Chapter VII

RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

A. Introduction

125. The Commission, at its fifty-fourth session (2002), decided to include the topic "Responsibility of international organizations" in its programme of work and appointed Mr. Giorgio Gaja as Special Rapporteur for the topic.[467] At the same session, the Commission established a Working Group on the topic. The Working Group in its report[468] 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,[469] questions of attribution, issues relating to the responsibility of member States for conduct that is 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.[470]

126. From its fifty-fifth (2003) to its fifty-ninth (2007) sessions, the Commission had received and considered five reports from the Special Rapporteur,[471] and provisionally adopted draft articles 1 to 45 [44].[472]

B. Consideration of the topic at the present session

127. At the present session, the Commission had before it the sixth report of the Special Rapporteur (A/CN.4/597), as well as written comments received so far from international organizations.[473]

128. The Commission considered the sixth report of the Special Rapporteur at its 2960th to 2964th meetings from 9 to 16 May 2008. At its 2964th meeting, on 16 May 2008, the Commission referred draft articles 46 to 51 to the Drafting Committee. At the same meeting, the Commission established a Working Group under the chairpersonship of Mr. Enrique Candioti for the purpose of considering the issue of countermeasures as well as the advisability of including in the draft articles a provision relating to admissibility of claims.

129. Upon the recommendation of the Working Group, the Commission, at its 2968th meeting, on 29 May 2008, referred an additional draft article 47 *bis* on admissibility of claims to the Drafting Committee.[474]

130. A majority of its members being in favour of including in the draft articles provisions regulating the issue of countermeasures, the Working Group dealt with a number of related issues. It first considered whether, and to what extent, the legal position of members and non-members of an international organization should be distinguished in that respect. It came to the conclusion that a new draft article should be included, stating that an injured member of an international organization may not take countermeasures against the organization so long as the rules of the organization provide reasonable means to ensure compliance of the organization with its obligations under Part Two of the draft articles. Secondly, the Working Group agreed that the draft articles should specify the need for countermeasures to be taken in a manner

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[467] *Yearbook ... 2002*, vol. II (Part Two), p. 93, paras. 461 and 463. At its fifty-second session (2000), the Commission decided to include the topic "Responsibility of international organizations" in its long-term programme of work, *Yearbook ... 2000*, vol. II (Part Two), p. 131, para. 729. 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. The General Assembly, in paragraph 8 of its resolution 56/82 of 12 December 2001, requested the Commission to begin its work on the topic "Responsibility of international organizations".

[468] *Yearbook ... 2002*, vol. II (Part Two), pp. 93–96, paras. 465–488.

[469] *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, para. 76.

[470] *Yearbook ... 2002*, vol. II (Part Two), p. 93, para. 464.

[471] First report: *Yearbook ... 2003*, vol. II (Part One), document A/CN.4/532; second report: *Yearbook ... 2004*, vol. II (Part One), document A/CN.4/541; third report: *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/553; fourth report: *Yearbook ... 2006*, vol. II (Part One), document A/CN.4/564 and Add.1–2; and fifth report: *Yearbook ... 2007*, vol. II (Part One), document A/CN.4/583.

[472] Draft articles 1 to 3 were adopted at the fifty-fifth session (*Yearbook ... 2003*, vol. II (Part Two), para. 49); draft articles 4 to 7 at the fifty-sixth session (*Yearbook ... 2004*, vol. II (Part Two), para. 69); draft articles 8 to 16 [15] at the fifty-seventh session (*Yearbook ... 2005*, vol. II (Part Two), para. 203); draft articles 17 to 30 at the fifty-eighth session (*Yearbook ... 2006*, vol. II (Part Two), para. 88); and draft articles 31 to 45 [44] at the fifty-ninth session (*Yearbook ... 2007*, vol. II (Part Two), para. 341).

[473] Following the recommendations of the Commission (*Yearbook ... 2002*, vol. II (Part Two), paras. 464 and 488 and *Yearbook ... 2003*, vol. II (Part Two), para. 52), the Secretariat, on an annual basis, has been circulating the relevant chapter of the report of the Commission to international organizations asking for their comments and for any relevant materials which they could provide to the Commission. For comments from Governments and international organizations, see *Yearbook ... 2004*, vol. II (Part One), document A/CN.4/545; *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/547 and A/CN.4/556; *Yearbook ... 2006*, vol. II (Part One), document A/CN.4/568 and Add.1; and *Yearbook ... 2007*, vol. II (Part One), document A/CN.4/582. See also document A/CN.4/593 and Add.1 (reproduced in *Yearbook ... 2008*, vol. II (Part One)).

[474] Draft article 47 *bis*, as drafted by the Special Rapporteur, read as follows:

"*Admissibility of claims*

"1. An injured State may not invoke the responsibility of an international organization if the claim is not brought in accordance with any applicable rule relating to nationality of claims.

"2. An injured State or international organization may not invoke the responsibility of another international organization if the claim is subject to any applicable rule on the exhaustion of local remedies and any available and effective remedy has not been exhausted."

respecting the specificity of the targeted organization. Finally, the Working Group recommended that the draft articles should not address the possibility for a regional economic integration organization to take countermeasures on behalf of one of its injured members.

131. At its 2978th meeting, on 15 July 2008, the Commission received the oral report of the Working Group, which was delivered by the Chairperson of the Working Group. The Commission referred draft articles 52 to 57, paragraph 1, to the Drafting Committee, together with the recommendations of the Working Group.

132. The Commission considered and adopted the report of the Drafting Committee on draft articles 46 to 53 at its 2971st meeting, on 4 June 2008. At its 2989th meeting on 4 August 2008, the Commission adopted the title of chapter I of Part Three of the draft articles (sect. C.1 below).

133. At its 2993rd meeting, on 6 August 2008, the Commission adopted the commentaries to the said draft articles (sect. C.2 below).

134. At its 2989th meeting, on 4 August 2008, the Commission received the report of the Drafting Committee and took note of draft articles 54 to 60 on countermeasures, as provisionally adopted by the Drafting Committee.

1. Introduction by the Special Rapporteur of his sixth report

135. Before introducing his sixth report, the Special Rapporteur indicated that his seventh report would address certain outstanding issues such as the final provisions of the draft articles and the place of the chapter concerning the responsibility of a State in connection with the act of an international organization. The seventh report would also provide the opportunity to respond to comments made by States and international organizations on the draft articles provisionally adopted by the Commission and, as necessary, to propose certain amendments thereto.

136. The sixth report of the Special Rapporteur, dealing with the implementation of the responsibility of international organizations, followed, like the previous reports, the general pattern of the articles on responsibility of States for internationally wrongful acts. Consistent with the approach adopted in Part Two of the draft articles, the draft articles relating to the implementation of international responsibility only addressed the invocation of the responsibility of an international organization by a State or another international organization. Moreover, the implementation of the responsibility of a State towards an international organization was outside the scope of the draft articles.

137. Draft article 46[475] provided a definition of an "injured" State or international organization, in line with the criteria laid down in article 42 on State responsibility.

138. Draft articles 47[476] and 48[477] replicated, with minor adjustments, the corresponding provisions on State responsibility. The question arose whether the draft articles should contain a provision, similar to article 44 on State responsibility, dealing with nationality of claims and exhaustion of local remedies. In the view of the Special Rapporteur, since the situations in which such requirements would apply in relation to the implementation of the responsibility of an international organization were much more limited than in the context of inter-State relations, a provision on nationality of claims and exhaustion of local remedies could be omitted in the present draft articles.

139. Draft articles 49[478] and 50,[479] concerning, respectively, plurality of injured entities and plurality of responsible entities, were aligned on the corresponding articles on State responsibility, with a specific

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[475] Draft article 46 read as follows:

"*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 organization individually;

"(*b*) a group of parties including that State or that former international organization, or the international community as a whole, and the breach of the obligation:

"(i) specially affects that State or that international 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."

[476] Draft article 47 read as follows:

"*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."

[477] Draft article 48 read as follows:

"*Loss of the right to invoke responsibility*

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

"(*a*) the injured State or international organization has validly waived the claim;

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

[478] Draft article 49 read as follows:

"*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."

