an international organization

6. Implementation of the responsibility of an international organization is here considered only insofar as responsibility may be invoked by a State or another international organization. Since, according to article 36 of the current draft, the international obligations set out in Part Two only concern the breach of an obligation under international law that an international organization owes to a State, another international organization or the international community as a whole, it seems unnecessary to specify in part three that the scope of the articles on implementation of responsibility is similarly limited. The same approach was taken when drafting the articles on responsibility of States for internationally wrongful acts. These do not include in part three any provision...
stating that implementation of responsibility is covered
only insofar as responsibility is invoked by another State.
This limitation of the scope of part three could be taken as
implied by article 33,11 which corresponds to article 36 of
the current draft.

7. In most cases, responsibility may be invoked only by
an entity which could be considered as injured. Determin-
ing when a State may be regarded as injured could hardly
vary according to whether the responsible entity is a State
or an international organization. Thus, the definition of
“injured State” in article 42 on responsibility of States
for internationally wrongful acts12 clearly applies also
when a State invokes the responsibility of an international
organization.

8. The possibility for an international organization to
invoke, as an injured entity, the responsibility of a State
was affirmed by ICJ in its advisory opinion on Repara-
tion for Injuries Suffered in the Service of the United
Nations, when the Court stated that it was “established
that the Organization has capacity to bring claims on the
international plane”.13 What the Court said with regard
to a claim for reparation by the United Nations may be
extended to all international organizations possessing
legal personality, when an obligation owed to them has
been breached, whether by a State or by another interna-
tional organization.

9. The criteria for defining when an entity is injured
by an internationally wrongful act of a State or an inter-
national organization do not appear to depend on the
nature of that entity. Hence, an international organization
would have to be considered as injured under the
same conditions as a State. This would mean that an
international organization may invoke the responsibility
of another international organization in the three follow-
ing cases: first, when the obligation breached is owed to
the latter organization individually; secondly, when it is
owed to several entities which include the latter organi-
zation, or to the international community as a whole, if
the breach specially affects that organization; thirdly,
when it is owed to several entities which include the lat-
ter organization, or to the international community as a
whole, and the breach radically changes the position of
all the entities to which the obligation is owed. While the
second and third cases are generally rare, and it may be
difficult to find pertinent examples concerning interna-
tional organizations, the fact that international organiza-
tions may be injured under those conditions cannot be
ruled out. It is therefore necessary to include also the
second and third cases in the definition of injured inter-
national organizations.

10. The definition of the injured entity should therefore
consist in an adaptation of the corresponding definition
in article 42 on responsibility of States for internationally
wrongful acts.14 The following text is suggested:

“Draft article 46. Invocation of responsibility by an
injured State or international organization

“A State or an international organization is entitled as
an injured party to invoke the responsibility of another
international organization if the obligation breached is
owed to:

“(a) that State or the former international organiza-
tion individually;

“(b) a group of parties including that State or that for-
mer international organization, or the international com-

unity as a whole, and the breach of the obligation:

“(i) specially affects that State or that interna-
tional organization; or

“(ii) is of such a character as radically to change
the position of all the parties to which the obligation
is owed with respect to the further performance of the
obligation.”

11. While the rules of the internal law of a State will
determine which is the State organ that is competent for
bringing a claim, in the case of an international organiza-
tion reference would have to be made to the rules of the
organization.15 These will also provide whether in certain
cases there is an obligation for the competent organ to
bring a claim.16 The rules of the organization will further
have to be applied in order to ascertain whether an
organization waived a claim or acquiesced to the termina-
tion of a claim. Since the requirement that the conduct of
the organization be appraised according to its pertinent
rules is of general application, it seems preferable not to
make a specific reference to the rules of the organization
in part three. This would also be consistent with the fact
that the articles on responsibility of States for interna-
tionally wrongful acts do not address the question of which
State organ is to be regarded as competent for bringing or
withdrawing a claim. It would be strange for the Commis-
sion to address the latter question for the first time in the
present context.

12. Part three, chapter I, of the articles on responsibil-
ity of States for internationally wrongful acts includes some
procedural rules of a general character. Two of them
concern the modalities to be observed by a State when
invoking the responsibility of another State with regard to
notice of claims (art. 43) and the loss of the right to invoke
responsibility (art. 45).17 While those articles only con-
sider claims that States may prefer against other States,
there is nothing in the content of those articles that sug-
gests that they would not also be applicable with regard to
the invocation by a State of the responsibility of an inter-
national organization.

12 Ibid., p. 117.
13 Reparation for Injuries Suffered in the Service of the United
15 A definition of the “rules of the organization” is contained in
article 4, paragraph 4, of the current draft (Yearbook ... 2007, vol. II
(Part Two), para. 343, p. 74).
16 Arsanjani, “Claims against international organizations: quis cus-
todiet ipsos custodes”, p. 147, raised the question whether “the U.N. is
under an obligation to bring international claims on behalf of its injured
staff”.
17 Yearbook ... 2001, vol. II (Part Two), p. 119 and p. 121, respectively.
13. The situation of international organizations does not differ from that of States in respect of notice of claims and the loss of the right to invoke responsibility. It seems therefore reasonable to extend to international organizations the same rules that are applied with regard to States in the articles on responsibility of States for internationally wrongful acts.

14. The text of articles 43 and 45 on responsibility of States for internationally wrongful acts should be adapted, when considering the invocation of the responsibility of an international organization, in order to cover the case in which the claimant entity is either a State or another international organization. The draft articles would then read:

“Draft article 47. Notice of claim by an injured State or international organization

1. An injured State which invokes the responsibility of an international organization shall give notice of its claim to that organization.

