UNITED NATIONS **A**

General Assembly

Distr.
LIMITED

A/CN.4/L.734/Add.2
7 July 2008

Original: ENGLISH

INTERNATIONAL LAW COMMISSION
Sixtieth session
Geneva, 5 May-6 June and 7 July-8 August 2008

DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTIETH SESSION

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CHAPTER VII

RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

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CHAPTER VII

RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

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

1. Text of the draft articles

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

[See A/CN.4/L.734/Add.1]

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

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

PART THREE

[…]

(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.[1] 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

[1] *Yearbook … 2001*, vol. II (Part Two), pp. 26-30.

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

[…]

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.[2] It seems clear that the conditions for a

[2] *Ibid.*, p. 29.

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 International Court of Justice stated that it was "established that the Organization has capacity to bring claims on the international plane".[3] 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".[4] On this basis, several entities that were expressly defined as international organizations 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.[5]

(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

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[3] *I.C.J. Reports 1949*, pp. 184-185.

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

[5] "Report and Recommendations made by the Panel of Commissioners concerning the Sixth Instalment of 'F1' Claims", S/AC.26/2002/6, paras. 213-371.

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.[6] 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;[7] 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".[8]

(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.

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[6] *Yearbook … 2001*, vol. II (Part Two), p. 29.

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

[8] *Ibid.*, p. 119, para. 13.

(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.[9] 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

[9] *Ibid.*, p. 29.

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.

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.[10] 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.

[10] *Ibid.*, p. 29.

(2) Nationality of claims is a requirement applying to States exercising diplomatic protection. Although article 1 of the draft on diplomatic protection 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".[11] The reference only to the relations between States is understandable in view of the fact that generally diplomatic protection is relevant in that context.[12] 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".[13]

(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 International Court of Justice 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".[14]

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[11] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), p. 16.

[12] It was also in the context of a dispute between two States that the International Court of Justice found in its judgment on the preliminary objections in the *Ahmadou Sadio Diallo* case that the definition provided in article 1 on diplomatic protection reflected "customary international law"; *I.C.J. Reports 2007*, para. 39 (also available at http://www.icj-cij.org/docket/files/103/13856.pdf).

[13] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), p. 17.

[14] *I.C.J. Reports 1949*, p. 186.

(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.[15] While the local remedies rule does not apply in the case of functional protection,[16] 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 International Court of Justice said in its advisory opinion on *Reparation for Injuries Suffered in the Service of the United Nations*.[17] 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 EC regulation

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

[16] This point was stressed by J. Verhoeven, "Protection diplomatique, épuisement des voies de recours et juridictions européennes", *Droit du pouvoir, pouvoir du droit - Mélanges offerts à Jean Salmon* (Bruxelles: Bruylant, 2007), p. 1511, at p. 1517.

[17] *I.C.J. Reports 1949*, p. 184.

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".[18] Although this practice relates to a claim that was addressed to the EU member States, one can infer that, had the responsibility of the European Union been invoked, exhaustion of remedies existing within the European Union would also have been required.

(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.[19] Although the

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[18] "Oral statement and comments on the US response", 15 November 2000, A/CN.4/545, attachment No. 18.

[19] 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.", *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 & N.M. Blokker, *International Institutional Law*, 3rd ed. (The Hague: Nijhoff, 1995), pp. 1167-1168; P. Klein, *La responsabilité des organisations internationales dans les ordres juridiques internes et en droit des gens* (Bruxelles: Bruylant/Editions de l'Université de Bruxelles, 1998), p. 534 ff.; C. Pitschas, *Die völkerrechtliche Verantwortlichkeit der Europäischen Gemeinschaften und ihrer Mitgliedstaaten* (Berlin: Duncker & Humblot, 2001), p. 250; K. Wellens, *Remedies against International Organizations* (Cambridge: 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 Organisations", *Report of the Seventy-First Conference (Berlin)*, 2004, p. 213. C. Eagleton, "International Organizations and the Law of Responsibility", *Recueil des cours*, vol. 76 (1950-I), 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, "Exhaustion of Local Remedies and the Law of International Organizations", *Revue de droit international et de sciences diplomatiques*, vol. 57 (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 may still develop in different directions". The view that the local remedies rule should be applied in a flexible manner was expressed by M. Perez 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, *Principles of the International Law of International Organisations*,

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, 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,[20] 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.

