

Chapter VI

RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

A. Introduction

192. At its fifty-second session (2000), the Commission decided to include the topic “Responsibility of international organizations” in its long-term programme of work.⁷⁴ The General Assembly, in paragraph 8 of its resolution 55/152 of 12 December 2000, took note of the Commission’s decision with regard to the long-term programme of work, and of the syllabus for the new topic annexed to the report of the Commission to the General Assembly on the work of its fifty-second session. In paragraph 8 of its resolution 56/82 of 12 December 2001, the Assembly requested the Commission to begin its work on the topic “Responsibility of international organizations”.

193. At its fifty-fourth session, in 2002, the Commission decided to include the topic in its programme of work and appointed Mr. Giorgio Gaja as Special Rapporteur for the topic.⁷⁵ At the same session, the Commission established a Working Group on the topic.⁷⁶ In its report,⁷⁷ the Working Group briefly considered the scope of the topic, the relations between the new project and the draft articles on responsibility of States for internationally wrongful acts adopted by the Commission at its fifty-third session,⁷⁸ questions of attribution, issues relating to the responsibility of member States for conduct attributed to an international organization, and questions relating to the content of international responsibility, implementation of responsibility and settlement of disputes. At the end of its fifty-fourth session, the Commission adopted the report of the Working Group.⁷⁹

194. At its fifty-fifth (2003) and fifty-sixth sessions (2004), the Commission considered the first⁸⁰ and second⁸¹ reports of the Special Rapporteur. The Commission provisionally adopted articles 1–7.⁸²

B. Consideration of the topic at the present session

195. At the present session, the Commission had before it the third report of the Special Rapporteur (A/CN.4/553).

196. Following the recommendations of the Commission,⁸³ the Secretariat had circulated the relevant chapter, included in the report of the Commission to the General Assembly on the work of its fifty-second session, to international organizations asking for their comments and for any relevant materials which they could provide to the Commission. Comments received so far from international organizations and from Governments were also before the Commission.⁸⁴

197. The third report of the Special Rapporteur, like the previous two reports, followed the general pattern of the articles on responsibility of States for internationally wrongful acts. It considered matters which were addressed in chapters III and IV of part one of those articles. Thus, following the second report, which dealt with questions of attribution of conduct to international organizations, the third report dealt with the existence of a breach of an international obligation on the part of an international organization, and with the responsibility of an international organization in connection with the act of a State or another international organization.

198. In his third report the Special Rapporteur proposed draft articles 8–16: article 8 (Existence of a breach of an international obligation),⁸⁵ article 9 (International obligation in force for an international organization),⁸⁶ article 10 (Extension in time of the

⁷⁴ See footnote 42 above.

⁷⁵ *Yearbook ... 2002*, vol. II (Part Two), p. 93, paras. 461–463.

⁷⁶ *Ibid.*, para. 462.

⁷⁷ *Ibid.*, pp. 93–96, paras. 465–488.

⁷⁸ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, para. 76.

⁷⁹ *Yearbook ... 2002*, vol. II (Part Two), p. 93, para. 464.

⁸⁰ *Yearbook ... 2003*, vol. II (Part One), p. 105, document A/CN.4/532.

⁸¹ *Yearbook ... 2004*, vol. II (Part One), document A/CN.4/541.

⁸² Draft articles 1 to 3 were provisionally adopted at the fifty-fifth session (*Yearbook ... 2003*, vol. II (Part Two), p. 18, para. 49) and draft articles 4 to 7 were provisionally adopted at the fifty-sixth session (*Yearbook ... 2004*, vol. II (Part Two), para. 69). For the text of draft articles 1 to 7, see section C below.

⁸³ See *Yearbook ... 2002*, vol. II (Part Two), paras. 464 and 488, and *Yearbook ... 2003*, vol. II (Part Two), p. 18, para. 52.

⁸⁴ For comments from Governments and international organizations see *Yearbook ... 2004*, vol. II (Part One), document A/CN.4/545; and *Yearbook ... 2005*, vol. II (Part One), documents A/CN.4/547 and A/CN.4/556.

⁸⁵ Draft article 8 reads as follows:

“Article 8. Existence of a breach of an international obligation

“1. There is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of its origin and character.

“2. The preceding paragraph also applies in principle to the breach of an obligation set by a rule of the organization.”

⁸⁶ Draft article 9 reads as follows:

“Article 9. International obligation in force for an international organization

“An act of an international organization does not constitute a breach of an international obligation unless the international organization is bound by the obligation in question at the time the act occurs.”

breach of an international obligation),⁸⁷ article 11 (Breach consisting of a composite act),⁸⁸ article 12 (Aid or assistance in the commission of an internationally wrongful act),⁸⁹ article 13 (Direction and control exercised over the commission of an internationally wrongful act),⁹⁰ article 14 (Coercion of a State or other international organization),⁹¹ article 15 (Effects of the preceding articles)⁹² and article 16 (Decisions, recommendations

and authorizations addressed to member States and international organizations).⁹³

199. Draft articles 8–11 corresponded to articles 12–15 in chapter III of the draft articles on responsibility of States for internationally wrongful acts which dealt with the existence of a breach of an international obligation, the requirement that the obligation be in force at the time the act occurs, the extension of the breach in time and the breach consisting of a composite act.⁹⁴ In the view of the Special Rapporteur, those articles on responsibility of States for internationally wrongful acts were of a general nature and reflected principles that were clearly applicable to the breach of an international obligation on the part of any subject of international law. There was no reason, therefore, to take a different approach, in this context, with regard to international organizations. However, the Special Rapporteur considered it useful to add in draft article 8 a specific paragraph dealing with the breach of an obligation under the rules of the organization.