2. An injured international organization which invokes the responsibility of another international organization shall give notice of its claim to the latter organization.

3. The injured State or international organization may specify in particular:

(a) the conduct that the responsible international organization should take in order to cease the wrongful act, if it is continuing;

(b) what form reparation should take in accordance with the provisions of Part Two.

“Draft article 48. Loss of the right to invoke responsibility

The responsibility of an international organization may not be invoked if:

(a) the conduct of the international organization has validly waived the claim;

(b) the injured international organization is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.”

15. The articles on responsibility of States for internationally wrongful acts include, between the two articles which have been considered above, an article on admissibility of claims (art. 44) which addresses questions relating to diplomatic protection. The exercise by a State of diplomatic protection against an international organization is a rare occurrence. However, it is not inconceivable, in particular in relation to an organization that administers a territory or uses force.

16. Should a State exercise diplomatic protection against an international organization, nationality of the claim would be a first requirement. The more problematic question would be the need to exhaust local remedies. On this issue, a variety of views have been expressed in the literature, the prevailing opinion being that the local remedies rule applies when adequate and effective remedies are provided within the organization concerned.

17. One can find some instances of practice in which the local remedies rule was invoked with regard to remedies existing within the European Union. Although this practice relates to claims that were addressed to the member States, one can infer that, had the responsibility of the Union been invoked, exhaustion of remedies existing within the Union would have been required. One of these instances of practice was a statement made on behalf of all the member States of the Union by the Director-General of the Legal Service of the European Commission before the ICAO Council in relation to a dispute between those States and the United States concerning measures taken for abating noise originating from aircraft. The member States of the Union contended that the claim by the United States was inadmissible because remedies relating to the controversial European Community regulation had not been exhausted, since the measure was at the time “subject to challenge before the

---

18 Ibid., p. 120.

19 Diplomatic protection was defined by the Commission as “the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility” (Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007, para. 39). In that case, IJC considered that this definition—which is contained in article 1 of the draft articles on diplomatic protection, Yearbook ..., 2006, vol. II (Part Two), p. 16—“reflected” customary international law.

20 The applicability of the local remedies rule to claims addressed by States to international organizations was maintained by several authors: Ritter, “La protection diplomatique à l’égard d’une organisation internationale”, pp. 454–455; De Visscher, “Observations sur le fondement et la mise en œuvre du principe de la responsabilité de l’Organisation des Nations Unies”, p. 174; Simmonds, Legal Problems arising from the United Nations Military Operations in the Congo, p. 238; Amiralah, “The international responsibility of the United Nations for activities carried out by U.N. peace-keeping forces”, p. 67; Granilch, “Diplomatic protection against acts of intergovernmental organs”, p. 398 (more tentatively); Schermers and Blokker, International Institutional Law: Unity within Diversity, para. 1858; Pierre Klein, La responsabilité des institutions internationales dans les ordres juridiques internes et en droit des gens, pp. 534 et seq.; Pitschas, Die völkerrechtliche Verantwortlichkeit der Europäischen Gemeinschaft und ihrer Mitgliedstaaten, p. 250; and Wellens, Remedies against International Organizations, pp. 66–67. The same opinion was voiced by the International Law Association, in its “Final report on accountability of international organisations”, p. 213. Eagleton, “International organization and the law of responsibility”, p. 395, considered that the local remedies rule would not be applicable to a claim against the United Nations, but only because “the United Nations does not have a judicial system, or other means of ‘local redress’ such as are regularly maintained by states”. Cançado Trindade, “Exhaustion of local remedies and the law of international organizations”, p. 108, noted that “when a claim for damages is lodged against an international organization, application of the rule is not excluded, but the law here may still develop in different directions”. The view that the local remedies rule should be applied in a flexible manner was expressed by Pérez González, “Les organisations internationales et le droit de la responsabilité”, p. 71. Amerasinghe, Principles of the Institutional Law of International Organizations, p. 486, considered that, since international organizations “do not have jurisdictional powers over individuals in general”, it is “questionable whether they can provide suitable internal remedies. Thus, it is difficult to see how the rule of local remedies would be applicable”. This view, which had already been expressed in the first edition of the same book, was shared by Vasco Fernández, La responsabilidad internacional de Naciones Unidas: fundamento y principales problemas de su puesta en práctica, pp. 139–140.
national courts of EU Member States and the European Court of Justice.”

18. Another example is provided by the judgement of the European Court of Human Rights in Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v. Ireland. The case concerned an alleged infringement of human rights owing to the implementation in Ireland of an European Community regulation. In finding that there were no remedies that the applicant had failed to exhaust, the Court included a consideration of the remedies available within the European Union.

19. When an international organization addresses a claim on behalf of one of its agents, whether against a State or another international organization, the requirement of nationality clearly does not apply. The local remedies rule could be relevant only insofar as the claim by the organization also concerns damage caused to one of its agents as a private individual. The entitlement of an organization to make such a claim was admitted by ICJ in its advisory opinion on Reparation of Injuries Suffered in the Service of the United Nations. However, the eventuality of this type of claim being addressed by an international organization against another international organization is clearly remote.

20. The fact that issues of admissibility concerning nationality and local remedies may conceivably also arise with regard to claims addressed to international organizations does not entail that the present draft articles should include a provision on the lines of article 44 of the articles on responsibility of States for internationally wrongful acts. That provision is essentially a reminder of the two main conditions for the exercise of diplomatic protection. It concerns a category of claims which is of considerable importance in the relations among States. Since the practical relevance of diplomatic protection with regard to State responsibility does not find a parallel in the present context, a provision on the admissibility of claims may well be omitted in the present draft. This would not imply that the requirements of nationality of claims and exhaustion of local remedies are always irrelevant when a claim is addressed against an international organization.