[479] Draft article 50 read as follows:

"*Plurality of responsible entities*

"1. Where an international organization and one or more States or other organizations are responsible for the same inter-

(*Continued on next page.*)

reference, however, to the case in which the responsibility of a member of an international organization was only subsidiary.

140. Draft article 51,[480] dealing with the invocation of responsibility by an entity other than an injured State or international organization, was based on article 48 on State responsibility. However, some adjustments had been made concerning the right of an international organization to invoke the responsibility of another international organization for a breach of an obligation owed to the international community as a whole. In the light of comments received from States and international organizations, the existence of such a right seemed to depend on whether the organization had a mandate to protect the general interests underlying the obligation in question. This limitation was reflected in paragraph 3 of draft article 51.

141. Draft articles 52,[481] 53,[482] 54,[483] 55[484] and 56[485] on countermeasures were based on the corresponding

(*Footnote 479 continued.*)

nationally 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 international 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."

[480] Draft article 51 read as follows:

"*Invocation 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 an 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 and if the organization that invokes responsibility has been given the function to protect the interest of the international community underlying that obligation.

"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."

[481] Draft article 52 read as follows:

"*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 injured organization."

[482] Draft article 53 read as follows:

"*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."

[483] Draft article 54 read as follows:

"*Proportionality*

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

[484] Draft article 55 read as follows:

"*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."

[485] Draft article 56 read as follows:

"*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."

articles on State responsibility. There seemed to be no reason for excluding, in general terms, that an injured State could take countermeasures against a responsible international organization. Moreover, while practice offered some examples of countermeasures by international organizations against responsible States, several States had taken the view, in their comments addressed to the Commission, that an injured organization could resort, in principle, to countermeasures under the same conditions as those applicable to States. However, in the relations between an international organization and its members, countermeasures were unlikely to be applicable. Therefore, an exception was made in paragraphs 4 and 5 of draft article 52.

142. Draft articles 57[486] addressed two separate issues. Paragraph 1, which corresponded *mutatis mutandis* to article 54 on State responsibility, was a "without prejudice" clause dealing with "lawful measures" taken against a responsible international organization by a State or another international organization that were not "injured" within the meaning of draft article 46. In the text of draft article 57, paragraph 1, the reference to "article 51, paragraph 1" should read "article 51, paragraphs 1 to 3".

143. Paragraph 2 of draft article 57 concerned the case of a regional economic integration organization to which exclusive competence over certain matters had been transferred by its members. Since the members of the organization would no longer be in a position to resort to countermeasures affecting those matters, the organization would be allowed, at the request of an injured member and on its behalf, to take countermeasures against another organization while respecting the requirement of proportionality.

144. After the adoption of the draft articles on countermeasures, the Commission would be able to fill a gap deliberately left in the chapter relating to circumstances precluding wrongfulness, whereby the drafting of article 19 had been postponed until the examination of the issues relating to countermeasures in the context of the implementation of the responsibility of an international organization. In his seventh report, the Special Rapporteur would examine the additional question of whether draft article 19 should also cover countermeasures by an injured international organization against a responsible State—a question that was not addressed in the context of the implementation of responsibility of international organizations.

[486] Draft article 57 read as follows:

"*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."

2. Summary of the debate

(a) *General comments*

145. Some members agreed with the suggestion by the Special Rapporteur that, before completing the first reading, the texts of the draft articles provisionally adopted would be reviewed in the light of all available comments from States and international organizations. According to another view, it was not appropriate for the Commission to do so, since the Commission should focus, for the time being, on the elaboration of a coherent set of draft articles without being influenced by political considerations; the second reading was the occasion to take due account of positions of States.

146. It was suggested by some members that a meeting be organized between the Commission and legal advisers of international organizations in order to engage in a concrete discussion of the issues raised by the present topic, including the question of countermeasures.

147. According to one view, it was regrettable that the draft articles submitted by the Special Rapporteur did not deal with the question of implementation by an injured international organization of the responsibility of the wrongdoing State, which meant that the Commission was leaving an unwelcome lacuna in the law of international responsibility.

(b) *Countermeasures*

(i) General remarks

148. Different opinions were expressed by the members as to the conditions under which international organizations may be the target of, or resort to, countermeasures. While certain members were against the inclusion of draft articles on countermeasures, other members supported their elaboration by the Commission. Several members supported the idea of establishing a working group for the purpose of considering the issue of countermeasures.

149. According to some members, there was no reason why countermeasures ought to be confined to inter-State relations. In this regard, it was stated that certain rules applicable to inter-State relations could be extended by analogy to the relations between States and international organizations, or between international organizations. It was also observed that countermeasures were only a means to ensure respect of the obligations incumbent upon the organization in the field of responsibility. A suggestion was made that the draft articles also cover countermeasures taken by an international organization against a State. However, several members called for a cautious approach with respect to countermeasures by and against international organizations, in view of the limited practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It was also stated that countermeasures should remain exceptional. Some members were of the opinion that countermeasures should not be made available in the situations covered by the present draft articles, as they also believed that countermeasures should not have been accepted in the articles on State responsibility. It was also suggested that any discussion of

the possibility for an international organization to resort to countermeasures should be limited to withholding the performance of contractual obligations under treaty relationships involving that organization.

150. Some members were of the view that the relationship between an international organization and its members should be treated differently, as regards countermeasures, from the relationship between an international organization and non-members.

151. Some members pointed to the fact that the practice within the European Union and in its relations with the World Trade Organization (WTO) could not constitute the basis for drawing general rules on the matter. In the case of the European Union, some members thought that this was due to the special nature of the European Union as a highly economically integrated entity, while other members emphasized the fact that the European Union member States had lost the capacity to impose countermeasures in the economic field. In the case of WTO, some members expressed the view that retaliations within the WTO system were contractual in nature and belonged to a special legal regime; it was also stated that such retaliations were subject to the law of treaties rather than to the regime on countermeasures.

152. Divergent views were expressed on whether sanctions imposed by the United Nations Security Council could be regarded as countermeasures. According to several members, such sanctions were subject to a different regime and should therefore remain outside the scope of the topic. In support of this position, reference was made to their punitive character and to their main purpose, which was the maintenance of international peace and security rather than the enforcement of obligations under international law. According to another view, sanctions by the Security Council could be regarded, in certain situations, as countermeasures in their essence, since they were directed against States that had breached international law and were frequently aimed at stopping internationally wrongful acts. The question was also raised as to whether, in case of unlawful sanctions imposed by the Security Council, the targeted States would be entitled to take countermeasures against the organization and those States that implemented them.

153. It was suggested that measures taken by an international organization, in accordance with its internal rules, against its members were to be regarded as sanctions rather than countermeasures. It was also observed that countermeasures must be distinguished from other types of measures, including those taken in the event of a material breach of a treaty obligation, which were governed by the law of treaties.

(ii) Specific comments on the draft articles

154. Some members expressed support, in general terms, for draft articles 52 to 56.

Draft article 52. Object and limits of countermeasures

155. With respect to draft article 52, several members emphasized the decisive role of the rules of the organization in determining whether an organization could resort to countermeasures against its members or be the target of countermeasures by them. It was suggested that disputes between an international organization and its members should, as far as possible, be settled in accordance with the rules and through the internal procedures of the organization. It was also emphasized that the existence and proper functioning of an international organization must not be jeopardized by unilateral countermeasures adopted by its members. As regards countermeasures taken by an injured organization, doubts were raised as to whether the concept of implied powers would constitute a sufficient basis for the right of an international organization to resort to countermeasures.

156. Some members expressed support for the reference to the rules of the organization contained in paragraphs 4 and 5 of draft article 52. However, it was suggested that draft article 52, paragraph 4, should be redrafted in order to clarify that a member of an international organization which considered itself injured by the organization could not, as a general rule, resort to countermeasures except if this conformed with the character and the rules of the organization; the same formulation should be included, *mutatis mutandis*, in paragraph 5. According to another proposal, the words "not inconsistent with" should be replaced by the word "allowed". It was also suggested that a paragraph 1 *bis* be added, limiting the power of an injured organization to resort to countermeasures to those situations in which such a power was enshrined in its constitutive instrument or in its internal rules. In the event that the rules of the organization were silent on countermeasures, a proposal was made to enunciate, in draft article 52, paragraphs 4 and 5, the prohibition of countermeasures that would significantly prejudice the position of the targeted organization, or threaten its functioning or existence.