200. With regard to draft articles 12–16, the Special Rapporteur explained that they corresponded to articles 16–19 in chapter IV of the articles on responsibility of States for internationally wrongful acts. The articles of that chapter consider cases and conditions under which a State is responsible for aid or assistance to, or direction and control of, another State in the commission of an internationally wrongful act, or for the coercion of another State to commit a wrongful act.⁹⁵ The Special Rapporteur explained that even though there was little practice relating to the international responsibility of international organizations in this type of situation, there was no reason to think that the requirements and approach would be any different from those relating to the responsibility of States. He noted that there might be situations in which an international organization might be responsible for the conduct of its members. These cases do not seem to fall squarely into any of the categories covered by articles 16–18 on responsibility of States for internationally wrongful acts. They involved compliance with acts of international organizations by their members. Such acts might be binding decisions or non-binding

⁸⁷ Draft article 10 reads as follows:

“Article 10. Extension in time of the breach of an international obligation

“1. The breach of an international obligation by an act of an international organization not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

“2. The breach of an international obligation by an act of an international organization having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.

“3. The breach of an international obligation requiring an international organization to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.”

⁸⁸ Draft article 11 reads as follows:

“Article 11. Breach consisting of a composite act

1. The breach of an international obligation by an international organization through a series of actions and omissions defined in aggregate as wrongful, occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.”

⁸⁹ Draft article 12 reads as follows:

“Article 12. Aid or assistance in the commission of an internationally wrongful act

“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) That 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.”

⁹⁰ Draft article 13 reads as follows:

“Article 13. Direction and control exercised over the commission of an internationally wrongful act

“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) That 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.”

⁹¹ Draft article 14 reads as follows:

“Article 14. Coercion of a State or another international organization

“An international organization which coerces a State or another international organization to commit an act is internationally responsible for that act if:

“(a) The act would, but for the coercion, be an internationally wrongful act of the coerced State or international organization; and

“(b) The coercing international organization does so with knowledge of the circumstances of the act.”

⁹² Draft article 15 reads as follows:

“Article 15. Effect of the preceding articles

“Articles 12 to 14 are without prejudice to the international responsibility of the State or international organization which commits the act in question, or of any other State or international organization.”

⁹³ Draft article 16 reads as follows:

“Article 16. Decisions, recommendations and authorizations addressed to member States and international organizations

“1. An international organization incurs international responsibility if:

“(a) It adopts a decision binding a member State or international organization to commit an act that would be internationally wrongful if taken by the former organization directly; and

“(b) The act in question is committed.

“2. An international organization incurs international responsibility if it authorizes a member State or international organization to commit an act that would be internationally wrongful if taken by the former organization directly, or if it recommends such an act, provided that:

“(a) The act fulfils an interest of the same organization; and

“(b) The act in question is committed.

“3. The preceding paragraphs apply also when the member State or international organization does not act in breach of one of its international obligations and therefore does not incur international responsibility.”

⁹⁴ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 26–27.

⁹⁵ *Ibid.*, p. 27.

recommendations or authorizations. To cover these situations, he had proposed draft article 16.

201. The Commission considered the third report of the Special Rapporteur at its 2839th to 2843rd meetings, on 17–24 May 2005. At its 2843rd meeting, on 24 May 2005, the Commission established a Working Group to consider draft articles 8 and 16. The Commission considered the report of the Working Group at its 2844th meeting, on 25 May 2005.

202. At its 2843rd meeting, the Commission referred draft articles 9–15 to the Drafting Committee. At its 2844th meeting, draft articles 8 and 16 were referred to the Drafting Committee, following the report of the Working Group.

203. The Commission considered and adopted the report of the Drafting Committee on draft articles 8–16 [15] at its 2848th meeting, on 3 June 2005 (see section C.1 below).

204. At its 2862nd and 2863rd meetings, on 2 and 3 August 2005, the Commission adopted the commentaries to the aforementioned draft articles (see section C.2 below).

C. Text of the draft articles on responsibility of international organizations provisionally adopted so far by the Commission

1. TEXT OF THE DRAFT ARTICLES

205. The text of the draft articles provisionally adopted so far by the Commission is reproduced below.

RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

PART ONE

THE INTERNATIONALLY WRONGFUL ACT OF AN INTERNATIONAL ORGANIZATION

CHAPTER I

INTRODUCTION

Article 1.⁹⁶ Scope of the present draft articles

1. The present draft articles apply to the international responsibility of an international organization for an act that is wrongful under international law.

2. The present draft articles also apply to the international responsibility of a State for the internationally wrongful act of an international organization.

Article 2.⁹⁷ Use of terms

For the purposes of the present draft articles, the term “international organization” refers to an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities.

⁹⁶ See the commentary to this article in *Yearbook ... 2003*, vol. II (Part Two), pp. 18–19, para. 54.

⁹⁷ *Ibid.*, pp. 20–22.

Article 3.⁹⁸ General principles

1. Every internationally wrongful act of an international organization entails the international responsibility of the international organization.

2. There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:

(a) Is attributable to the international organization under international law; and

(b) Constitutes a breach of an international obligation of that international organization.

CHAPTER II⁹⁹

ATTRIBUTION OF CONDUCT TO AN INTERNATIONAL ORGANIZATION

Article 4.¹⁰⁰ General rule on attribution of conduct to an international organization

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 as an act of that organization under international law whatever position the organ or agent holds in respect of the organization.

2. For the purposes of paragraph 1, the term “agent” includes officials and other persons or entities through whom the organization acts.¹⁰¹

3. Rules of the organization shall apply to the determination of the functions of its organs and agents.

4. For the purpose of the present draft article, “rules of the organization” means, in particular, the constituent instruments, decisions, resolutions and other acts taken by the organization in accordance with those instruments, and established practice of the organization.¹⁰²

Article 5.¹⁰³ Conduct of organs or agents placed at the disposal of an international organization by a State or another international organization

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.