21. Following the pattern of the articles on responsibility of States for internationally wrongful acts, the next question to be addressed concerns the case of a plurality of injured entities. With regard to a plurality of injured States, a provision contained in those articles (art. 46) says that: “Where several States are injured by the same internationally wrongful act, each injured State may separately invoke the responsibility of the State which has committed the internationally wrongful act.” What is said about a plurality of States being injured by another State may clearly be extended to the case that the responsible entity is an international organization instead of a State.

22. The same approach should be taken when the injured entities are international organizations. They may be injured on their own or together with certain States. These States would likely be members of an injured organization, but may conceivably be non-members. The existence of a plurality of injured entities would depend, first, on whether the obligation breached is owed to (a) two or more organizations or (b) one or more organizations and to one or more States, and, moreover, on whether the conditions that are laid down for determining whether an entity is injured by the breach of the obligation are fulfilled.

23. It follows that the content of the corresponding provision in the articles on responsibility of States for internationally wrongful acts may be used as a model, with the adaptations necessary for the present purposes. The following text is here proposed with the intention of covering a number of cases: that of two or more States being injured; that of two or more international organizations being injured; that of one or more States and one or more international organizations being injured.

“Draft article 49. Plurality of injured entities

“Where several entities are injured by the same internationally wrongful act of an international organization, each injured State or international organization may separately invoke the responsibility of the international organization which has committed the internationally wrongful act.”

24. When an international organization is responsible for an internationally wrongful act, another entity may also be responsible for the same act. The possibility of a plurality of responsible States has been envisaged in article 47 on responsibility of States for internationally wrongful acts. The possibility of a plurality of responsible entities is even more likely when one of them is an international organization, given the existence of a variety of cases in which this may occur. In particular, there are several instances in which both an organization and its members, or some of them, may incur responsibility

---

23 Judgement of 30 June 2005, ibid.
24 The local remedies rule does not apply with regard to claims concerning damage caused to agents insofar as it affects the respective State or international organization, because these matters lie outside the field of diplomatic protection. That point was stressed by Verhoeven, “Protection diplomatique, épuisement des voies de recours et juridictions européennes”, p. 1517.
26 The text of article 44 (referred to in paragraph 15 above) runs as follows: “The responsibility of a State may not be invoked if:

(a) the claim is not brought in accordance with any applicable rule relating to the nationality of claims;
(b) the claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.”

Yearbook ... 2001, vol. II (Part Two), p. 120.
27 Ibid., p. 123.
28 This may occur, for instance, with regard to certain mixed agreements concluded by the European Community and some of its member States (or all of them) with one or more non-member States, when the obligations owed to the Community and its members have not been separated (see O’Keeffe and Schermers, Mixed Agreements as a Technique for Organizing the International Relations of the European Community and its Member States).
for the same internationally wrongful act. Articles 28–29
of the present draft refer to some of those instances. 30
Another case is when both the organization and its mem-
bers have jointly undertaken the same obligation towards
a third party and the obligation is breached.31

25. With regard to a plurality of responsible States,
the articles on responsibility of States for internationally
wrongful acts make three points that are equally relevant
when one of the responsible entities is an international or-
ganization. The first one is that the responsibility of each
entity may be invoked in relation to the act. This point
needs to be qualified, in view of the statement in article 29
of the present draft that when, under the conditions there
provided, a member of an organization is responsible, that
responsibility “is presumed to be subsidiary”.32 The con-
cept of subsidiarity implies, in this context, that the
responsibility of the member may be invoked only if the
responsibility of the organization has been invoked first
and to no avail or at any rate to little purpose.

26. The second and third points made in article 47 on
responsibility of States for internationally wrongful acts
are generally also applicable to the case that one of the
responsible entities is an international organization: the
injured party is not entitled “to recover, by way of com-
ensation, more than the damage it has suffered” (art. 47,
para. 2 (a)); the entity that provided reparation may have
a right of recourse against the other responsible entities.
With regard to these points it matters little who is the
responsible entity.

27. While article 47 of the articles on responsibility of
States for internationally wrongful acts provides a basis
for the drafting of a text, a few adaptations seem neces-
sary. One has to envisage the possibility that two or more
organizations are responsible or that one or more organi-
zations are responsible together with one or more States.
Moreover, a proviso should cover the question of subsidi-
arity. Finally, the text may be slightly clearer if, unlike
article 47, it specified which entity may have a right of
recourse. The proposed text runs as follows:

“Draft article 50. Plurality of responsible entities

1. Where an international organization and one or
more States or other organizations are responsible for
the same internationally wrongful act, the responsibility
of each responsible entity may be invoked in relation to
that act. However, if the responsibility of an entity is only
subsidiary, it may be invoked only to the extent that the
invocation of the primary responsibility has not led to
reparation.

2. Paragraph 1:

“(a) does not permit any injured State or interna-
tional organization to recover, by way of compensation,
more than the damage it has suffered;

“(b) is without prejudice to any right of recourse that
the entity providing reparation may have against the other
responsible entities.”

28. Injured entities within the meaning of article 46 of
the current draft are not the only ones that may invoke
responsibility. According to article 48 on responsibility of
States for internationally wrongful acts there are two cases
in which a State other than “an injured” State may invoke
responsibility.33 The State in question would be entitled
to request cessation of the internationally wrongful act
and performance of the obligation of reparation “in the
interest of the injured State or of the beneficiaries of the
obligation breached” (art. 48, para. 2 (b)). The first case
envisaged in article 48 is that “the obligation breached
is owed to a group of States including that State, and is
established for the protection of a collective interest of the
group” (para. 1 (a)).

