Chapter VI
RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

A. Introduction

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

193. At its fifty-fourth session, in 2002, the Commission decided to include the topic in its programme of work and appointed Mr. Giorgio Gaja as Special Rapporteur for the topic. At the same session, the Commission established a Working Group on the topic. In its report, the Working Group briefly considered the scope of the topic, the relations between the new project and the draft articles on responsibility of States for internationally wrongful acts adopted by the Commission at its fifty-third session, questions of attribution, issues 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.

194. At its fifty-fifth (2003) and fifty-sixth sessions (2004), the Commission considered the first* and second* reports of the Special Rapporteur. The Commission provisionally adopted articles 1–7.*

B. Consideration of the topic at the present session

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

196. Following the recommendations of the Commission, the Secretariat had circulated the relevant chapter, included in the report of the Commission to the General Assembly on the work of its fifty-second session, to international organizations asking for their comments and for any relevant materials which they could provide to the Commission. Comments received so far from international organizations and from Governments were also before the Commission.4

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

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

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* See footnote 42 above.


Ibid., para. 462.

Ibid., pp. 93–96, paras. 465–488.

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


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

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Draft article 8 reads as follows:

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

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

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

Draft article 9 reads as follows:

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

An act of an international organization does not constitute a breach of an international obligation unless the international organization is bound by the obligation in question at the time the act occurs.”
breach of an international obligation).\textsuperscript{87} Article 11 (Breach consisting of a composite act),\textsuperscript{88} Article 12 (Aid or assistance in the commission of an internationally wrongful act),\textsuperscript{89} Article 13 (Direction and control exercised over the commission of an internationally wrongful act),\textsuperscript{90} Article 14 (Coercion of a State or other international organization),\textsuperscript{91} Article 15 (Effects of the preceding articles)\textsuperscript{92} and Article 16 (Decisions, recommendations and authorizations addressed to member States and international organizations).\textsuperscript{93}

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

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

\textsuperscript{87} Draft article 10 reads as follows:

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

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

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

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

\textsuperscript{88} Draft article 11 reads as follows:

“Article 11. Breach consisting of a composite act

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

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

\textsuperscript{89} Draft article 12 reads as follows:

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

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

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

(b) The act would be internationally wrongful if committed by that organization.”

\textsuperscript{90} Draft article 13 reads as follows:

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

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

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

(b) The act would be internationally wrongful if committed by that organization.”

\textsuperscript{91} Draft article 14 reads as follows:

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

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

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

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

\textsuperscript{92} Draft article 15 reads as follows:

“Article 15. Effect of the preceding articles

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

\textsuperscript{93} Draft article 16 reads as follows:

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

1. An international organization incurs international responsibility if:

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

(b) The act in question is committed.

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

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

(b) The act in question is committed.

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

\textsuperscript{94} Ibid., p. 96.

\textsuperscript{95} Yearbook... 2001, vol. II (Part Two) and corrigendum, pp. 26–27.
recommendations or authorizations. To cover these situations, he had proposed draft article 16.

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

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

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

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

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

1. TEXT OF THE DRAFT ARTICLES

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

RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

PART ONE

THE INTERNATIONALLY WRONGFUL ACT OF AN INTERNATIONAL ORGANIZATION

CHAPTER I

INTRODUCTION

Article 1. 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. 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.

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96 See the commentary to this article in Yearbook ... 2003, vol. II (Part Two), pp. 18–19, para. 54.
97 Ibid., pp. 20–22.
98 Ibid., pp. 22–23.
99 See the commentary to this chapter in Yearbook ... 2004, vol. II (Part Two), chap. V, sect. C.2, para. 72.
100 See the commentary to this article (Ibid.).
101 The location of paragraph 2 may be reconsidered at a later stage with a view eventually to placing all definitions of terms in article 2.
102 The location of paragraph 4 may be reconsidered at a later stage with a view eventually to placing all definitions of terms in article 2.
103 See the commentary to this article in Yearbook ... 2004, vol. II (Part Two), chap. V, sect. C.2, para. 72.
104 Ibid.
Responsibility of international organizations

**Article 7.** 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**

**BREACH OF AN INTERNATIONAL OBLIGATION**

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

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

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

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

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

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

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

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

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.** 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**

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

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

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

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

(b) The act would be internationally wrongful if committed by that organization.

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

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

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

(b) The act would be internationally wrongful if committed by that organization.

**Article 14.** 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].** Decisions, recommendations and authorizations addressed to member States and international organizations

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

2. An international organization incurs international responsibility if:

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

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

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

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106 Ibid.
107 The commentary to this chapter appears in section C.2 below.
108 Ibid.
109 Ibid.
110 Ibid.
111 The commentary to this chapter appears in section C.2 below.
112 The commentary to this article appears in ibid.
113 Ibid.
114 Ibid.
115 Ibid. The figure in square brackets refers to the corresponding article in the third report of the Special Rapporteur.
organization to which the decision, authorization or recommenda-
tion is directed.

**Article 16 [15]. Effect of this chapter**

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

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

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

**CHAPTER III**

**BREACH OF AN INTERNATIONAL OBLIGATION**

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

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

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

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

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

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

**Commentary**

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

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

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

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

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

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

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

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

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

120 The theory that the “rules of the organization” are part of
international law has been expounded particularly by Matteo Decleva,
_Il diritto interno delle Unioni internazionali_ (Padua, Cedam, 1962)
and Giorgio Balladore Pallieri, “Le droit interne des organisations
internationales”, _Recueil des cours de l’Académie de droit international
de La Haye_, 1969–II, vol. 127, p. 1. For a recent reassertion, see Patrick
Daillier and Alain Pellet, _Droit international public_, 7th ed. (Paris,
once it has come into existence, does not form part of international law.\textsuperscript{121} Another view, which finds support in practice,\textsuperscript{122} is that international organizations which have achieved a high degree of integration are a special case. A further view, which was shared by some members of the Commission, would draw a distinction according to the source and subject matter of the rules of the organization, and would exclude, for instance, certain administrative regulations from the domain of international law.