Article 6.¹⁰⁴ Excess of authority or contravention of instructions

The conduct of an organ or an agent of an international organization shall be considered an act of that organization under international law if the organ or agent acts in that capacity, even though the conduct exceeds the authority of that organ or agent or contravenes instructions.

⁹⁸ *Ibid.*, pp. 22–23.

⁹⁹ See the commentary to this chapter in *Yearbook ... 2004*, vol. II (Part Two), chap. V, sect. C.2, para. 72.

¹⁰⁰ See the commentary to this article (*ibid.*).

¹⁰¹ The location of paragraph 2 may be reconsidered at a later stage with a view eventually to placing all definitions of terms in article 2.

¹⁰² The location of paragraph 4 may be reconsidered at a later stage with a view eventually to placing all definitions of terms in article 2.

¹⁰³ See the commentary to this article in *Yearbook ... 2004*, vol. II (Part Two), chap. V, sect. C.2, para. 72.

¹⁰⁴ *Ibid.*

Article 7.¹⁰⁵ Conduct acknowledged and adopted by an international organization as its own

Conduct which is not attributable to an international organization under the preceding draft articles shall nevertheless be considered an act of that international organization under international law if and to the extent that the organization acknowledges and adopts the conduct in question as its own.

CHAPTER III¹⁰⁶

BREACH OF AN INTERNATIONAL OBLIGATION

Article 8.¹⁰⁷ Existence of a breach of an international obligation

1. There is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of its origin and character.

2. Paragraph 1 also applies to the breach of an obligation under international law established by a rule of the international organization.

Article 9.¹⁰⁸ International obligation in force for an international organization

An act of an international organization does not constitute a breach of an international obligation unless the international organization is bound by the obligation in question at the time the act occurs.

Article 10.¹⁰⁹ Extension in time of the breach of an international obligation

1. The breach of an international obligation by an act of an international organization not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of an international organization having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.

3. The breach of an international obligation requiring an international organization to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

Article 11.¹¹⁰ Breach consisting of a composite act

1. The breach of an international obligation by an international organization through a series of actions and omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

CHAPTER IV¹¹¹

RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION IN CONNECTION WITH THE ACT OF A STATE OR ANOTHER INTERNATIONAL ORGANIZATION

Article 12.¹¹² Aid or assistance in the commission of an internationally wrongful act

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 international organization is internationally responsible for doing so if:

(a) That 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.

Article 13.¹¹³ Direction and control exercised over the commission of an internationally wrongful act

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 international organization is internationally responsible for that act if:

(a) That 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.

Article 14.¹¹⁴ Coercion of a State or another international organization

An international organization which coerces a State or another international organization to commit an act is internationally responsible for that act if:

(a) The act would, but for the coercion, be an internationally wrongful act of the coerced State or international organization; and

(b) The coercing international organization does so with knowledge of the circumstances of the act.

Article 15 [16].¹¹⁵ Decisions, recommendations and authorizations addressed to member States and international organizations

1. An international organization incurs international responsibility if it adopts a decision binding a member State or international organization to commit an act that would be internationally wrongful if committed by the former organization and would circumvent an international obligation of the former organization.

2. An international organization incurs international responsibility if:

(a) It authorizes a member State or international organization to commit an act that would be internationally wrongful if committed by the former organization and would circumvent an international obligation of the former organization, or it recommends that a member State or international organization commit such an act; and

(b) That State or international organization commits the act in question in reliance on that authorization or recommendation.

3. Paragraphs 1 and 2 apply whether or not the act in question is internationally wrongful for the member State or international

¹⁰⁵ *Ibid.*

¹⁰⁶ The commentary to this chapter appears in section C.2 below.

¹⁰⁷ The commentary to this article appears in *ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ The commentary to this chapter appears in section C.2 below.

¹¹² The commentary to this article appears in *ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.* The figure in square brackets refers to the corresponding article in the third report of the Special Rapporteur.

organization to which the decision, authorization or recommendation is directed.

Article 16 [15].¹¹⁶ Effect of this chapter

This chapter is without prejudice to the international responsibility of the State or international organization which commits the act in question, or of any other State or international organization.

2. TEXT OF THE DRAFT ARTICLES WITH COMMENTARIES
THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-
SEVENTH SESSION

206. The text of the draft articles together with commentaries thereto provisionally adopted by the Commission at its fifty-seventh session is reproduced below.

CHAPTER III

BREACH OF AN INTERNATIONAL OBLIGATION

(1) Draft articles 4–7 of the present draft address the question of attribution of conduct to an international organization. According to draft article 3, paragraph 2, attribution of conduct is one of the two conditions for an internationally wrongful act of an international organization to arise. The other condition is that the same conduct “constitutes a breach of an international obligation of that organization”. This condition is examined in the present chapter.

(2) As specified in draft article 3, paragraph 2, conduct of an international organization may consist of “an action or omission”. An omission constitutes a breach when the international organization is under an international obligation to take some positive action and fails to do so. A breach may also consist in an action which is inconsistent with what the international organization is required to do, or not to do, under international law.

(3) To a large extent, the four articles included in the present chapter correspond, in their substance and wording, to articles 12–15 on responsibility of States for internationally wrongful acts.¹¹⁷ Those articles express principles of a general nature that appear to be applicable to the breach of an international obligation on the part of any subject of international law. There would thus be little reason to take a different approach in the present draft articles, although available practice relating to international organizations is limited with regard to the various issues addressed in this chapter.

Article 8. Existence of a breach of an international obligation

1. There is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of its origin and character.

¹¹⁶ The commentary to this article appears in section C.2 below. The figure in square brackets refers to the corresponding article in the third report of the Special Rapporteur.

