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**DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS FIFTY-SIXTH SESSION**

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CHAPTER V

RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
A. Introduction	1 - 3	
B. Consideration of the topic at the present session	4 - 10	
C. Text of draft articles on responsibility of international organizations provisionally adopted so far by the Commission	11	
1. Text of draft articles		

A. Introduction

1. At its fifty-second session, in 2000, the Commission decided to include the topic “Responsibility of international organizations” in its long-term programme of work.¹ 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 Commission’s 2000 report. The 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”.

2. At its fifty-fourth session, the Commission decided, at its 2717th meeting, held on 8 May 2002, 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. The Working Group in its report² 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”, 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.³

3. At its fifty-eighth session, in 2003, the Commission had before it the first report of the Special Rapporteur⁴ proposing articles 1 to 3 dealing with the scope of the articles, the use of draft articles to the Drafting Committee. At its 2776th meeting, held on 16 July 2003, the Commission considered and adopted the report of the Drafting Committee on draft articles 1, 2 and 3.

¹ *Official Records of the General Assembly, Fifty-fifth session, Supplement No. 10 (A/55/10)*, chap. IX.1, para. 729.

² *Ibid.*, chap. VIII.C, paras. 465-488.

³ *Ibid.*, chap. VIII.B, para. 464.

⁴ Document A/CN.4/532.

B. Consideration of the topic at the present session

4. At the present session, the Commission had before it the second report of the Special Rapporteur (A/CN.4/541).

5. The second report of the Special Rapporteur dealt with attribution of conduct to international organizations for which he proposed four draft articles: article 4 “General rule on attribution of conduct to an international organization”,⁵ article 5 “Conduct of organs placed at the disposal of an international organization by a State or another international organization”,⁶

⁵ Draft article 4 read as follows:

General rule on attribution of conduct to an international organization

1. The conduct of an organ of an international organization, of one of its officials or another person entrusted with part of the organization’s functions shall be considered as an act of that organization under international law, whatever position the organ, official or person holds in the structure of the organization.
2. Organs, officials and persons referred to in the preceding paragraph are those so characterized under the rules of the organization.
3. For the purpose of this article, “rules of the organization” means, in particular, the constituent instruments, [decisions and resolutions] [acts of the organization] adopted in accordance with them, and [established] [generally accepted] practice of the organization.

⁶ Draft article 5 read as follows:

Conduct of organs 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 international organization that is placed at the disposal of another international organization for the exercise of one of that organization’s functions shall be considered under international law an act of the latter organization to the extent that the organization exercises effective control over the conduct of the organ.

article 6 “Excess of authority or contravention of instructions”,⁷ and article 7 “Conduct acknowledged and adopted by an international organization as its own”.⁸ The articles corresponded to Chapter II of Part One of draft articles on Responsibility of States for internationally wrongful acts. While that Chapter comprised eight articles on the question of attribution, a similar issue with regard to international organizations required only four draft articles. The Special Rapporteur noted that while some of the issues on attribution of conduct to a State have equivalent or similar application to attribution of conduct to an international organization, some of the others are specific to States or may apply to an international organization only in exceptional cases.

6. The Special Rapporteur also noted that following the recommendations of the Commission⁹ the Secretariat had circulated 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. A similar request was made in paragraph 5 of General Assembly resolution 58/77 adopted on 9 December 2003. The resolution also invited States to submit information concerning their relevant practice. The Special Rapporteur said

⁷ Draft article 6 read as follows:

Excess of authority or contravention of instructions

The conduct of an organ, an official or another person entrusted with part of the organization’s functions shall be considered an act of the organization under international law if the organ, official or person acts in that capacity, even though the conduct exceeds authority or contravenes instructions.

⁸ Draft article 7 read as follows:

**Conduct acknowledged and adopted by an
international organization as its own**

Conduct which is not attributable to an international organization under the preceding 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.

⁹ *Official Records of the General Assembly, Fifty-seventh session, Supplement No. 10, and corrigendum (A/57/10 and Corr.1), chap. VIII, paras. 464 and 488 and ibid., Fifty-eighth session (A/58/10), chap. IV, para. 52.*

that, with a few noteworthy exceptions, replies had added little to already published materials. He expressed the hope that the continuing discussion in the Commission would prompt international organizations and States to send further contributions, so that the Commission's study could more adequately relate to practice and thus become more useful.

7. The Commission considered the second report of the Special Rapporteur at its 2800th to 2803rd meetings, held from 18 to 25 May 2004.

8. At its 2803rd meeting held on 25 May 2004, the Commission referred draft articles 4 to 7 to the Drafting Committee.

9. The Commission considered and adopted the report of the Drafting Committee on draft articles 4 to 7 at its 2810th meeting held on 4 June 2004 (see section C.1 below).

10. At its ... meeting held on ... 2004, the Commission adopted the commentaries to the aforementioned draft articles (see section C.2 below).

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

1. Text of draft articles

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

Responsibility of international organizations

Article 1¹⁰

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.

¹⁰ For the commentary to this article see *ibid.*, *Fifty-eighth session (A/58/10)*, chap. IV, pp. 34-37.

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

Article 2¹¹

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 3¹²

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.

¹¹ Ibid., pp. 38-45.

¹² Ibid., pp. 45-49.

Article 4¹³

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.¹⁴
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.¹⁵

¹³ For the commentary see section C.2 below.

¹⁴ The location of paragraph 2 may be reconsidered at a later stage with a view of eventually placing all definitions of terms in article 2.

¹⁵ The location of paragraph 4 may be reconsidered at a later stage with a view of eventually placing all definitions of terms in article 2.

Article 5¹⁶

**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 6¹⁷

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 7¹⁸

**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.

¹⁶ For the commentary see section C.2 below.

¹⁷ For the commentary see section C.2 below.

¹⁸ For the commentary see section C.2 below.