29. For the purposes of invoking responsibility in the
circumstances so described, the fact that the obligation
in question is breached by an international organization
instead of a State appears to be immaterial. Nor does it
appear relevant that the group of entities to which the
obligation is owed includes an international organization.
It seems reasonable that in the latter case international
organizations may invoke responsibility under the same
conditions applying to States.

30. One example from practice of a claim made by a
non-injured State against an international organization is
provided by the European Communities: Regime for the
Importation, Sale and Distribution of Bananas case.34 A
WTO panel found that, although the United States had
“no legal right or interest”35 in the case, its potential inter-
est in trade in goods and services and its “interest in a
determination of whether the EC regime is inconsistent
with the requirements of WTO rules” were “each suffi-
cient to establish a right to pursue a WTO dispute set-
tlement proceeding”.36 The panel referred in a footnote
to a provision of the articles on responsibility of States
for internationally wrongful acts adopted on first read-
ing, which included in its definition of “injured State”:
“If the right infringed by the act of a State arises from a
multilateral treaty, any other State party to the multilateral
treaty, if it is established that the right has been expressly
stipulated in that treaty for the protection of the collective
interests of the States parties thereto.”37

31. The second case in which, according to article 48
on responsibility of States for internationally wrong-
ful acts, non-injured States may request cessation of the
breach and performance of the obligation of reparation is
that “the obligation breached is owed to the interna-
tional community as a whole”.38 The fact that the breach

30 Yearbook ... 2007, vol. II (Part Two), para. 343, p. 76.
31 Mixed agreements referred to in footnote 28 above also provide
an example for this purpose, when the obligations for the European
Community and its members have not been separated.
32 See footnote 30 above.
33 Ibid., para. 7.47.
34 Ibid., para. 7.50.
35 Ibid., footnote 361. The quoted text is reproduced in Year-
is committed by an international organization instead of a State cannot make a difference in the entitlement of non-injured States to invoke responsibility. As was noted in that respect by OPCW, “there does not appear to be any reason why States—as distinct from other international organizations—may not also be able to invoke the responsibility of an international organization”.

32. A more difficult issue is whether an international organization would be entitled to invoke the responsibility of another international organization for the breach of an obligation owed to the international community as a whole.

33. Practice in that regard is not very indicative. This is not only because that practice relates to action taken by international organizations in respect of States. Organizations generally respond to breaches committed by their members and act on the basis of their respective rules. This does not imply the existence for international organizations of a more general entitlement to invoke responsibility in case of a breach of an obligation towards the international community as a whole. The most significant practice in this respect appears that of the European Union, which has often stated that non-members committed breaches of obligations which appear to be owed towards the international community as a whole. For instance, a Common Position of the Council of the European Union of 26 April 2000 referred to “severe and systematic violations of human rights in Burma”. In most cases this type of statement by the European Union led to the adoption of economic measures against the allegedly responsible State. Those measures will be discussed in the next chapter. For the present purposes, it is important to note that it is not altogether clear whether responsibility was jointly invoked by the member States of the European Union or by the European Union as a distinct organization.

34. There is only limited literature on the question whether an international organization would be entitled to invoke responsibility in the case of a breach of an obligation towards the international community as a whole. Writings generally focus on the European Union; the views expressed appear to be divided, although the majority of authors gives a favourable answer.

35. In its 2007 report to the General Assembly, the Commission asked for comments on the following question:

Article 48 on responsibility of States for internationally wrongful acts provides that, in case of a breach by a State of an obligation owed to the international community as a whole, States are entitled to claim from the responsible State cessation of the internationally wrongful act and performance of the obligation of reparation in the interest of the injured State or of the beneficiaries of the obligation breached. Should a breach of an obligation owed to the international community as a whole be committed by an international organization, would the other organizations or some of them be entitled to make a similar claim?

36. In the Sixth Committee the views expressed were clearly in favour of a positive answer. While certain States gave an unqualified reply to this effect, a higher number of States considered that only certain organizations would be entitled to invoke responsibility: those organizations that have the mandate to protect the general interests of the international community. The latter view was shared by two international organizations in their written comments. OPCW wrote:

In the case of international organizations, the ability to invoke responsibility for violations of obligations owed to the international community as a whole could depend on the scope of the activities of the organization and defined in its constituent document. Accordingly, every “concerned” international organization could be entitled to invoke responsibility and claim the cessation of the wrongful act to the extent that affects its mandate as set out in its constituent instrument.

The European Commission voiced similar views:

As the international community as a whole cannot act on its own lacking centralized institutions, it is for the individual members of that community to take action against the offender on behalf and in the interest of the community. It appears to the European Commission that this right pertains in principle to all members of the international community, including international organizations as subjects of international law. However, at the same time international organizations are entrusted by their statutes to carry out specific functions and to protect certain interests only. Where the breached obligation relates to subject matters that fall outside the organization’s powers and functions, there would be no compelling reason why it should be allowed to take decentralized enforcement action. For example, it is hardly conceivable that a technical transport organization should be allowed to sanction a military alliance for a breach of a fundamental guarantee of international humanitarian law that may be owed to the international community as a whole.