¹¹⁷ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, para. 76.

2. Paragraph 1 also applies to the breach of an obligation under international law established by a rule of the international organization.

Commentary

(1) The wording of paragraph 1 corresponds to that of article 12 on responsibility of States for internationally wrongful acts,¹¹⁸ with replacement of the term “State” by “international organization”.

(2) With regard to States, the term “international obligation” means an obligation under international law “regardless of its origin”. As mentioned in the commentary to draft article 12 on responsibility of States for internationally wrongful acts, this is intended to convey that “[i]nternational obligations may be established by a customary rule of international law, by a treaty or by a general principle applicable within the international legal order”.¹¹⁹

(3) An international obligation may be owed by an international organization to the international community as a whole, to one or several States, whether members or non-members, to another international organization or other international organizations or to any other subject of international law.

(4) For an international organization, most obligations are likely to arise from the rules of the organization, which are defined in draft article 4, paragraph 4, of the present draft as meaning “in particular, the constituent instruments, decisions, resolutions and other acts taken by the organization in accordance with those instruments, and established practice of the organization”. While it may seem superfluous to state that obligations arising from the constituent instruments or binding acts that are based on those instruments are indeed international obligations, the practical importance of obligations under the rules of the organization makes it preferable to dispel any doubt that breaches of these obligations are also covered by the present draft. The wording in paragraph 2, which refers to an obligation “established by a rule of the international organization”, is intended to refer to any obligation arising from the rules of the organization.

(5) The question may be raised as to whether all the obligations arising from rules of the organization are to be considered as international obligations. The legal nature of the rules of the organization is to some extent controversial. Many consider that the rules of treaty-based organizations are part of international law.¹²⁰ Some authors have held that, although international organizations are established by treaties or other instruments governed by international law, the internal law of the organization,

¹¹⁸ *Ibid.*, p. 54. See the related commentary, pp. 54–57.

¹¹⁹ *Ibid.*, p. 55 (para. (3) of the commentary).

¹²⁰ The theory that the “rules of the organization” are part of international law has been expounded particularly by Matteo Declewa, *Il diritto interno delle Unioni internazionali* (Padua, Cedam, 1962) and Giorgio Balladore Pallieri, “Le droit interne des organisations internationales”, *Recueil des cours de l'Académie de droit international de La Haye, 1969–II*, vol. 127, p. 1. For a recent reassertion, see Patrick Daillier and Alain Pellet, *Droit international public*, 7th ed. (Paris, Librairie générale de droit et de jurisprudence, 2002), pp. 576–577.

once it has come into existence, does not form part of international law.¹²¹ Another view, which finds support in practice,¹²² is that international organizations which have achieved a high degree of integration are a special case. A further view, which was shared by some members of the Commission, would draw a distinction according to the source and subject matter of the rules of the organization, and would exclude, for instance, certain administrative regulations from the domain of international law.

(6) Although the question of the legal nature of the rules of the organization is far from theoretical for the purposes of the present draft, since it affects the applicability of the principles of international law with regard to responsibility for breaches of certain obligations arising from rules of the organization, paragraph 2 does not attempt to express a clear-cut view on the issue. It simply intends to say that, to the extent that an obligation arising from the rules of the organization has to be regarded as an obligation under international law, the principles expressed in the present draft apply.

(7) The rules of an organization may devise specific treatment of breaches of obligations, and also with regard to the question of the existence of a breach. This does not need to be stated in article 8, because it could be adequately covered by a final provision of the draft, which would point to the possible existence of special rules on any of the matters covered by the draft. These special rules do not necessarily prevail over principles set out in the present draft.¹²³ For instance, with regard to the existence of a breach of an international obligation, a

special rule of the organization would not affect breaches of obligations that an international organization may owe to a non-member State. Nor would special rules affect obligations arising from a higher source, irrespective of the identity of the subject to whom the international organization owes the obligation.

(8) As explained in the commentary to article 12 on responsibility of States for internationally wrongful acts, the reference in paragraph 1 to the character of the obligation concerns the “various classifications of international obligations”.¹²⁴

(9) Existing obligations of an international organization may relate in a variety of ways to conduct of its member States or international organizations. For instance, an international organization may have acquired an obligation to prevent its member States from certain conduct. In this case, the conduct of member States would not *per se* cause a breach of the obligation. The breach would consist in the failure, on the part of the international organization, to comply with its obligation of prevention. Another possible combination of the conduct of an international organization with that of its member States occurs when the organization is under an obligation to achieve a certain result, irrespective of whether the necessary conduct will be taken by the organization itself or by one or more of its member States. This combination was acknowledged by the European Court of Justice in a case, *Parliament v. Council*, concerning a treaty establishing cooperation that was concluded by the European Community and its member States, on the one side, and several non-member States, on the other. The Court found that:

In those circumstances, in the absence of derogations expressly laid down in the Convention, the Community and its Member States as partners of the ACP [African, Caribbean and Pacific Group] States are jointly liable to those latter States for the fulfilment of every obligation arising from the commitments undertaken, including those relating to financial assistance.¹²⁵

Article 9. International obligation in force for an international organization

An act of an international organization does not constitute a breach of an international obligation unless the international organization is bound by the obligation in question at the time the act occurs.

Commentary

Given the fact that no specific issue appears to affect the application to international organizations of the principle expressed in article 13 on responsibility of States for internationally wrongful acts,¹²⁶ the term “State” is simply

from the assumption that the rules of the international organization in question are not part of international law.

¹²⁴ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 56–57 (para. (11) of the commentary).

¹²⁵ Case C-316/91. Judgment of 2 March 1994, *European Court Reports*, 1994-I, p. 625 at pp. 661–662.