157. According to another view, draft article 52 should be substantially reconsidered with a view to limiting countermeasures by international organizations to cases where competences have been transferred to an international organization and the organization resorts to countermeasures in the exercise of such competences.

158. While some members agreed with the Special Rapporteur that the internal rules of an international organization were only relevant to the relations between that organization and its members, other members of the Commission were of the view that respect by an international organization of its internal rules while taking countermeasures could also be claimed by non-members. In particular, it was proposed that draft article 52 enunciate that the targeted State or international organization, whether or not a member of the international organization resorting to countermeasures, should be able to contest the legality of such measures if the functions of that organization did not allow it to adopt countermeasures or if the organ that resorted to such measures acted *ultra vires*.

Draft article 53. Obligations not affected by countermeasures

159. With respect to paragraph 2 (*b*) of draft article 53, the question was raised whether this provision

corresponded to the *lex lata* or to the *lex ferenda*, and whether it applied to all international organizations.

Draft article 55. Conditions relating to resort to countermeasures

160. With respect to subparagraph 3 (*b*) of draft article 55, it was proposed that the scope of this exception be extended to situations in which a dispute was pending before a body other than a court or a tribunal, provided that such body had the power to make decisions binding on the parties. This would also cover mechanisms possibly available within an international organization for the settlement of disputes between the organization and its members.

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

161. With respect to draft article 57, it was stated that the two paragraphs dealt with questions that were too different in nature to be included in the same provision. Some members expressed support for draft article 57, paragraph 1, dealing with lawful measures that a non-injured State or international organization could take against a responsible international organization. It was suggested that the draft article include the requirement, enunciated in draft article 51, paragraph 3, that the organization invoking responsibility had been given the function to protect the interest of the international community underlying the obligation in question. However, it was also stated that replicating article 54 on State responsibility was not the only option for the Commission; in particular, the question was raised whether the Commission could go a step further and replace the expression "lawful measures" by "countermeasures".

162. Some members supported draft article 57, paragraph 2, dealing with countermeasures taken against a responsible international organization by a regional economic integration organization at the request of an injured member that had transferred to that organization exclusive competence over certain matters. However, according to some members, there was no valid reason to restrict the scope of this provision to regional economic integration organizations, and a suggestion was made that the scope of this provision be expanded so as to cover all cases in which member States had transferred to an international organization competent to act on their behalf. Other members expressed concern about this provision, indicating, in particular, that it would entail a serious risk of abuse and would produce the effect of bringing in more States than those initially injured by an internationally wrongful act. It was proposed that the draft article limit the right of an international organization to adopt countermeasures to those situations where such a right was expressly allowed by the mandate of the organization. It was also proposed that the right of an organization to adopt countermeasures in accordance with paragraph 2 of draft article 57 be limited to those measures that would have been lawfully possible for the member, had it taken those measures itself. If no consensual formulation of this paragraph could be found, a proposal was made either to delete it or to replace it by a "without prejudice" clause concerning regional economic integration organizations.

3. Concluding remarks of the Special Rapporteur

163. The Special Rapporteur observed that the Commission was divided as to whether the draft articles should include a chapter on countermeasures and, in the affirmative, as to what extent international organizations should be considered entitled to resort to countermeasures. A working group may attempt to reach a consensus on these issues. If only a "without prejudice" clause was adopted, there would be no opportunity to state, as the current wording of draft article 52, paragraphs 4 and 5 implies, that as a general rule countermeasures had no place in the relations between an international organization and its members. Such a statement, the aim of which was to curb countermeasures, was generally not spelled out in practice or in the literature.

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

1. Text of the draft articles

164. 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.[487] ***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.[488] ***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.

Article 3.[489] ***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.

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[487] For the commentary to this article, see *Yearbook ... 2003*, vol. II (Part Two), pp. 18–19.

[488] *Ibid.*, pp. 20–22.

[489] *Ibid.*, pp. 22–23.

Chapter II[490]

ATTRIBUTION OF CONDUCT TO AN INTERNATIONAL ORGANIZATION

Article 4.[491] *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.[492]

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.[493]

Article 5.[494] *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.[495] *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.

Article 7.[496] *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 III[497]

BREACH OF AN INTERNATIONAL OBLIGATION

Article 8.[498] *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.[499] *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.[500] *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.[501] *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 IV[502]

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

Article 12.[503] *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.

Article 13.[504] *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.

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[490] For the commentary to this chapter, see *Yearbook ... 2004*, vol. II (Part Two), p. 47.

[491] *Ibid.*, pp. 48–50.

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

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

[494] For the commentary to this article, see *Yearbook ... 2004*, vol. II (Part Two), pp. 50–52.

[495] *Ibid.*, pp. 52–53.

[496] *Ibid.*, pp. 53–54.

[497] For the commentary to this chapter, see *Yearbook ... 2005*, vol. II (Part Two), p. 42.

[498] For the commentary to this article, see *ibid.*

[499] *Idem*.

[500] *Idem*.

[501] *Idem*.

[502] *Ibid*., for the commentary to this chapter.

[503] *Ibid.*

[504] *Idem*.

Article 14.[505] *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].[506] *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 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 organization to which the decision, authorization or recommendation is directed.

Article 16 [15].[507] *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.

CHAPTER V[508]

CIRCUMSTANCES PRECLUDING WRONGFULNESS

Article 17.[509] *Consent*

Valid consent by a State or an international organization to the commission of a given act by another international organization precludes the wrongfulness of that act in relation to that State or the former organization to the extent that the act remains within the limits of that consent.

Article 18.[510] *Self-defence*

The wrongfulness of an act of an international organization is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the principles of international law embodied in the Charter of the United Nations.

Article 19.[511] *Countermeasures*

…[512]

Article 20.[513] **Force majeure**

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the act is due to *force majeure*, that is, the occurrence of an irresistible force or of an unforeseen event, beyond the control of the organization, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

(*a*) the situation of *force majeure* is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(*b*) the organization has assumed the risk of that situation occurring.

Article 21.[514] *Distress*

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.

2. Paragraph 1 does not apply if:

(*a*) the situation of distress is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(*b*) the act in question is likely to create a comparable or greater peril.

Article 22.[515] *Necessity*

1. Necessity may not be invoked by an international organization as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that organization unless the act:

(*a*) is the only means for the organization to safeguard against a grave and imminent peril an essential interest of the international community as a whole when the organization has, in accordance with international law, the function to protect that interest; and

(*b*) does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by an international organization as a ground for precluding wrongfulness if:

(*a*) the international obligation in question excludes the possibility of invoking necessity; or

(*b*) the organization has contributed to the situation of necessity.

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[505] *Idem*.

[506] *Idem*. The square bracket refers to the corresponding article in the third report of the Special Rapporteur, *Ibid.*, vol. II (Part One), document A/CN.4/553.

[507] *Ibid*., vol. II (Part Two), chap. VI, sect. C.2, para. 206, for the commentary to this article.

[508] For the commentary to this chapter, see *Yearbook ... 2006*, vol. II (Part Two), chap. VII, sect. C.2, para. 91.

[509] *Ibid*., for the commentary to this article.

[510] *Idem*.

[511] *Ibid.*

[512] Draft article 19 concerns countermeasures by an international organization in respect of an internationally wrongful act of another international organization or a State as circumstances precluding wrongfulness. The text of this draft article will be drafted at a later stage, when the issues relating to countermeasures by an international organization will be examined in the context of the implementation of the responsibility of an international organization.

[513] For the commentary to this article, see *Yearbook ... 2006*, vol. II (Part Two), chap. VII, sect. C.2, para. 91.

[514] *Idem*.

[515] *Idem*.

Article 23.[516] *Compliance with peremptory norms*

Nothing in this chapter precludes the wrongfulness of any act of an international organization which is not in conformity with an obligation arising under a peremptory norm of general international law.

Article 24.[517] *Consequences of invoking a circumstance precluding wrongfulness*

The invocation of a circumstance precluding wrongfulness in accordance with this chapter is without prejudice to:

(*a*) compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;

(*b*) the question of compensation for any material loss caused by the act in question.