2nd ed. (Cambridge: Cambridge University Press, 2003), p. 486, considered that, since international organizations “do not have jurisdictional powers over individuals in general”, it is “questionable whether they 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* (Madrid: Dykinson, 2002), pp. 139-140.

[20] *Official Records of the General Assembly, Sixty-first session, Supplement No. 10* (A/61/10), p. 20.

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,[21] 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 also an international organization should 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 responsibility only if it is "validly" made. As was stated in 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".[22] In the case of an international

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[21] *Yearbook … 2001*, vol. II (Part Two), p. 29.

[22] *Official Records of the General Assembly, Sixty-first session, Supplement No. 10* (A/61/10), p. 265.

organization validity implies that the rules of the organization have to be respected. However, this requirement may encounter limits such as those stated in article 46, paragraphs 2 and 3, of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations[23] 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.[24] 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.

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[23] A/CONF.129/15.

[24] *Yearbook … 2001*, vol. II (Part Two), p. 29.

(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 International Court of Justice 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 […]".[25]

(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.

[25] *I.C.J. Reports 1949*, pp. 184-186.

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 that 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 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 a case *Parliament v. Council* relating to a mixed cooperation agreement: "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 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".[26]

(2) Like article 47 on responsibility of States for internationally wrongful acts,[27] 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

[26] Judgment of 2 March 1994, case C-316/91, *European Court Reports* (1994), p. I-623, at pp. I-660-661, recital 29.

[27] *Yearbook … 2001*, vol. II (Part Two), p. 29.

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.[28] 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.

[28] *Ibid.*, pp. 29-30.

(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".[29]

[29] A/CN.4/593, sub F.1.

(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 also international organizations, including regional organizations, would be so entitled. However, regional organizations would then act only on the basis 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.[30] 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

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[30] 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", *Revue belge de droit international*, vol. 18 (1984-5), 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* (Napoli: Jovene, 1993), p. 496 ff.; C. Tomuschat, "Artikel 210", in: H. van der Groeben, J. Thiesing, C.D. Ehlermann (eds.), *Kommentar zum EU-/EG-Vertrag*, 5th edition (Baden-Baden: Nomos, 1997), vol. 5, pp. 28-29; P. Klein, *La responsabilité …, op. cit*., p. 401 ff.; 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", *Revue belge de droit international*, vol. 18 (1984-5), p. 79, at pp. 89-90, and P. Sturma, "La participation de la Communauté internationale 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 that are owed to its Member States".

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".[31] 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 international organization. There is no requirement of a specific mandate under those rules.

(11) The solution adopted in paragraph 3 corresponds to the view expressed by several States[32] in the Sixth Committee of the General Assembly, in response to a question raised by the

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[31] *Official Journal of the European Communities*, 14 May 2000 *L* 122, p. 1.

[32] Thus the interventions of Argentina (A/C.6/62/SR.18, para. 64), Denmark, on behalf of the five Nordic countries (A/C.6/62/SR.18, para. 100), Italy (A/C.6/62/SR.19, para. 40), the Netherlands (A/C.6/62/SR.20, para. 39), the Russian Federation (A/C.6/62/SR.21, para. 70) and Switzerland (A/C.6/62/SR.21, para. 85). Other States appear to favour a more general entitlement for international organizations. See the interventions of Belgium (A/C.6/62/SR.21, para. 90), Cyprus (A/C.6/62/SR.21, para. 38), Hungary (A/C.6/62/SR.21, para. 16) and Malaysia (A/C.6/62/SR.19, para. 75).

Commission in its 2007 report to the General Assembly.[33] A similar view was shared by some international organizations that expressed comments on this question.[34]

(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 (articles 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 Chapter

This Chapter 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.

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[33] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 10* (A/62/10), chap. III, section D, 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?"

[34] See the views expressed by the Organization for the Prohibition of Chemical Weapons (A/CN.4/593, sub F.1), the Commission of the European Union (*ibid.*), the World Health Organization (*ibid.*) and the International Organization for Migration (A/CN.4/593/Add.1, sub B). See also the reply of the World Trade Organization (A/CN.4/593, sub F.1).

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 Chapter 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 of 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 Chapter is not intended to exclude any such entitlement.