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

(7) The rules of an organization may devise specific treatment of breaches of obligations, and also with regard to the question of the existence of a breach. This does not need to be stated in article 8, because it could be adequately covered by a final provision of the draft, which would point to the possible existence of special rules on any of the matters covered by the draft. These special rules do not necessarily prevail over principles set out in the present draft.\textsuperscript{123} For instance, with regard to the existence of a breach of an international obligation, a special rule of the organization would not affect breaches of obligations that an international organization may owe to a non-member State. Nor would special rules affect obligations arising from a higher source, irrespective of the identity of the subject to whom the international organization owes the obligation.

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

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

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

\textbf{Article 9. International obligation in force for an international organization}

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

\textbf{Commentary}

Given the fact that no specific issue appears to affect the application to international organizations of the principle expressed in article 13 on responsibility of States for internationally wrongful acts,\textsuperscript{126} the term “State” is simply from the assumption that the rules of the international organization in question are not part of international law.


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

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

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


\textsuperscript{123} The International Law Association stated in this regard:

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

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


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

129 Ibid., pp. 65–69.

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

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

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

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

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

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

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

(b) The act would be internationally wrongful if committed by that organization.

**Commentary**

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

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

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

141 The ILA Berlin resolution stated: “There is also an internationally wrongful act of an international organization when it aids or assists a State or another international organization in the commission of an internationally wrongful act by that State or other international organization.” (Report of the Seventy-First Conference, Berlin, 16–21 August 2004 (see footnote 36 above), pp. 200–201). This text does not refer to the conditions listed in article 12 under (a) and (b).
Article 13. Direction and control exercised over the commission of an internationally wrongful act

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

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

(b) The act would be internationally wrongful if committed by that organization.

Commentary

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

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

(3) In the relations between an international organization and its member States and international organizations, the concept of “direction and control” could conceivably be extended so as to encompass cases in which an international organization takes a decision binding its members. The commentary to article 17 on responsibility of States for internationally wrongful acts explains that “Article 17 is limited to cases where a dominant State actually directs and controls conduct which is a breach of an international obligation of the dependent State”144 that “the term ‘controls’ refers to cases of domination over the commission of wrongful conduct and not simply the exercise of oversight, still less mere incitement or suggestion but rather connotes actual direction of an operative kind”.146 If one interprets the provision in the light of the passages quoted above, the adoption of a binding decision on the part of an international organization could determine, under certain circumstances, a form of direction or control in the commission of an internationally wrongful act. The assumption is that the State or international organization which is the addressee of the decision is not given discretion to adopt conduct which, while complying with the decision, would not constitute an internationally wrongful act.

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

Article 14. Coercion of a State or another international organization

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

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

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

Commentary

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

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

142 Yearbook ..., 2001, vol. II (Part Two) and corrigendum, p. 67. See also the related commentary, pp. 68–69.
144 Yearbook ..., 2001, vol. II (Part Two) and corrigendum, p. 68 (para. (6) of the commentary).
145 Ibid., p. 69 (para. (7) of the commentary to article 17).
146 Ibid.
147 Ibid. See also the related commentary, pp. 69–70.
Coercion for the purpose of article 18 has the same essential character as force majeure under article 23. Nothing less than conduct which forces the will of the coerced State will suffice, giving it no effective choice but to comply with the wishes of the coercing State.148

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

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

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

2. An international organization incurs international responsibility if:

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

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

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

Commentary

(1) The fact that an international organization is a subject of international law, which is distinct from the organization’s members, opens up the possibility for the organization to try to influence its members in order to achieve through them a result that the organization could not lawfully achieve directly, and it would circumvent one of its international obligations. As was noted by the delegation of Austria during the debates in the Sixth Committee: ‘[A]n international organization should not be allowed to escape responsibility by ‘outsourcing’ its actors.’149

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

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

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

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

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

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

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

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


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

... it appeared essential to find the point where the member State could be said to have so little “room for manoeuvre” that it would seem unreasonable to make it solely responsible for certain conduct.\(^\text{131}\)

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

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

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

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

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

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

... insofar as “Opération Turquoise” is concerned, although that operation was “authorized” by the Security Council, the operation itself was under national command and control and was not a United Nations operation. The United Nations is, therefore, not internationally responsible for acts and omissions that might be attributable to “Opération Turquoise”.\(^\text{132}\)

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

Article 16. Effect of this chapter

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

Commentary

Draft article 16 is a “without prejudice” clause relating to the whole chapter. It corresponds in part to draft article 19 on responsibility of States for internationally wrongful acts.\(^\text{133}\) The latter provision intends to leave unprejudiced “the international responsibility, under other provisions of these articles, of the State which commits the act in question, or of any other State”. References to international organizations have been added in draft article 16. Moreover, since the international responsibility of States committing a wrongful act is covered by the articles on responsibility of States for internationally wrongful acts and not by the present draft, the wording of the clause has been made more general.

\(^{131}\) Bosphorus Hava Yollari Turizm ve Ticaret AS v. Ireland, decision of 30 June 2005 (see footnote 139 above), para. 157.

\(^{132}\) Official Records of the General Assembly (see footnote 149 above), para. 66.

\(^{133}\) Unpublished letter. “Opération Turquoise” was established by Security Council resolution 929 (1994).

\(^{134}\) Yearbook ... 2001, vol. II (Part Two) and corrigendum, p. 70, and the related commentary, pp. 70–71.