Chapter (x)[518]

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

Article 25.[519] *Aid or assistance by a State in the commission of an internationally wrongful act by an international organization*

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

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

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

Article 26.[520] *Direction and control exercised by a State over the commission of an internationally wrongful act by an international organization*

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

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

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

Article 27.[521] *Coercion of an international organization by a State*

A State which coerces an 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 that international organization; and

(*b*) that State does so with knowledge of the circumstances of the act.

Article 28.[522] *International responsibility in case of provision of competence to an international organization*

1. A State member of an international organization incurs international responsibility if it circumvents one of its international obligations by providing the organization with competence in relation to that obligation, and the organization commits an act that, if committed by that State, would have constituted a breach of that obligation.

2. Paragraph 1 applies whether or not the act in question is internationally wrongful for the international organization.

Article 29.[523] *Responsibility of a State member of an international organization for the internationally wrongful act of that organization*

1. Without prejudice to draft articles 25 to 28, a State member of an international organization is responsible for an internationally wrongful act of that organization if:

(*a*) it has accepted responsibility for that act; or

(*b*) it has led the injured party to rely on its responsibility.

2. The international responsibility of a State which is entailed in accordance with paragraph 1 is presumed to be subsidiary.

Article 30.[524] *Effect of this chapter*

This chapter is without prejudice to the international responsibility, under other provisions of these draft articles, of the international organization which commits the act in question, or of any other international organization.

Part Two[525]

CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

Chapter I

GENERAL PRINCIPLES

Article 31.[526] *Legal consequences of an internationally wrongful act*

The international responsibility of an international organization which is entailed by an internationally wrongful act in accordance with the provisions of Part One involves legal consequences as set out in this Part.

Article 32.[527] *Continued duty of performance*

The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible international organization to perform the obligation breached.

Article 33.[528] *Cessation and non-repetition*

The international organization responsible for the internationally wrongful act is under an obligation:

(*a*) to cease that act, if it is continuing;

(*b*) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Article 34.[529] *Reparation*

1. The responsible international organization is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of an international organization.

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[516] *Idem*.

[517] *Idem*.

[518] The location of this chapter will be determined at a later stage. *Ibid*., for the commentary to this chapter.

[519] *Ibid.,* for the commentary to this article.

[520] *Idem*.

[521] *Idem*.

[522] *Idem*.

[523] *Idem*.

[524] *Idem*.

[525] For the commentary to this Part, see *Yearbook ... 2007*, vol. II (Part Two), chap. VIII, sect. C.2, para. 344.

[526] *Ibid.*, for the commentary to this article.

[527] *Idem*.

[528] *Idem*.

[529] *Idem*.

Article 35.[530] *Irrelevance of the rules of the organization*

1. The responsible international organization may not rely on its rules as justification for failure to comply with its obligations under this Part.

2. Paragraph 1 is without prejudice to the applicability of the rules of an international organization in respect of the responsibility of the organization towards its member States and organizations.

Article 36.[531] *Scope of international obligations set out in this Part*

1. The obligations of the responsible international organization set out in this Part may be owed to one or more other organizations, to one or more States, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.

2. This Part is without prejudice to any right, arising from the international responsibility of an international organization, which may accrue directly to any person or entity other than a State or an international organization.

CHAPTER II

REPARATION FOR INJURY

Article 37.[532] *Forms of reparation*

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

Article 38.[533] *Restitution*

An international organization responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(*a*) is not materially impossible;

(*b*) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Article 39.[534] *Compensation*

1. The international organization responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

Article 40.[535] *Satisfaction*

1. The international organization responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible international organization.

Article 41.[536] *Interest*

1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

Article 42.[537] *Contribution to the injury*

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or international organization or of any person or entity in relation to whom reparation is sought.

Article 43.[538] [539] *Ensuring the effective performance of the obligation of reparation*

The members of a responsible international organization are required to take, in accordance with the rules of the organization, all appropriate measures in order to provide the organization with the means for effectively fulfilling its obligations under this chapter.

CHAPTER III

Serious breaches of obligations under peremptory norms of general international law

Article 44 [43].[540] *Application of this chapter*

1. This chapter applies to the international responsibility which is entailed by a serious breach by an international organization of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible international organization to fulfil the obligation.

Article 45 [44].[541] *Particular consequences of a serious breach of an obligation under this chapter*

1. States and international organizations shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 44 [43].

2. No State or international organization shall recognize as lawful a situation created by a serious breach within the meaning of article 44 [43], nor render aid or assistance in maintaining that situation.

3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this chapter applies may entail under international law.

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[530] *Idem*.

[531] *Idem*.

[532] *Idem*.

[533] *Idem*.

[534] *Idem*.

[535] *Idem*.

[536] *Idem*.

[537] *Idem*.

[538] *Idem*.

[539] The following text was proposed, discussed and supported by some members: "The responsible international organization shall take all appropriate measures in accordance with its rules in order to ensure that its members provide the organization with the means for effectively fulfilling its obligations under this chapter."

[540] For the commentary, see *Yearbook ... 2007*, vol. II (Part Two), chap. VIII, sect. C.2, para. 344. The square bracket refers to the corresponding article in the fifth report of the Special Rapporteur, *ibid.*, vol. II (Part One), document A/CN.4/583.

[541] *Ibid.*, for the commentary, vol. II (Part Two), chap. VIII, sect. C.2, para. 344.

PART THREE[542]

THE IMPLEMENTATION OF THE INTERNATIONAL RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

CHAPTER I

INVOCATION OF THE RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

Article 46.[543] ***Invocation of responsibility by an injured State or international organization***

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

(*a*) that State or the former international organization individually;

(*b*) a group of States or international organizations including that State or the former international organization, or the international community as a whole, and the breach of the obligation:

(i) specially affects that State or that international organization; or

(ii) is of such a character as radically to change the position of all the other States and international organizations to which the obligation is owed with respect to the further performance of the obligation.

Article 47.[544] ***Notice of claim by an injured State or international organization***

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

2. 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.

Article 48.[545] ***Admissibility of claims***

1. An injured State may not invoke the responsibility of an international organization if the claim is not brought in accordance with any applicable rule relating to nationality of claims.

2. When a rule requiring the exhaustion of local remedies applies to a claim, an injured State or international organization may not invoke the responsibility of another international organization if any available and effective remedy provided by that organization has not been exhausted.

Article 49 [48].[546] ***Loss of the right to invoke responsibility***

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

(*a*) the injured State or international organization has validly waived the claim;

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

Article 50 [49].[547] **Plurality of injured States or international organizations**

Where several States or international organizations 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 for the internationally wrongful act.

Article 51 [50].[548] **Plurality of responsible States or international organizations**

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 State or international organization may be invoked in relation to that act.

2. Subsidiary responsibility, as in the case of draft article 29, may be invoked insofar as the invocation of the primary responsibility has not led to reparation.

3. Paragraphs 1 and 2:

(*a*) *do not permit any injured State or international organization to recover, by way of compensation, more than the dama*ge it has suffered;

(*b*) are without prejudice to any right of recourse that the State or international organization providing reparation may have against the other responsible States or international organizations.

Article 52 [51].[549] ***Invocation of responsibility by a State or an international organization other than an injured State or international organization***

1. A State or an international organization other than an injured State or international 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 States or international organizations, including the State or organization that invokes responsibility, and is established for the protection of a collective interest of the group.

2. A 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. An international organization that is not an injured international 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 and safeguarding the interest of the international community underlying the obligation breached is included among the functions of the international organization invoking responsibility.

4. A State or an international organization entitled to invoke responsibility under paragraphs 1 to 3 may claim from the responsible international organization:

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

(*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 draft articles 47, 48, paragraph 2, and 49 apply to an invocation of responsibility by a State or international organization entitled to do so under paragraphs 1 to 4.

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[542] For the commentary, see section C.2. below.

[543] *Idem*.

[544] *Idem*.

[545] *Idem*.

[546] *Idem*. The square bracket refers to the corresponding article in the sixth report of the Special Rapporteur (A/CN.4/597).

[547] For the commentary, see section C.2. below.

[548] *Idem*.

[549] *Idem*.

Article 53.[550] *Scope of this Part*

This Part is without prejudice to the entitlement that a person or entity other than a State or an international organization may have to invoke the international responsibility of an international organization.

2. Text of the draft articles with commentaries thereto adopted by the Commission at its sixtieth session

165. The text of draft articles together with commentaries thereto provisionally adopted by the Commission at its sixtieth session is reproduced below.