37. If this logic is followed, the possibility for an international organization of invoking responsibility for the breach of an obligation towards the international community would depend on the content of the obligation breached and on its relation to the mandate of that organization. This entitlement would not necessarily depend on the fact that the international organization is a member of the international community. It could be seen as delegated by the States that are members of the organization. The latter approach would seem in line with the following statement made by ICJ in its advisory opinion on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict:

42 Yearbook ... 2007, vol. II (Part Two), p. 6, para. 30 (a).

43 See the statements by Malaysia (Official Records of the General Assembly, Sixty-second Session, Sixth Committee, 19th meeting (A/C.6/62/SR.19), para. 75), Hungary (21st meeting (A/C.6/62/SR.21), para. 16), Cyprus (ibid., para. 38) and Belgium (ibid., para. 90).

44 Thus the statements by Argentina (18th meeting (A/C.6/62/SR.18), para. 64), Denmark, on behalf of the five Nordic countries (ibid., para. 100), Italy (19th meeting (A/C.6/62/SR.19), para. 40), Japan (ibid., para. 100), the Netherlands (20th meeting (A/C.6/62/SR.20), para. 39), the Russian Federation (21st meeting (A/C.6/62/SR.21), para. 70) and Switzerland (ibid., para. 85).


46 Ibid., sect. F2.
International organizations are subjects of international law which do not, unlike States, possess a general competence. International organizations are governed by the "principle of speciality", that is to say, they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them.

38. In order to determine when a non-injured international organization would be entitled to invoke responsibility of another international organization for the breach of an obligation towards the international community, one could use wording similar to that used in article 22, paragraph 1 (a), for determining when an international organization may invoke necessity as a circumstance precluding wrongfulness.

39. As a matter of drafting, while article 48 on responsibility of States for internationally wrongful acts may provide the basic model, various changes would have to be introduced in order to distinguish the entitlement that States have in invoking responsibility from the more limited entitlement of international organizations. In the last paragraph, given the absence in the proposed draft of a provision on admissibility of claims, an ambiguity in the text on State responsibility would be removed. For the present purposes, it is sufficient to extend to non-injured States or international organizations the applicability of the two provisions concerning notice of claims and the loss of the right to invoke responsibility.

40. The following text is therefore proposed:

"Draft article 51. Invitation of responsibility by an entity other than an injured State or international organization

1. Any State or international organization other than an injured State or organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to a group of entities including the State or organization that invokes responsibility, and is established for the protection of a collective interest of the group.

2. Any State other than an injured State is entitled to invoke the responsibility of an international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole.

3. Any international organization that is not an injured organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole.

4. Any State or international organization entitled to invoke responsibility under the preceding paragraphs may claim from the responsible international organization:

(a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 33;

(b) performance of the obligation of reparation in accordance with Part Two, in the interest of the injured State or international organization or of the beneficiaries of the obligation breached.

5. The requirements for the invocation of responsibility by an injured State or international organization under articles 47 and 48 apply to an invocation of responsibility by a State or international organization entitled to do so under the preceding paragraphs."

CHAPTER II

Countermeasures

41. In the context of the present part, countermeasures need to be examined insofar as they may be taken against an international organization which is responsible for an internationally wrongful act. Although the relevant practice is scarce, countermeasures are an important aspect of implementation of international responsibility which cannot be ignored in the present draft. Moreover, it would be hard to find a convincing reason for exempting international organizations from being possible targets of countermeasures.

42. Practice relating to WTO offers some examples of countermeasures taken by certain States against the European Communities with the authorization of the Dispute Settlement Body: for instance by Canada in 1999 in response to the failure, on the part of the European Communities, to implement a decision concerning Canadian beef that was produced using growth hormones. In another case, United States: Import Measures on Certain Products from the European Communities, a WTO panel considered that the suspension of concessions or other obligations that had been authorized by the Dispute Settlement Body was "essentially retaliatory in nature". According to Alvarez, "International organizations: accountability or responsibility?", pp. 33–34. The whole work of the Commission on responsibility of international organizations would become "a train wreck—if, for example, the ILC’s anticipated provision with respect to countermeasures directed at wrongful IO [international organization] action will provide new justifications for those who, such as certain members of the U.S. Congress, have long been inclined to ‘sanction’ the UN by, for example, withholding U.S. dues". It is not clear to which internationally wrongful act the author refers that was committed by the United Nations and injured the United States. Nor is it clear whether he suggests that, although countermeasures would have to be regarded as admissible against international organizations under international law, the Commission should refrain from saying so for tactical reasons.

The panel did not make any distinction between countermeasures taken against a State and those taken against an international organization when it observed:

Under general international law, retaliation (also referred to as reprisals or countermeasures) has undergone major changes in the course of the XX century, specially, as a result of the prohibition of the use of force (ius ad bellum). Under international law, these types of countermeasures are now subject to requirements, such as those identified by the International Law Commission in its work on state responsibility (proportionality etc. ... see Article 43 of the Draft). However, in WTO, countermeasures, retaliations and reprisals are strictly regulated and can take place only within the framework of the WTO/DSU. 51

43. These instances from practice confirm that injured States may generally take countermeasures against a responsible international organization under the same conditions applying to countermeasures against a responsible State. However, this conclusion needs to be qualified. Should an injured State intend to take countermeasures against a responsible organization of which that State is a member, the rules of the organization may impose some further restrictions or even forbid countermeasures in this case. For example, when two member States of the European Communities argued that their breaches of an obligation under the EEC Treaty were justified by the fact that the Council of that organization had previously committed a breach, the Court of Justice of the European Communities stated that

Except where otherwise expressly provided, the basic concept of the EEC Treaty requires that the Member States shall not take the law into their own hands. Therefore the fact that the Council failed to carry out its obligations cannot relieve the defendants from carrying out theirs. 55

The fact that members are forbidden to take countermeasures finds in the European Communities a reason in the existing system of judicial remedies. However, restrictions may exist with regard to other international organizations even if similar remedies are not provided within the organization concerned.