¹²⁶ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 57. See also the related commentary, pp. 57–59. Resolution 1/2004 adopted in Berlin by the International Law Association is similarly worded: “An act of an international organization does not constitute a breach

¹²¹ Among the authors who defend this view are L. Focsaneanu, “Le droit interne de l’Organisation des Nations Unies”, *Annuaire français de droit international*, vol. 3 (1957), p. 315, P. Cahier, “Le droit interne des organisations internationales”, *Revue générale de droit international public*, vol. 67 (1963), p. 563, and J. A. Barberis, “Nouvelles questions concernant la personnalité juridique internationale”, *Recueil des cours de l’Académie de droit international de La Haye*, 1983-I, vol. 179, pp. 145 *et seq.*, at pp. 222–225. The distinction between international law and the internal law of international organizations was also upheld by Rudolf Bernhardt, “Qualifikation und Anwendungsbereich des internen Rechts internationaler Organisationen”, *Berichte der Deutschen Gesellschaft für Völkerrecht*, vol. 12 (1973), p. 7.

¹²² As a model of this type of organization one could cite the European Community, for which the European Court of Justice gave the following description in *Costa v. E.N.E.L.*, in 1964:

“By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the member States and which their courts are bound to apply.

... By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.”

Case 6/64, Judgment of 15 July 1964, *European Court Reports*, vol. X (1964), p. 585.

¹²³ The International Law Association stated in this regard: “The characterization of an act of an international organization as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by the international organization’s internal legal order.” (“Final Report of the Committee on Accountability of International Organisations”, part three, section one, adopted by resolution No. 1/2004), *Report of the Seventy-First Conference, Berlin, 16–21 August 2004* (see footnote 36 above), p. 199. This paragraph appears to start

replaced by “international organization” in the title and text of draft article 9.

Article 10. Extension in time of the breach of an international obligation

1. The breach of an international obligation by an act of an international organization not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of an international organization having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.

3. The breach of an international obligation requiring an international organization to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

Commentary

Similar considerations to those made in the commentary to draft article 9 apply in the case of draft article 10. The text corresponds to that of article 14 on responsibility of States for internationally wrongful acts,¹²⁷ with the replacement of the term “State” by “international organization”.

Article 11. Breach consisting of a composite act

1. The breach of an international obligation by an international organization through a series of actions and omissions defined in aggregate as wrongful, occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series, and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

Commentary

The observation made in the commentary to draft article 9 also applies with regard to draft article 11. This corresponds to article 15 on responsibility of States for internationally wrongful acts,¹²⁸ with the replacement of the term “State” by “international organization” in paragraph 1.

(Footnote 126 continued.)

of an international obligation unless the Organization is bound by the obligation in question at the time the act occurs.” (*Report of the Seventy-First Conference, Berlin, 16–21 August 2004* (see footnote 36 above), p. 199).

¹²⁷ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 59, and the related commentary, pp. 59–62.

¹²⁸ *Ibid.*, p. 62, with the related commentary at pp. 62–64.

CHAPTER IV

RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION IN CONNECTION WITH THE ACT OF A STATE OR ANOTHER INTERNATIONAL ORGANIZATION

(1) Articles 16–18 on responsibility of States for internationally wrongful acts¹²⁹ consider the cases in which a State assists or aids, directs and controls, or coerces another State in the commission of an internationally wrongful act. Parallel situations could be envisaged with regard to international organizations. For instance, an international organization may aid or assist a State or another international organization in the commission of an internationally wrongful act. For the purposes of international responsibility, there would be no reason for distinguishing the case of an international organization aiding or assisting a State or another international organization from that of a State aiding or assisting another State. Thus, even if available practice with regard to international organizations is limited, there is some justification for including, in the present draft, provisions that are parallel to articles 16–18 on responsibility of States for internationally wrongful acts.

(2) The pertinent provisions on responsibility of States for internationally wrongful acts are based on the premise that aid or assistance, direction and control, and coercion do not affect attribution of conduct to the State which is aided or assisted, under direction or control, or under coercion. It is that State which commits an internationally wrongful act, although in the case of coercion wrongfulness could be excluded, while the other State is held responsible not for having actually committed the wrongful act but for its causal contribution to the commission of the act.

(3) Relations existing between an international organization and its member States or international organizations allow the former organization to influence the conduct of members also in cases that are not envisaged in articles 16–18 on responsibility of States for internationally wrongful acts. Some international organizations have the power to take decisions binding their members, while most organizations may only influence their members’ conduct through non-binding acts. The consequences that this type of relation, which does not have a parallel in the relations between States, may entail with regard to an international organization’s responsibility will also be examined in the present chapter.

(4) The question of an international organization’s international responsibility in connection with the act of a State has been discussed in several cases before international tribunals or other bodies, but has not been examined by those tribunals or bodies because of lack of jurisdiction *ratione personae*. Reference should be made in particular to the following cases: *M. & Co.*¹³⁰ before

¹²⁹ *Ibid.*, pp. 65–69.