Part Three

THE IMPLEMENTATION OF THE INTERNATIONAL RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

Commentary

(1) Part Three of the present draft articles concerns the implementation of the international responsibility of international organizations. This Part is subdivided into two chapters, according to the general pattern of the articles on responsibility of States for internationally wrongful acts.[551] Chapter I deals with the invocation of international responsibility and with certain associated issues. These do not include questions relating to remedies that may be available for implementing international responsibility. Chapter II considers countermeasures taken in order to induce the responsible international organization to cease the unlawful conduct and to provide reparation.

(2) Issues relating to the implementation of international responsibility are here considered insofar as they concern invocation of the responsibility of an international organization. Thus, while the present articles consider the invocation of responsibility by a State or an international organization, they do not address questions relating to the invocation of responsibility of States. However, one provision (art. 51) refers to the case in which the responsibility of one or more States concurs with that of one or more international organizations for the same wrongful act.

Chapter I

INVOCATION OF THE RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

Article 46. Invocation of responsibility by an injured State or international organization

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

(*a*) that State or the former international organization individually;

(*b*) a group of States or international organizations including that State or the former international organization, or the international community as a whole, and the breach of the obligation:

(i) specially affects that State or that international organization; or

(ii) is of such a character as radically to change the position of all the other States and international organizations to which the obligation is owed with respect to the further performance of the obligation.

Commentary

(1) The present article defines when a State or an international organization is entitled to invoke responsibility as an injured State or international organization. This implies the entitlement to claim from the responsible international organization compliance with the obligations that are set out in Part Two.

(2) Subparagraph (*a*) considers the more frequent case of responsibility arising for an international organization: that of a breach of an obligation owed to a State or another international organization individually. This subparagraph corresponds to article 42 (*a*) on responsibility of States for internationally wrongful acts.[552] It seems clear that the conditions for a State to invoke responsibility as an injured State cannot vary according to the fact that the responsible entity is another State or an international organization. Similarly, when an international organization owes an obligation to another international organization individually, the latter organization has to be regarded as entitled to invoke responsibility as an injured organization in case of breach.

(3) Practice concerning the entitlement of an international organization to invoke international responsibility because of the breach of an obligation owed to that organization individually mainly concerns breaches of obligations that are committed by States. Since the current articles do not address questions relating to the invocation of responsibility of States, this practice is here relevant only indirectly. The obligations breached to which practice refers were imposed either by a treaty or by general international law. It was in the latter context that in its advisory opinion on *Reparation for Injuries Suffered in the Service of the United Nations*, the ICJ stated that it was "established that the Organization has capacity to bring claims on the international plane".[553] Also in the context of breaches of obligations under general international law that were committed by a State, the Governing Council of the United Nations Compensation Commission envisaged compensation "with respect to any direct loss, damage, or injury to Governments or international organizations as a result of Iraq's unlawful invasion and occupation of Kuwait".[554] On this basis, several entities that were expressly defined as international organizations

[550] *Idem*.

[551] *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 26–30.

[552] *Ibid.*, pp. 117–119.

[553] *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 174, at pp. 184–185.

[554] S/AC.26/1991/7/Rev.1, para. 34.

were, as a result of their claims, awarded compensation by the Panel of Commissioners: the Arab Planning Institute, the Inter-Arab Investment Guarantee Corporation, the Gulf Arab States Educational Research Center, the Arab Fund for Economic and Social Development, the Joint Program Production Institution for the Arab Gulf Countries and the Arab Towns Organization.[555]

(4) According to article 42 (*b*) on responsibility of States for internationally wrongful acts, a State may invoke responsibility as an injured State also when the obligation breached is owed to a group of States or to the international community as a whole, and the breach of the obligation "(i) specially affects that State, or (ii) is of such a character as radically to change the position of all the other States to which the obligation is owed with regard to the further performance of the obligation".[556] The related commentary gives as an example for the first category a coastal State that is particularly affected by the breach of an obligation concerning pollution of the high seas;[557] for the second category, the party to a disarmament treaty or "any other treaty where each party's performance is effectively conditioned upon and requires the performance of each of the others".[558]

(5) Breaches of this type, which rarely affect States, are even less likely to be relevant for international organizations. However, one cannot rule out that an international organization may commit a breach that falls into one or the other category and that a State or an international organization may then be entitled to invoke responsibility as an injured State or international organization. It is therefore preferable to include in the present article the possibility that a State or an international organization may invoke responsibility of an international organization as an injured State or international organization under similar circumstances. This is provided in subparagraph (*b*) (i) and (ii).

(6) While the *chapeau* of the present article refers to "the responsibility of another international organization", this is due to the fact that the text cumulatively considers invocation of responsibility by a State or an international organization. The reference to "another" international organization is not intended to exclude the case that a State is injured and only one international organization—the responsible organization—is involved. Nor does the reference to "a State" and to "an international organization" in the same *chapeau* imply that more than one State or international organization may not be injured by the same internationally wrongful act.

(7) Similarly, the reference in subparagraph (*b*) to "a group of States or international organizations" does not necessarily imply that the group should comprise both States and international organizations or that there should be a plurality of States or international organizations. Thus, the text is intended to include the following cases: that the obligation breached is owed by the responsible international organization to a group of States; that it is owed to a group of other organizations; that it is owed to a group comprising both States and organizations, but not necessarily a plurality of either.

Article 47. Notice of claim by an injured State or international organization

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

2. 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.

Commentary

(1) This article corresponds to article 43 on responsibility of States for internationally wrongful acts.[559] With regard to notice of claim for invoking international responsibility of an international organization, there would be little reason for envisaging different modalities from those that are applicable when an injured State invokes the responsibility of another State. Moreover, the same rule should apply whether the entity invoking responsibility is a State or an international organization.

(2) Paragraph 1 does not determine which form the invocation of responsibility should take. The fact that, according to paragraph 2, the State or international organization invoking responsibility may specify some elements, and in particular "what form reparation should take", does not imply that the responsible international organization is bound to conform to those specifications.

(3) While paragraph 1 refers to the responsible international organization as "another international organization", this does not mean that, when the entity invoking responsibility is a State, more than one international organization needs to be involved.

(4) Although the present article refers to "an injured State or international organization", according to article 52, paragraph 5, the same rule applies to notice of claim when a State or an international organization is entitled to invoke responsibility without being an injured State or international organization within the definition of article 46.

Article 48. Admissibility of claims

1. An injured State may not invoke the responsibility of an international organization if the claim is not brought in accordance with any applicable rule relating to nationality of claims.

[555] Report and recommendations made by the Panel of Commissioners concerning the Sixth Instalment of "F1" Claims (S/AC.26/2002/6), paras. 213–371.

[556] *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 29.

[557] *Ibid.*, p. 119, para. 12.

[558] *Ibid.*, para. 13.

[559] *Ibid.*, pp. 119–120.

2. When a rule requiring the exhaustion of local remedies applies to a claim, an injured State or international organization may not invoke the responsibility of another international organization if any available and effective remedy provided by that organization has not been exhausted.

Commentary

(1) This article corresponds to article 44 on responsibility of States for internationally wrongful acts.[560] It concerns the admissibility of certain categories of claims that States or international organizations may prefer when invoking the international responsibility of an international organization. Paragraph 1 considers those claims that are subject to the rule on nationality of claims, while paragraph 2 relates to the claims to which the local remedies rule applies.

(2) Nationality of claims is a requirement applying to States exercising diplomatic protection. Although article 1 of the draft on diplomatic protection adopted by the Commission at its fifty-eighth session defines that institution with regard to the invocation by a State 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", this definition is made "for the purposes of the … draft articles".[561] The reference only to the relations between States is understandable in view of the fact that, generally, diplomatic protection is relevant in that context.[562] However, diplomatic protection could be exercised by a State also towards an international organization, for instance when an organization deploys forces on the territory of a State and the conduct of those forces leads to a breach of an obligation under international law concerning the treatment of individuals.