44. Resort to countermeasures by an injured international organization against a responsible international organization is certainly a rare event. However, there are no reasons why an injured international organization should not have at its disposal such a significant instrument for inducing a responsible entity to comply with the obligations set out in Part Two. As was noted with regard to States, the rules of the responsible organization may restrict resort to countermeasures by an injured organization which is a member of the former organization. Moreover, the rules of the injured organization may also affect the possibility for that organization to take countermeasures against a responsible organization when the latter is a member of the former organization. Apart from these eventualities, one would have to consider whether the situation of an injured international organization is generally identical to that of an injured State or whether, as the Commission put it in a request for comments from States and international organizations, international organizations “encounter further restrictions than those that are listed in articles 49 to 53 of the articles on responsibility of States for internationally wrongful acts”. 54

45. In the Sixth Committee several States expressed the view that no distinction should be made between injured international organizations and injured States in this respect. 55 Some States, while admitting in principle that an international organization may take countermeasures like a State, stressed the need for the organization “to act within the limits of its mandate”. 56 One State argued that there should exist, as an additional requirement for countermeasures to be taken by an international organization, “a close connection to the right protected by the obligation breached”. 57 Another State remarked that when international organizations take countermeasures, they mainly resort to non-compliance of obligations under a treaty, but that State did not assume that there was a corresponding restriction to the possibility to resort to countermeasures. 58

46. The rules of the organization will determine what sort of countermeasures may be taken and which organ of the organization is competent to take them. As already noted above (para. 11) with regard to the presentation and withdrawal of claims, it is not necessary to state in the draft presently under discussion that the conduct of an international organization is governed by its rules. It has to be expected that an international organization will act consistently with its own rules. However, should an organization fail to apply its own rules when taking countermeasures, the legal consequence is not necessarily that countermeasures would have to be regarded as unlawful. One would have to distinguish the position of the organization towards its members from that towards non-members. With regard to non-members, the fact that a countermeasure has been taken by the international organization in breach of its own rules does not per se make the countermeasure unlawful. On the contrary, in respect of members, since the rules of the organization are applicable in the relations between the organization and its members, those rules would set out the consequence of their breach on the lawfulness of countermeasures.

47. In the present context, there is little to change, apart from some of the wording, in article 49 of the articles on responsibility of States for internationally wrongful acts, 59 which describes the object and limits of countermeasures. For the purposes of the current draft, the text of

52 Ibid., footnote 100. The reference made by the panel to the work of the Commission concerns the articles on responsibility of States for internationally wrongful acts, adopted on first reading.

53 Judgement of 13 November 1964, Commission of the European Economic Community v. Grand Duchy of Luxembourg and Kingdom of Belgium, joined cases 90 and 91/63, European Court Reports 1964, p. 631.

54 Yearbook ... 2007, vol. II (Part Two), p. 6, para. 30 (b).


56 Statement by the Russian Federation (21st meeting (A/C.6/62/ SR.21), para. 71). Similarly, Switzerland (ibid., para. 86) referred to the “mandate of the organization” and also to the “purpose” for which the organization was established. One may approach to these comments the suggestion by Malaysia (19th meeting (A/C.6/62/SR.19), para. 75) that “the Commission should consider whether additional restrictions should be imposed, taking into account the nature and legal capacity of international organizations”.

57 See the statement by Argentina (18th meeting (A/C.6/62/SR.18), para. 64).

58 This remark was made by Italy (19th meeting (A/C.6/62/SR.19), para. 41).

paragraphs 1–2 has to be modified in order to cover countermeasures that an injured State or international organization may take against a responsible international organization. Paragraph 3 does not require any change. It seems useful to add two further paragraphs to this initial article, in order to stress the role that the rules of the organization may have in restricting or precluding countermeasures in the relations between an international organization and its members. One of the paragraphs would deal with the rules of the responsible organization and the other with the rules of the organization that invokes responsibility.

48. The following text is suggested:

“Draft article 52. Object and limits of countermeasures

1. An injured State or international organization may only take countermeasures against an international organization which is responsible for an internationally wrongful act in order to induce that organization to comply with its obligations under Part Two.

2. Countermeasures are limited to the non-performance for the time being of international obligations of the State or international organization taking the measures towards the responsible international organization.

3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

4. Where an international organization is responsible for an internationally wrongful act, an injured member of that organization may take countermeasures against the organization only if this is not inconsistent with the rules of the same organization.

5. Where an international organization which is responsible for an internationally wrongful act is a member of the injured international organization, the latter organization may take countermeasures against its member only if this is not inconsistent with the rules of the same organization.

49. Countermeasures taken against an international organization involve by definition the non-performance by the injured State or international organization of one of its obligations, that is conduct which would, but for the previous breach, injure the responsible organization. Should the injured State or international organization not be under an obligation to take a certain conduct, that conduct would per se be lawful and therefore could not be considered a countermeasure.

50. Article 50 of the draft articles on responsibility of States for internationally wrongful acts contains a list of obligations that a State may not lawfully breach when it takes countermeasures against another State. These are obligations that because of their importance have to be respected even when a State has been previously injured by a breach. The importance of the obligations concerned does not change according to the subject to whom they are owed; most of them can any way be characterized as obligations towards the international community as a whole. Thus, the list is also clearly relevant when an injured State intends to take countermeasures against an international organization.