¹³⁰ *M. & Co. v. the Federal Republic of Germany*, Application No. 13258/87, Decision of 9 February 1990, European Commission of Human Rights, *Decisions and Reports*, vol. 64, p. 138.

the European Commission of Human Rights, *Cantoni*,¹³¹ *Matthews*¹³² and *Senator Lines*¹³³ before ECHR, and *H.v.d.P.*¹³⁴ before the Human Rights Committee. In the latter case, a communication concerning the conduct of the European Patent Office was held to be inadmissible, because that conduct could not, “in any way, be construed as coming within the jurisprudence of the Netherlands or of any other State party to the International Covenant on Civil and Political Rights and the Optional Protocol thereto”.¹³⁵

(5) Several cases concern the relations between the European Community and its member States. In *M. & Co.* the European Commission of Human Rights held:

The Commission first recalls that it is in fact not competent *ratione personae* to examine proceedings before or decisions of organs of the European Communities ... This does not mean, however, that by granting executory power to a judgment of the European Court of Justice the competent German authorities acted *quasi* as Community organs and are to that extent beyond the scope of control exercised by the Convention organs.¹³⁶

(6) A different view was endorsed recently by a WTO panel in *European Communities—Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*, which:

accepted the European Communities’ explanation of what amounts to its *sui generis* domestic constitutional arrangements that Community laws are generally not executed through authorities at Community level but rather through recourse to the authorities of its member States which, in such a situation, “act *de facto* as organs of the Community, for which the Community would be responsible under WTO law and international law in general”.¹³⁷

This approach implies making an exception for the relations between the European Community and its member States, to the effect that in the presence of a European Community act binding a member State, State authorities would be considered as acting as organs of the Community.

(7) The issue was recently before ECHR in *Bosphorus Hava Yollari Turizm ve Ticaret AS*. The Court said in its decision on admissibility in this case that it would examine at a later stage of the proceedings:

whether the impugned acts can be considered to fall within the jurisdiction of the Irish State within the meaning of Article 1 of the Convention [for the Protection of Human Rights and Fundamental Freedoms], when

that State claims that it was obliged to act in furtherance of a directly effective and obligatory EC [European Community] Regulation.¹³⁸

In its unanimous judgement on the merits of 30 June 2005, the Grand Chamber of the Court held that:

In the present case it is not disputed that the act about which the applicant company complained, the detention of the aircraft leased by it for a period of time, was implemented by the authorities of the respondent State on its territory following a decision made by the Irish Minister for Transport. In such circumstances the applicant company, as the addressee of the impugned act, fell within the “jurisdiction” of the Irish State, with the consequence that its complaint about that act is compatible *ratione loci, personae* and *materiae* with the provisions of the Convention.¹³⁹

For the purposes of the present chapter, it seems preferable at the current stage of judicial developments not to assume that a special rule has come into existence to the effect that, when implementing a binding act of the European Community, State authorities would act as organs of the European Community.

Article 12. Aid or assistance in the commission of an internationally wrongful act

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) That 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.

Commentary

The application to an international organization of a provision corresponding to draft article 16 on responsibility of States for internationally wrongful acts¹⁴⁰ is not problematic.¹⁴¹ Draft article 12 introduces only a few changes: the reference to the case in which a State aids or assists another State has been modified in order to refer to an international organization aiding or assisting a State or another international organization; in consequence, certain changes have been made in the rest of the text.

¹³¹ *Cantoni v. France*, Application No. 17862/91, Judgment of 15 November 1996, ECHR, *Reports of Judgments and Decisions*, 1996–V, p. 1614.

¹³² *Matthews v. the United Kingdom*, Application No. 24833/94, Grand Chamber, Judgment of 18 February 1999, ECHR, *Reports of Judgments and Decisions*, 1999–I, p. 251.

¹³³ *Senator Lines v. Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom*, Application No. 56672/00, Grand Chamber, Decision of 10 March 2004, ECHR, *Reports of Judgments and Decisions*, 2004–IV, p. 335.

¹³⁴ *H.v.d.P. v. the Netherlands*, Communication No. 217/1986, decision of 8 April 1987, *Official Records of the General Assembly, Forty-Second Session, Supplement No. 40 (A/42/40)*, p. 185.

¹³⁵ *Ibid.*, p. 186 (para. 3.2).

¹³⁶ *M. & Co. v. Germany* (see footnote 130 above), p. 144.

¹³⁷ WTO, *European Communities—Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs: Complaint by the United States*, Report of the Panel, 15 March 2005 (WT/DS/174/R), para. 7.725.

¹³⁸ *Bosphorus Hava Yollari ve Ticaret AS v. Ireland*, Application No. 45036/98, Decision of 13 September 2001 (unpublished), para. A.

¹³⁹ *Ibid.*, Grand Chamber, decision of 30 June 2005, ECHR, *Reports of Judgments and Decisions*, 2005–VI, para. 137.

¹⁴⁰ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 65. See the related commentary, pp. 65–67.

¹⁴¹ The ILA Berlin resolution stated: “There is also an internationally wrongful act of an international organization when it aids or assists a State or another international organization in the commission of an internationally wrongful act by that State or other international organization.” (*Report of the Seventy-First Conference, Berlin, 16–21 August 2004* (see footnote 36 above), pp. 200–201). This text does not refer to the conditions listed in article 12 under (a) and (b).

Article 13. Direction and control exercised over the commission of an internationally wrongful act

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) That 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.

Commentary

(1) The text of draft article 13 corresponds to draft article 17 on responsibility of States for internationally wrongful acts,¹⁴² with changes similar to those explained in the commentary to draft article 12. Thus, the reference to the directing and controlling State has been replaced by that to an international organization which directs and controls; moreover, the term “State” has been replaced with “State or another international organization” in the reference to the entity which is directed and controlled.

(2) If one assumes that the Kosovo Force (KFOR) is an international organization, an example of two international organizations allegedly exercising direction and control in the commission of a wrongful act may be taken from the Government of France’s preliminary objections in *Legality of Use of Force* before ICJ, when the French Government held that: “NATO is responsible for the ‘direction’ of KFOR and the United Nations for ‘control’ of it.”¹⁴³ A joint exercise of direction and control was probably envisaged.