(3) The requirement that a person be a national for diplomatic protection to be admissible is already implied in the definition quoted in the previous paragraph. It is expressed in article 3, paragraph 1, on diplomatic protection in the following terms: "The State entitled to exercise diplomatic protection is the State of nationality."[563]

(4) Paragraph 1 of the present article only concerns the exercise of diplomatic protection by a State. When an international organization prefers a claim against another international organization, no requirement concerning nationality applies. With regard to the invocation of the responsibility of a State by an international organization, the ICJ stated in its advisory opinion on *Reparation for Injuries Suffered in the Service of the United Nations* that "the question of nationality is not pertinent to the admissibility of the claim".[564]

(5) Paragraph 2 relates to the local remedies rule. Under international law, this rule does not apply only to claims concerning diplomatic protection, but also to claims relating to the respect of human rights.[565] While the local remedies rule does not apply in the case of functional protection,[566] when an international organization acts in order to protect one of its agents in relation to the performance of his or her mission, an organization may include in its claim also "the damage suffered by the victim or by persons entitled through him", as the ICJ said in its advisory opinion on *Reparation for Injuries Suffered in the Service of the United Nations*.[567] To that extent, the requirement that local remedies be exhausted may be considered to apply.

(6) With regard to a responsible international organization, the need to exhaust local remedies depends on the circumstances of the claim. Provided that the requirement applies in certain cases, there is no need to define here more precisely when the local remedies rule would be applicable. One clear case appears to be that of a claim in respect of the treatment of an individual by an international organization while administering a territory. The local remedies rule has also been invoked with regard to remedies existing within the European Union. One instance of practice is provided by a statement made on behalf of all the member States of the European Union by the Director-General of the Legal Service of the European Commission before the Council of the International Civil Aviation Organization 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 European Union contended that the claim of the United States was inadmissible because remedies relating to the controversial European Commission regulation had not been exhausted, since the measure was at the time "subject to challenge before the national courts of EU Member States and the European Court of Justice".[568] This practice suggests that whether a claim is addressed to the European Union member States, or the responsibility of the European Union is invoked, exhaustion of remedies existing within the European Union would be required.

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[560] *Ibid.*, pp. 120–121.

[561] *Yearbook ... 2006*, vol. II (Part Two), p. 24, para. 49.

[562] It was also in the context of a dispute between two States that the ICJ found in its judgment on the preliminary objections in the *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* case that the definition provided in article 1 on diplomatic protection reflected "customary international law" (*Preliminary Objections, Judgment, I.C.J. Reports 2007*, p. 582, at p. 599, para. 39). The text of the judgment is available at www.icj-cij.org.

[563] *Yearbook ... 2006*, vol. II (Part Two), p. 24, para. 49.

[564] *Reparation for Injuries Suffered in the Service of the United Nations* (see footnote 553 above), p. 186.

[565] See especially A. A. Cançado Trindade, *The Application of the Rule of Exhaustion of Local Remedies in International Law: its Rationale in the International Protection of Individual Rights*, Cambridge University Press, 1983, pp. 46–56; C. F. Amerasinghe, *Local Remedies in International Law*, 2nd ed., Cambridge University Press, 2004, pp. 64–75; and R. Pisillo Mazzeschi, *Esaurimento dei ricorsi interni e diritti umani*, Turin, Giappichelli, 2004. These authors focus on the exhaustion of local remedies with regard to claims based on human rights treaties.

[566] This point was stressed by J. Verhoeven, "Protection diplomatique, épuisement des voies de recours internes et juridictions européennes", *Droit du pouvoir, pouvoir du droit—Mélanges offerts à Jean Salmon*, Brussels, Bruylant, 2007, p. 1511, at p. 1517.

[567] *Reparation for Injuries Suffered in the Service of the United Nations* (see footnote 553 above), p. 184.

[568] See the "Oral statement and comments on the US response presented by the Member States of the European Union" of 15 November 2000, before the Council of the International Civil Aviation Organization under its Rules for the Settlement of Differences (document 7782/2) in the disagreement with the United States arising under the Convention on International Aviation done at Chicago on 7 December 1944, p. 15. See also *Yearbook ... 2004*, vol. II (Part One), document A/CN.4/545, annex, attachment 18.

(7) The need to exhaust local remedies with regard to claims towards an international organization has been accepted, at least in principle, by the majority of writers.[569] Although the term "local remedies" may seem inappropriate in this context, because it seems to refer to remedies available in the territory of the responsible entity, it has generally been used in English texts as a term of art and as such has been included also in paragraph 2.

(8) As in article 44 on responsibility of States for internationally wrongful acts,[570] the requirement for local remedies to be exhausted is conditional on the existence of "any available and effective remedy". This requirement has been elaborated in greater detail by the Commission in articles 14 and 15 on diplomatic protection,[571] but for the purpose of the present articles the more concise description may prove adequate.

(9) While the existence of available and effective remedies within an international organization may be the prerogative of only a limited number of organizations, paragraph 2, by referring to remedies "provided by that organization", intends to include also remedies that are available before arbitral tribunals, national courts or administrative bodies when the international organization has accepted their competence to examine claims. The location of the remedies may affect their effectiveness in relation to the individual concerned.

(10) As in other provisions, the reference to "another" international organization in paragraph 2 is not intended to exclude that responsibility may be invoked towards an international organization even when no other international organization is involved.

(11) Paragraph 2 is also relevant when, according to article 52, responsibility is invoked by a State or an international organization other than an injured State or international organization. A reference to article 48, paragraph 2, is made in article 52, paragraph 5, to this effect.

Article 49 [48]. Loss of the right to invoke responsibility

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

(*a*) the injured State or international organization has validly waived the claim;

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

Commentary

(1) The present article closely follows the text of article 45 on responsibility of States for internationally wrongful acts,[572] with replacement of "a State" with "an international organization" in the *chapeau* and the addition of "or international organization" in subparagraphs (*a*) and (*b*).

(2) It is clear that, for an injured State, the loss of the right to invoke responsibility can hardly depend on whether the responsible entity is a State or an international organization. In principle, an international organization should also be considered to be in the position of waiving a claim or acquiescing in the lapse of the claim. However, it is to be noted that the special features of international organizations make it generally difficult to identify which organ is competent to waive a claim on behalf of the organization and to assess whether acquiescence on the part of the organization has taken place. Moreover, acquiescence on the part of an international organization may involve a longer period than the one normally sufficient for States.

(3) Subparagraphs (*a*) and (*b*) specify that a waiver or acquiescence entails the loss of the right to invoke

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[569] The applicability of the local remedies rule to claims addressed by States to international organizations was maintained by several authors: J.-P. Ritter, "La protection diplomatique à l'égard d'une organisation internationale", *Annuaire français de droit international*, vol. 8 (1962), p. 427, at pp. 454–455; P. De Visscher, "Observations sur le fondement et la mise en oeuvre du principe de la responsabilité de l'Organisation des Nations Unies", *Revue de droit international et de droit comparé*, vol. 40 (1963), p. 165, at p. 174; R. Simmonds, *Legal Problems Arising from the United Nations Military Operations in the Congo*, The Hague, Nijhoff, 1968, p. 238; B. Amrallah, "The international responsibility of the United Nations for activities carried out by the U.N. peace-keeping forces", *Revue égyptienne de droit international*, vol. 32 (1976), p. 57, at p. 67; L. Gramlich, "Diplomatic protection against acts of intergovernmental organs", *German Yearbook of International Law*, vol. 27 (1984), p. 386, at p. 398 (more tentatively); H. G. Schermers and N. M. Blokker, *International Institutional Law: Unity within Diversity*, 3rd rev. ed., The Hague, Nijhoff, 1995, pp. 1167–1168, para. 1858; P. Klein, *La responsabilité des organisations internationales dans les ordres juridiques internes et en droit des gens*, Brussels, Bruylant/Editions de l'Université de Bruxelles, 1998, pp. 534 *et seq.*; C. Pitschas, *Die völkerrechtliche Verantwortlichkeit der Europäischen Gemeinschaften und ihrer Mitgliedstaaten*, Berlin, Duncker and Humblot, 2001, p. 250; and K. Wellens, *Remedies against International Organisations*, Cambridge University Press, 2002, pp. 66–67. The same opinion was expressed by the International Law Association in its final report on accountability of international organizations, *Report of the Seventy-First Conference* (see footnote 26 above), p. 213. C. Eagleton, "International organization and the law of responsibility", *Recueil des cours de l'Académie de droit international de La Haye, 1950-I*, vol. 76, p. 323, at 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". A. A. Cançado Trindade, in "Exhaustion of local remedies and the law of international organizations", *Revue de droit international et de sciences diplomatiques et politiques*, vol. 57, No. 2 (1979), p. 81, at 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 M. Pérez González, "Les organisations internationales et le droit de la responsabilité", *Revue générale de droit international public*, vol. 92 (1988), p. 63, at p. 71. C. F. Amerasinghe, in *Principles of the Institutional Law of International Organizations*, 2nd rev. ed., Cambridge University Press, 2005, 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 F. Vacas Fernández, *La responsabilidad internacional de Naciones Unidas: fundamento y principales problemas de su puesta en práctica*, Madrid, Dykinson, 2002, pp. 139–140.