51. Given the importance of the obligations that are listed, similar restrictions would also seem to apply to injured international organizations, even if some of the obligations that are mentioned in the list are of little relevance to most organizations. This is in particular the case of the obligation concerning “inviolability of diplomatic or consular agents, premises, archives and documents” (art. 50, para. 2 (b)). No doubt, international organizations have a more significant and parallel concern that should also be taken into account in the present context. The commentary concerning article 50 explains that the restriction in question seeks to protect diplomatic and consular agents from the risk of being “targeted by way of countermeasures” to which they might otherwise be exposed. A similar risk exists for agents of international organizations. The same may be said of the premises, archives and documents of international organizations. These terms and the term “agents” are wide enough to include any mission that an international organization would send, permanently or temporarily, to another organization or a State. It seems therefore reasonable to reword the restriction in paragraph 2 (b) and refer to the inviolability of agents, premises, archives and documents of the responsible international organization.

52. The drafting of article 50, paragraph 2, on responsibility of States for internationally wrongful acts needs some adaptations. The text, which includes the change proposed in the previous paragraph, could run as follows:

“Draft article 53. Obligations not affected by countermeasures

1. Countermeasures shall not affect:

(a) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;

(b) obligations for the protection of fundamental human rights;

(c) obligations of a humanitarian character prohibiting reprisals;

(d) other obligations under peremptory norms of general international law.

2. A State or international organization taking countermeasures is not relieved from fulfilling its obligations:

(a) under any dispute settlement procedure applicable between the injured State or international organization and the responsible international organization;

(b) to respect the inviolability of the agents of the responsible international organization and of the premises, archives and documents of the same organization.”

—

50 Ibid., p. 131.

61 Ibid., p. 134, para. (15).
53. When considering conditions and modalities of countermeasures that an injured State intends to take against a responsible State, articles 51–53 on responsibility of States for internationally wrongful acts embody certain principles that have a general character. The first article states the requirement of proportionality: the following provision concerns the procedural conditions for resorting to countermeasures; in a rather self-evident statement, the third article considers termination of countermeasures. The principles embodied in these articles appear to be equally relevant when an injured State or international organization takes countermeasures against a responsible international organization. Moreover, a uniform regime of the questions dealt with in these articles, whether they are taken against a responsible State or a responsible international organization, would have a practical advantage. Thus, the arguably innovative elements that article 52 on State responsibility introduces with regard to the procedural conditions for resorting to countermeasures should also be extended to countermeasures that are taken against an international organization.

54. The requirement of proportionality was restated by ICJ in the Gabčíkovo-Nagymaros Project case. The Court was considering a measure taken by one State against another, but made a more general appraisal of proportionality, saying that “an important consideration is that the effects of a countermeasure must be commensurate with the injury suffered, taking account of the rights in question”. The requirement of proportionality may be of particular significance when countermeasures are taken by an international organization, given the potential involvement of all its members. As was noted by Belgium: “The transposition of that requirement to international organizations ... prevent countermeasures adopted by an international organization from exerting an excessively destructive impact.”

55. Article 51 on responsibility of States for internationally wrongful acts may be reproduced without change. Articles 52–53 require certain adaptations. The following texts are proposed:

“Draft article 54. Proportionality

“Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

“Draft article 55. Conditions relating to resort to countermeasures

“1. Before taking countermeasures, an injured State or international organization shall:

“(a) call upon the responsible international organization, in accordance with article 47, to fulfil its obligations under Part Two;

“(b) notify the responsible international organization of any decision to take countermeasures and offer to negotiate with that organization.

2. Notwithstanding paragraph 1 (b), the injured State or international organization may take such urgent countermeasures as are necessary to preserve its rights.

3. Countermeasures may not be taken, and if already taken must be suspended without undue delay if:

“(a) the internationally wrongful act has ceased; and

“(b) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible international organization fails to implement the dispute settlement procedures in good faith.

“Draft article 56. Termination of countermeasures

“Countermeasures shall be terminated as soon as the responsible international organization has complied with its obligations under Part Two in relation to the internationally wrongful act.”

56. Two different questions arise with regard to measures that may be taken against a responsible international organization by a State or international organization which is not injured within the meaning of article 46. The question that will be examined first is parallel to the issue that was considered in article 54 on responsibility of States for internationally wrongful acts. This provision states that the chapter on countermeasures does not prejudice the right that a State may have to take “lawful measures” when it is entitled to invoke international responsibility although it is not injured. This provision concerns the category of States which are referred to in article 51 of the present draft.

57. Since article 54 on responsibility of States for internationally wrongful acts is a “without prejudice” provision, one would clearly go beyond the purposes of the present study if one attempted to go any further when considering the measures that may be taken against a responsible international organization by a State which, although not injured, is entitled to invoke international responsibility. The only option in this respect is to restate what was said in the articles on State responsibility. However, it may be pointed out that, to the extent that these measures are per se lawful, there would not be any need to say that the right to take them is not prejudiced.

58. Article 51 of the current draft envisages the possibility that, under certain conditions, an international organization, although not injured within the meaning of article 46, may also invoke the responsibility of another international organization. Practice shows several examples of measures taken against a responsible State by an international organization which is not injured. This practice mostly originates from the European Union. For

---

62 Ibid., pp. 134–137.
instance, after the statement, referred to above (para. 33), concerning “severe and systematic violations of human rights in Burma”, the Council of the European Union prohibited “the sale, supply and export to Burma/Myanmar of equipment which might be used for internal repression of terrorism”. In some cases, the measures that were adopted by the European Union were not consistent with its obligations towards the responsible State and thus were considered to be justified because of a previous breach of an international obligation by that State.