(3) In the relations between an international organization and its member States and international organizations, the concept of “direction and control” could conceivably be extended so as to encompass cases in which an international organization takes a decision binding its members. The commentary to article 17 on responsibility of States for internationally wrongful acts explains that “Article 17 is limited to cases where a dominant State actually directs and controls conduct which is a breach of an international obligation of the dependent State”,¹⁴⁴ that “the term ‘controls’ refers to cases of domination over the commission of wrongful conduct and not simply the exercise of oversight, still less mere influence or concern”,¹⁴⁵ and that “the word ‘directs’ does not encom-

pass mere incitement or suggestion but rather connotes actual direction of an operative kind”.¹⁴⁶ If one interprets the provision in the light of the passages quoted above, the adoption of a binding decision on the part of an international organization could determine, under certain circumstances, a form of direction or control in the commission of an internationally wrongful act. The assumption is that the State or international organization which is the addressee of the decision is not given discretion to adopt conduct which, while complying with the decision, would not constitute an internationally wrongful act.

(4) If the adoption of a binding decision were to be regarded as a form of direction and control within the purview of draft article 13, this provision would overlap with draft article 15 of the present draft. The overlap would be only partial; it is sufficient to point out that draft article 15 also covers the case where a binding decision requires a member State or international organization to take an act which is not unlawful for that State or international organization. In any case, the possible overlap between draft articles 13 and 15 would not create any inconsistency, since both provisions assert, albeit under different conditions, the international responsibility of the international organization which has taken a decision binding its member States or international organizations.

Article 14. Coercion of a State or another international organization

An international organization which coerces a State or another international organization to commit an act is internationally responsible for that act if:

(a) The act would, but for the coercion, be an internationally wrongful act of the coerced State or international organization; and

(b) The coercing international organization does so with knowledge of the circumstances of the act.

Commentary

(1) The text of draft article 14 corresponds to draft article 18 on responsibility of States for internationally wrongful acts,¹⁴⁷ with changes similar to those explained in the commentary to draft article 12. The reference to a coercing State has been replaced with that to an international organization; moreover, the coerced entity is not necessarily a State, but could also be an international organization. Also the title has been modified from “Coercion of another State” to “Coercion of a State or another international organization”.

(2) In the relations between an international organization and its member States or international organizations, a binding decision by an international organization could give rise to coercion only under exceptional circumstances. The commentary to draft article 18 on responsibility of States for internationally wrongful acts stresses that:

¹⁴² *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 67. See also the related commentary, pp. 68–69.

¹⁴³ *I.C.J. Pleadings, Legality of Use of Force (Serbia and Montenegro v. France)*, Preliminary Objections of the French Republic (5 July 2000), p. 33, para. 46. A similar view with regard to the relations between NATO and KFOR was held by Alain Pellet, “L’imputabilité d’éventuels actes illicites: responsabilité de l’OTAN ou des États membres”, in C. Tomuschat, ed., *Kosovo and the International Community: A Legal Assessment* (The Hague, Kluwer Law International, 2002), pp. 193 *et seq.*, at p. 199.

¹⁴⁴ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 68 (para. (6) of the commentary).

¹⁴⁵ *Ibid.*, p. 69 (para. (7) of the commentary to article 17).

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.* See also the related commentary, pp. 69–70.

Coercion for the purpose of article 18 has the same essential character as *force majeure* under article 23. Nothing less than conduct which forces the will of the coerced State will suffice, giving it no effective choice but to comply with the wishes of the coercing State.¹⁴⁸

(3) Should nevertheless an international organization be considered as coercing a member State or international organization when it adopts a binding decision, there could be an overlap between draft article 14 and draft article 15. The overlap would be only partial, given the different conditions set by the two provisions, and especially the fact that according to draft article 15 the act committed by the member State or international organization need not be unlawful for that State or that organization. To the extent that there would be an overlap, an international organization could be regarded as responsible under either draft article 14 or draft article 15. This would not give rise to any inconsistency.

Article 15 [16]. Decisions, recommendations and authorizations addressed to member States and international organizations

1. An international organization incurs international responsibility if it adopts a decision binding a member State or international organization to commit an act that would be internationally wrongful if committed by the former organization and would circumvent an international obligation of the former organization.

2. An international organization incurs international responsibility if:

(a) It authorizes a member State or international organization to commit an act that would be internationally wrongful if committed by the former organization and would circumvent an international obligation of the former organization, or recommends that a member State or international organization commit such an act; and

(b) That State or international organization commits the act in question in reliance on the authorization or recommendation.

3. Paragraphs 1 and 2 apply whether or not the act in question is internationally wrongful for the member State or international organization to which the decision, authorization or recommendation is directed.

Commentary

(1) The fact that an international organization is a subject of international law, which is distinct from the organization's members, opens up the possibility for the organization to try to influence its members in order to achieve through them a result that the organization could not lawfully achieve directly, and it would circumvent one of its international obligations. As was noted by the delegation of Austria during the debates in the Sixth Committee: ...[A]n international organization should not

be allowed to escape responsibility by 'outsourcing' its actors."¹⁴⁹

(2) The Legal Counsel of WIPO considered the case of an international organization requiring a member State to commit an internationally unlawful act, and wrote:

[I]n the event a certain conduct, in which a member State engages in compliance with a request on the part of an international organization, appears to be in breach of an international obligation both of that State and of that organization, then the organization should also be regarded as responsible under international law.¹⁵⁰

(3) The opportunity for circumvention is likely to be higher when the conduct of the member State or international organization would not be in breach of an international obligation, for instance because the circumventing international organization is bound by a treaty with a non-member State and the same treaty does not produce effects for the organization's members.

(4) The existence on the part of the international organization of a specific intention of circumventing is not required. Thus, when an international organization requests its members to employ certain conduct and this would imply the circumvention of one of the organization's international obligations, that organization could not avoid its responsibility by showing the absence of any intention to circumvent its obligation.