[570] *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 120–121.

[571] *Yearbook ... 2006*, vol. II (Part Two), p. 25.

[572] *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 121–123.

responsibility only if it is "validly" made. As was stated in paragraph (4) of the commentary on article 17, this term "refers to matters 'addressed by international law rules outside the framework of State responsibility', such as whether the agent or person who gave the consent was authorized to do so on behalf of the State or international organization, or whether the consent was vitiated by coercion or some other factor".[573] In the case of an international organization, validity implies that the rules of the organization must be respected. However, this requirement may encounter limits such as those stated in article 46, paragraphs 2 and 3, of the 1986 Vienna Convention with regard to the relevance of respecting the rules of the organization relating to competence to conclude treaties in relation to the invalidity of the treaty for infringement of those rules.

(4) When there is a plurality of injured States or injured international organizations, the waiver by one or more State or international organization does not affect the entitlement of the other injured States or organizations to invoke responsibility.

(5) Although subparagraphs (*a*) and (*b*) refer to "the injured State or international organization", a loss of the right to invoke responsibility because of a waiver or acquiescence may occur also for a State or an international organization that is entitled, in accordance with article 52, to invoke responsibility not as an injured State or international organization. This is made clear by the reference to article 49 contained in article 52, paragraph 5.

Article 50 [49]. Plurality of injured States or international organizations

Where several States or international organizations 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 for the internationally wrongful act.

Commentary

(1) This provision corresponds to article 46 on responsibility of States for internationally wrongful acts.[574] The following cases, all relating to responsibility for a single wrongful act, are here considered: that there is a plurality of injured States; that there exists a plurality of injured international organizations; that there are one or more injured States and one or more injured international organizations.

(2) Any injured State or international organization is entitled to invoke responsibility independently from any other injured State or international organization. This does not preclude some or all of the injured entities invoking responsibility jointly, if they so wish. Coordination of claims would contribute to avoid the risk of a double recovery.

(3) An instance of claims that may be concurrently preferred by an injured State and an injured international organization was envisaged by the ICJ in its advisory opinion on *Reparation for Injuries Suffered in the Service of the United Nations*. The Court found that both the United Nations and the national State of the victim could claim "in respect of the damage caused … to the victim or to persons entitled through him" and noted that there was "no rule of law which assigns priority to the one or to the other, or which compels either the State or the Organization to refrain from bringing an international claim. The Court sees no reason why the parties concerned should not find solutions inspired by goodwill and common sense".[575]

(4) An injured State or international organization could engage itself to refrain from invoking responsibility, leaving other injured States or international organizations to do so. If this engagement is not only an internal matter between the injured entities, it could lead to the loss for the former State or international organization of the right to invoke responsibility according to article 49.

(5) When an international organization and one or more of its members are both injured as the result of the same wrongful act, the internal rules of an international organization could similarly attribute to the organization or to its members the exclusive function of invoking responsibility.

Article 51 [50]. Plurality of responsible States or international organizations

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 State or international organization may be invoked in relation to that act.

2. Subsidiary responsibility, as in the case of draft article 29, may be invoked insofar as the invocation of the primary responsibility has not led to reparation.

3. Paragraphs 1 and 2:

(*a*) do not permit any injured State or international organization to recover, by way of compensation, more than the damage it has suffered;

(*b*) are without prejudice to any right of recourse that the State or international organization providing reparation may have against the other responsible States or international organizations.

Commentary

(1) The present article considers the case where an international organization is responsible for a given wrongful act together with one or more other entities, either international organizations or States. The joint responsibility of an international organization with one or more States is envisaged in articles 12 to 15, which consider the responsibility of an international organization in connection with

[573] *Yearbook ... 2006*, vol. II (Part Two), p. 122.

[574] *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 123–124.

[575] *Reparation for Injuries Suffered in the Service of the United Nations* (see footnote 553 above), pp. 184–186.

the act of a State, and in articles 25 to 29, which concern the responsibility of a State in connection with the act of an international organization. Another example is provided by so-called "mixed agreements" that are concluded by the European Community together with its member States, when such agreements provide for joint responsibility. As was stated by the European Court of Justice in *European Parliament* v. *Council of the European Union* relating to a mixed cooperation agreement:

> In those circumstances, in the absence of derogations expressly laid down in the [Fourth ACP-EEC] Convention, the Community and its Member States as partners of the [African, Caribbean and Pacific Group of] 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.[576]

(2) Like article 47 on responsibility of States for internationally wrongful acts,[577] paragraph 1 provides that the responsibility of each responsible entity may be invoked by the injured State or international organization. However, there may be cases in which a State or an international organization bears only subsidiary responsibility, to the effect that it would have an obligation to provide reparation only if, and to the extent that, the primarily responsible State or international organization fails to do so. Article 29, paragraph 2, to which paragraph 2 of the present article refers, gives an example of subsidiary responsibility, by providing that, when the responsibility of a member State arises for the wrongful act of an international organization, responsibility is "presumed to be subsidiary".

(3) Whether responsibility is primary or subsidiary, an injured State or international organization is not required to refrain from addressing a claim to a responsible entity until another entity whose responsibility has been invoked has failed to provide reparation. Subsidiarity does not imply the need to follow a chronological sequence in addressing a claim.

(4) Paragraph 3 corresponds to article 47, paragraph 2, on responsibility of States for internationally wrongful acts, with the addition of the words "or international organization" in subparagraphs (*a*) and (*b*). A slight change in the wording of subparagraph (*b*) intends to make it clearer that the right of recourse accrues to the State or international organization "providing reparation".

Article 52 [51]. Invocation of responsibility by a State or an international organization other than an injured State or international organization

1. A State or an international organization other than an injured State or international 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 States or international organizations, including the State or organization that invokes responsibility, and is established for the protection of a collective interest of the group.

2. A 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. An international organization that is not an injured international 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 and safeguarding the interest of the international community underlying the obligation breached is included among the functions of the international organization invoking responsibility.

4. A State or an international organization entitled to invoke responsibility under paragraphs 1 to 3 may claim from the responsible international organization:

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

(*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 draft articles 47, 48, paragraph 2, and 49 apply to an invocation of responsibility by a State or international organization entitled to do so under paragraphs 1 to 4.

Commentary

(1) The present article corresponds to article 48 on responsibility of States for internationally wrongful acts.[578] It concerns the invocation of responsibility of an international organization by a State or another international organization which, although it is owed the obligation breached, cannot be regarded as injured within the meaning of article 46 of the current draft. According to paragraph 4, when that State or the latter international organization is entitled to invoke responsibility, it may only claim cessation of the internationally wrongful act, assurances and guarantees of non-repetition and the performance of the obligation of reparation: the latter "in the interest of the injured State or international organization or of the beneficiaries of the obligation breached".

(2) Paragraph 1 concerns the first category of cases in which this limited entitlement arises. The category comprises cases when the "obligation breached is owed to a group of States or international organizations, including the State or organization that invokes responsibility, and is established for the protection of a collective interest of the group". Apart from the addition of the words "or international organizations" and "or organization", this text reproduces subparagraph (*a*) of article 48, paragraph 1, on State responsibility.

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[576] *European Parliament* v. *Council of the European Union, Judgement of 2 March 1994, Case C–316/91, Reports of Cases before the Court of Justice and the Court of First Instance 1994–3*, p. I–653, at pp. I-661–I-662, recital 29.

[577] *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 124–125.

[578] *Ibid.*, pp. 126–128.