59. It would be difficult to give an example of measures that an international organization has taken against another international organization in similar circumstances. This does not necessarily imply that the “without prejudice” provision should not include a reference to measures taken by international organizations that are not “injured” within the meaning of article 46 of the current draft. The possibility of an international organization taking countermeasures against another international organization cannot be excluded. Moreover, the European Union has recently asserted “the right of an international organization to take countermeasures against another international organization [in] situations where the former has the statutory function to protect the interest underlying the obligation that was breached by the latter.” This obligation was defined by the European Union as an “obligation owed to the international community as a whole”. Thus, one cannot view as totally remote the eventuality of an international organization, which is not injured by a breach of one such obligation, taking measures against another international organization which is held responsible for the breach. This confirms that it would be preferable to include international organizations among the entities whose right to take “lawful measures” is not regarded as prejudiced by the chapter concerning countermeasures.

60. The second question to be discussed in the present context is of a different nature. It concerns the situation of those members of an international organization that have transferred to that organization competence over certain matters and may find themselves, as a consequence, unable to take effective countermeasures. This situation was described by the Court of Justice of the European Communities with regard to retaliations within the WTO system in the following manner:

[In the absence of close cooperation, where a Member State, duly authorized within its sphere of competence to take cross-retaliation measures, considered that they would be ineffective if taken in the fields covered by GATS or TRIPS, it would not, under Community law, be empowered to retaliate in the field of trade in goods, since that is an area which on any view falls within the exclusive competence of the Community under Article 113 [now 133] of the [EC] Treaty. Conversely, if the Community were given the right to retaliate in the

sector of goods but found itself incapable of exercising that right, it would, in the absence of close cooperation, find itself unable, in law, to retaliate in the areas covered by GATS or TRIPS, those being within the competence of the Member States.

Since the European Community and its member States acquired under the WTO agreements separate rights and obligations reflecting their respective competences under Community law, the scenario envisaged by the Court of Justice has become real. It occurs also in the reverse situation of a State party to the WTO agreements intending to take countermeasures for a breach committed either by the Community or by one or more of its member States. The matter arose, although it was not discussed, in the European Communities: Regime for the Importation, Sale and Distribution of Bananas case, when Ecuador was authorized to suspend certain obligations towards the member States for a breach committed by the European Community.

61. A similar question may arise when a State or international organization which is not injured, but which is entitled to invoke responsibility, intends to take measures against the responsible international organization. However, in view of the fact that the right to take measures in those circumstances is covered by a “without prejudice” provision, it is not necessary to enquire whether States or international organizations would then be in a position to request an international organization of which they are members to take measures against the responsible organization or whether an international organization may then request its members to take measures.

62. The possibility for an international organization to take countermeasures on behalf of its members that have been injured has been mainly discussed with regard to organizations implying a strong form of economic integration among their members, and in particular in respect of the European Union. When the establishment of one such organization involves the transfer of an exclusive competence to the organization over economic matters, its members would find themselves in the position of no longer being able to resort to countermeasures, or at least to effective countermeasures, when they are injured. It is difficult to assume that, by transferring to an organization an exclusive competence over economic matters, States intend to renounce any possibility to resort to countermeasures affecting those matters. This would imply that an injured member may take measures through the organization, by requesting the organization to take measures on its behalf. The organization would then accede to this request or refuse to act in accordance with its own rules. With regard to measures that an organization may take under these circumstances, the requirement of proportionality, set out in article 54, would be of paramount importance.

60 Official Journal of the European Communities (see footnote 40 above), p. 29.

61 See paragraph 30 above. This case was analysed under the aspect discussed here by Heliskoski, op. cit., pp. 220–221.


63 Pierre Klein, op. cit., pp. 400–401, considered that, in view of the degree of integration of an international organization, the transfer of powers would justify the organization in taking countermeasures when a member State has been injured. For similar views, see Ehlermann, loc. cit., p. 106, and Meng, “Internationale Organisationen im völkerrechtlichen Deliktsrecht”, pp. 350–354. According to Verhoeven, “Communautés européennes…”, pp. 88–90, an international organization would then not be entitled to take measures, but could implement them.
63. For defining the international organizations which would be entitled to take countermeasures on behalf of their members, one could refer to the concept of regional economic integration organizations. This concept has been used in article 13 of the Vienna Convention for the Protection of the Ozone Layer and in a number of later treaties. If the idea of referring to regional economic integration organizations is acceptable, one would have to include a definition in article 2, which concerns the use of terms.

64. While there are some reasons in favour of allowing an injured member of an international organization to take countermeasures through the organization, there would seem to be little justification for admitting the possibility that an organization may take countermeasures outside its field of competence through its members.

65. Also, in the reverse situation, it would be difficult to admit that an injured State may take measures against an international organization when the responsibility lies not with the organization, but with one of its members. Should one consider that the injured State may target the organization when only one of its members is responsible, the State taking countermeasures would be able, as a result of its free choice, to affect an international organization that has committed no breach. Similar considerations apply with regard to the case of an injured State intending to target a member of an international organization when only that organization is responsible.

66. The two questions considered here could be addressed in two different paragraphs in the following manner:

“Draft article 57. Measures taken by an entity other than an injured State or international organization

1. This chapter does not prejudice the right of any State or international organization, entitled under article 51, paragraph 1, to invoke the responsibility of an international organization, to take lawful measures against the latter international organization to ensure cessation of the breach and reparation in the interest of the injured party or of the beneficiaries of the obligation breached.

2. Where an injured State or international organization has transferred competence over certain matters to a regional economic integration organization of which it is a member, the organization, when so requested by the injured member, may take on its behalf countermeasures affecting those matters against a responsible international organization.”