(5) In the case of a binding decision, paragraph 1 does not stipulate as a pre-condition, for the international responsibility of an international organization to arise, that the required act be committed by member States or international organizations. Since compliance by members with a binding decision is to be expected, the likelihood of a third party's being injured would then be high. It appears preferable, therefore, to hold the organization already responsible and thus allow the third party that would be injured to seek a remedy even before the act is committed. Moreover, if the threshold of international responsibility is advanced, the international organization would have to refrain from placing its members in the uncomfortable position of either infringing their obligations under the decision or causing the international responsibility of the international organization, as well as possibly incurring their own responsibility.

(6) A member State or international organization may be given discretion with regard to implementation of a binding decision adopted by an international organization. In its judgment on the merits in *Bosphorus Hava Yollari Turizm ve Ticaret AS*, ECHR considered the conduct of member States of the European Community when implementing binding Community acts and observed:

[A] State would be fully responsible under the Convention for all acts falling outside its strict international legal obligations. The numerous Convention cases ... confirm this. Each case (in particular,

¹⁴⁹ *Official Records of the General Assembly, Fifty-Ninth Session, Sixth Committee, 22nd meeting (A/C.6/59/SR.22) and corrigendum, para. 24.*

¹⁵⁰ Comments and observations received from Governments and international organizations, *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/556, p. 52, sect. N.5.

¹⁴⁸ *Ibid.*, p. 69 (para. (2) of the commentary).

Cantoni, p. 1626, § 26) concerned a review by this Court of the exercise of State discretion for which Community law provided.¹⁵¹

(7) Paragraph 1 assumes that compliance with the binding decision of the international organization necessarily entails circumvention of one of its international obligations. As was noted in a statement in the Sixth Committee by the delegation of Denmark on behalf of the five Nordic countries:

... it appeared essential to find the point where the member State could be said to have so little “room for manoeuvre” that it would seem unreasonable to make it solely responsible for certain conduct.¹⁵²

Should, on the contrary, the decision allow the member State or international organization some discretion to take an alternative course which does not imply circumvention, responsibility would arise for the international organization that has taken the decision only if circumvention actually occurs, as stated in paragraph 2.

(8) Paragraph 2 considers the case in which an international organization circumvents one of its international obligations by recommending to a member State or international organization the commission of a certain act or by authorizing a member State or international organization to commit such an act. The effects of recommendations and authorizations may differ, especially according to the organization concerned. The reference to these two types of acts is intended to cover all non-binding acts of an international organization which are susceptible of influencing the conduct of member States or international organizations.

(9) For international responsibility to arise, the first condition in paragraph 2 is that the international organization authorizes an act that would be wrongful for that organization and moreover would allow it to circumvent one of its international obligations. Since the recommendation or authorization in question is not binding, and may not prompt any conduct which conforms to the recommendation or authorization, a further condition laid out in paragraph 2 is that, as specified under (a), the act which is recommended or authorized is actually committed.

(10) Moreover, as specified under (b), the act in question has to be committed “in reliance on that authorization or recommendation”. This condition implies a contextual analysis of the role that the recommendation or authorization actually plays in determining the conduct of the member State or international organization.

(11) Reliance on the recommendation or authorization should not be unreasonable. Responsibility of the recommending or authorizing international organization cannot arise if, for instance, the recommendation is outdated and not intended to apply to the current circumstances, because of the substantial changes that have intervened since the adoption.

(12) While the authorizing or recommending international organization would be responsible if it requested the commission of an act that would represent a circumvention of one of its obligations, that organization would clearly not be responsible for any other breach that the member State or international organization to which the authorization or recommendation is addressed might commit. To that extent, the following statement contained in a letter addressed on 11 November 1996 by the United Nations Secretary-General to the Prime Minister of Rwanda appears accurate:

... insofar as “Opération Turquoise” is concerned, although that operation was “authorized” by the Security Council, the operation itself was under national command and control and was not a United Nations operation. The United Nations is, therefore, not internationally responsible for acts and omissions that might be attributable to “Opération Turquoise”.¹⁵³

(13) Paragraph 3 makes it clear that, unlike draft articles 12–14, draft article 15 does not base the international responsibility of the international organization which takes a binding decision, or authorizes or recommends such a decision, on the unlawfulness of the conduct of the member State or international organization to which the decision, authorization or recommendation is addressed. As was noted in the commentaries to draft articles 13 and 14, when the conduct is unlawful and other conditions are fulfilled, there is the possibility of an overlap between the cases covered in those provisions and those to which draft article 15 applies. However, the consequence would only be the existence of alternative bases for holding an international organization responsible.

Article 16. Effect of this chapter

This chapter is without prejudice to the international responsibility of the State or international organization which commits the act in question, or of any other State or international organization.

Commentary

Draft article 16 is a “without prejudice” clause relating to the whole chapter. It corresponds in part to draft article 19 on responsibility of States for internationally wrongful acts.¹⁵⁴ The latter provision intends to leave unprejudiced “the international responsibility, under other provisions of these articles, of the State which commits the act in question, or of any other State”. References to international organizations have been added in draft article 16. Moreover, since the international responsibility of States committing a wrongful act is covered by the articles on responsibility of States for internationally wrongful acts and not by the present draft, the wording of the clause has been made more general.

¹⁵¹ *Bosphorus Hava Yollari Turizm ve Ticaret AS v. Ireland*, decision of 30 June 2005 (see footnote 139 above), para. 157.

¹⁵² *Official Records of the General Assembly* (see footnote 149 above), para. 66.

¹⁵³ Unpublished letter. “Opération Turquoise” was established by Security Council resolution 929 (1994).

¹⁵⁴ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 70, and the related commentary, pp. 70–71.