(3) The reference in paragraph 1 to the "collective interest of the group" is intended to specify that the obligation breached is not only owed, under the specific circumstances in which the breach occurs, to one or more members of the group individually. For instance, should an international organization breach an obligation under a multilateral treaty for the protection of the common environment, the other parties to the treaty may invoke responsibility because they are affected by the breach, although not specially so. Each member of the group would then be entitled to request compliance as a guardian of the collective interest of the group.

(4) Obligations that an international organization may have towards its members under its internal rules do not necessarily fall within this category. Moreover, the internal rules may restrict the entitlement of a member to invoke responsibility of the international organization.

(5) The wording of paragraph 1 does not imply that the obligation breached should necessarily be owed to a group comprising States and international organizations. That obligation may also be owed to either a group of States or a group of international organizations. As in other provisions, the reference to "another international organization" in the same paragraph does not imply that more than one international organization needs to be involved.

(6) Paragraphs 2 and 3 consider the other category of cases when a State or an international organization that is not injured within the meaning of article 46 may nevertheless invoke responsibility, although to the limited extent provided in paragraph 4. Paragraph 2, which refers to the invocation of responsibility by a State, is identical to article 48, paragraph 1, subparagraph (*b*) on responsibility of States for internationally wrongful acts. It seems clear that, should a State be regarded as entitled to invoke the responsibility of another State which has breached an obligation towards the international community as a whole, the same applies with regard to the responsibility of an international organization that has committed a similar breach. As was observed by the Organization for the Prohibition of Chemical Weapons, "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".[579]

(7) While no doubts have been expressed within the Commission with regard to the entitlement of a State to invoke responsibility in the case of a breach of an international obligation towards the international community as a whole, some members expressed concern about considering that international organizations, including regional organizations, would also be so entitled. However, regional organizations would then act only in the exercise of functions that have been attributed to them by their member States, which would be entitled to invoke responsibility individually or jointly in relation to a breach.

(8) Legal writings concerning the entitlement of international organizations to invoke responsibility in case of a breach of an obligation towards the international community as a whole, mainly focus on the European Union. The views are divided among authors, but a clear majority favours an affirmative solution.[580] Although authors generally consider only the invocation by an international organization of the international responsibility of a State, a similar solution would seem to apply to the case of a breach by another international organization.

(9) Practice in this regard is not very indicative. This is not just because practice relates to action taken by international organizations in respect of States. When international organizations respond to breaches committed by their members, they often act only on the basis of their respective rules. It would be difficult to infer from this practice the existence of a general entitlement of international organizations to invoke responsibility. The most significant practice appears to be that of the European Union, which has often stated that non-members committed breaches of obligations which appear to be owed to 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".[581] 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. 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.

(10) Paragraph 3 restricts the entitlement of an international organization to invoke responsibility in case of a breach of an international obligation owed to the international community as a whole. It is required that "safeguarding the interest of the international community underlying the obligation breached is included among the functions of the international organization invoking responsibility". Those functions reflect the character and purposes of the organization. The rules of the organization would determine which are the functions of the

[579] *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/593 and Add.1 (Comments and observations received from international organizations).

[580] The opinion that at least certain international organizations could invoke responsibility in case of a breach of an obligation *erga omnes* was expressed by C.-D. Ehlermann, "Communautés européennes et sanctions internationales— une réponse à J. Verhoeven", *Belgian Review of International Law*, vol. 18 (1984–1985), p. 96, at pp. 104–105; E. Klein, "Sanctions by international organizations and economic communities", *Archiv des Völkerrechts*, vol. 30 (1992), p. 101, at p. 110; A. Davì, *Comunità europee e sanzioni economiche internazionali*, Naples, Jovene, 1993, pp. 496 *et seq.*; C. Tomuschat, "Artikel 210", in H. von der Groeben, J. Thiesing and C.-D. Ehlermann (eds.), *Kommentar zum EU-/EG-Vertrag*, 5th ed., Baden-Baden, Nomos, 1997, vol. 5, pp. 28–29; Klein, *La responsabilité ..., op. cit*. (footnote 569 above), pp. 401 *et seq.*; and A. Rey Aneiros, *Una aproximación a la responsabilidad internacional de las organizaciones internacionales*, Valencia, Tirant, 2006, p. 166. The opposite view was maintained by J. Verhoeven, "Communautés européennes et sanctions internationales", *Belgian Review of International Law*, vol. 18 (1984–1985), p. 79, at pp. 89–90, and P. Sturma, "La participation de la communauté européenne à des 'sanctions' internationales", *Revue du marché commun et de l'Union européenne*, No. 366 (1993), p. 250, at p. 258. According to P. Palchetti, "Reactions by the European Union to breaches of *erga omnes* obligations", in E. Cannizzaro (ed.), *The European Union as an Actor in International Relations*, The Hague, Kluwer Law International, 2002, p. 219, at p. 226, "the role of the Community appears to be only that of implementing rights which are owed to its Member States".

[581] *Official Journal of the European Communities*, No. L 122, of 24 May 2000, p. 1.

international organization. There is no requirement of a specific mandate of safeguarding the interest of the international community under those rules.

(11) The solution adopted in paragraph 3 corresponds to the view expressed by several States[582] in the Sixth Committee of the General Assembly, in response to a question raised by the Commission in its 2007 report to the General Assembly.[583] A similar view was shared by some international organizations that expressed comments on this question.[584]

(12) Paragraph 5 is based on article 48, paragraph 3, on responsibility of States for internationally wrongful acts. It is designed to indicate that the provisions concerning notice of claim, admissibility of claims and loss of the right to invoke responsibility apply also with regard to States and international organizations that invoke responsibility according to the present article. While article 48, paragraph 3, on State responsibility makes a general reference to the corresponding provisions (arts. 43 to 45), it is not intended to extend the applicability of "any applicable rule relating to the nationality of claims", which is stated in article 44, subparagraph (*a*), because that requirement is clearly extraneous to the obligations considered in article 48. Although this may be taken as implied, the reference in paragraph 5 of the present article has been expressly limited to the paragraph on admissibility of claims that relates to the exhaustion of local remedies.

Article 53. Scope of this Part

This Part is without prejudice to the entitlement that a person or entity other than a State or an international organization may have to invoke the international responsibility of an international organization.

Commentary

(1) Articles 46 to 52 above consider implementation of the responsibility of an international organization only to the extent that responsibility is invoked by a State or another international organization. This accords with article 36, which defines the scope of the international obligations set out in Part Two by stating that these only relate to 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. The same article further specifies that this is "without prejudice to any right, arising from the international responsibility of an international organization, which may accrue directly to any person or entity other than a State or an international organization". Thus, by referring only to the invocation of responsibility by a State or an international organization the scope of the present Part reflects that of Part Two. Invocation of responsibility is considered to the extent that it concerns only the obligations set out in Part Two.

(2) While it could be taken as implied that the articles concerning invocation of responsibility are without prejudice to the entitlement that a person or entity other than a State or an international organization may have to invoke responsibility of an international organization, an express statement to this effect serves the purpose of conveying more clearly that the present Part is not intended to exclude any such entitlement.

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[582] Thus the interventions of Argentina, *Official Records of the General Assembly, Sixty-second Session, Sixth Committee*, 18th meeting (A/C.6/62/SR.18), para. 64; Denmark, on behalf of the five Nordic countries, *ibid.*, para. 100; Italy, *ibid.*, 19th meeting (A/C.6/62/SR.19), para. 40; the Netherlands, *ibid*., 20th meeting (A/C.6/62/SR.20), para. 39; the Russian Federation, *ibid.*, 21st meeting (A/C.6/62/SR.21), para. 70; and Switzerland, *ibid.*, para. 85. Other States appear to favour a more general entitlement for international organizations. See the interventions of Belgium, *ibid.*, para. 90; Cyprus, *ibid.*, para. 38; Hungary, *ibid.*, para. 16; and Malaysia, *ibid.*, 19th meeting (A/C.6/62/SR.19), para. 75.

[583] *Yearbook ... 2007*, vol. II (Part Two), para. 30. The question ran as follows: "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?"

[584] See the views expressed by the Organization for the Prohibition of Chemical Weapons, the Commission of the European Union, the World Health Organization and the International Organization for Migration, *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/593 and Add.1 (Comments and observations received from international organizations). See also the reply of the World Trade Organization (*ibid.*).