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Responsibility of international organizations

Comments and observations received from Governments

Addendum

Contents

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I. Introduction

1. Additional written replies, containing comments and observations on the draft articles on the responsibility of international organizations, adopted on first reading by the International Law Commission at its sixty-first session, in 2009 (A/64/10, para. 50), were received from the Czech Republic (1 April 2011), the Republic of Korea (23 February 2011), Mexico (2 March 2011), the Netherlands (15 March 2011) and Switzerland (24 February 2011).

II. Comments and observations received from Governments

A. General comments

Czech Republic

[Original: English]

1. One of the legal problems in the draft articles is the dividing line between the responsibility of an international organization and that of a (member) State. In other words, to what extent can international organizations incur responsibility for the acts of States and vice versa? The draft articles on the responsibility of international organizations attempt to answer this question.

2. What is beyond dispute is that an international organization must possess international legal personality distinct from that of its member States. Otherwise it would not be capable of incurring responsibility. However, the nature of the legal personality of international organizations is quite another question. In this context, it is only appropriate to recall the advisory opinion of the International Court of Justice on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, in which the Court noted that:

> "International organizations are subjects of international law which do not, unlike States, possess a general competence. International organizations are governed by the principle of speciality."[1]

Republic of Korea

[Original: English]

1. The Republic of Korea supports the Commission's desire to establish a comprehensive framework for the law of international responsibility. The adoption of the draft articles on the responsibility of international organizations will enhance legal stability in this area.

2. Given the differences between States and international organizations, a separate set of draft articles is required rather than the wholesale application of the articles on State responsibility. Such instrument should reflect the characteristics of international organizations.

3. However, it is difficult to understand some of the draft articles, as they are based on the scarce practice of international organizations. They would be easier to

[1] *I.C.J. Reports 1996*, p. 78, para. 25.

understand if the Commission included more information on practice in the commentaries. Article 20, for example, is about the right of self-defence as a circumstance precluding wrongfulness. Under article 21 of the State responsibility articles, wrongful acts of States can be precluded if the acts are taken as a lawful measure of self-defence taken in conformity with the Charter of the United Nations. However, self-defence of international organizations is referred to as self-defence under international law, in abstract terms, which leaves room for abuse.

Mexico

[Original: Spanish]

1. It has been suggested in the doctrine that the secondary rules of the present draft articles would be of little use given that there are insufficient primary rules applicable to international organizations. While the scope of States' international obligations is much broader than that of international organizations, there are developments in international law that cannot be ignored. For example, international organizations that take decisions with a direct or indirect impact on human rights cannot be exempt from compliance with certain international human rights standards.

2. Given the increasing role of international organizations in the international arena and the growing impact of their activities on a wide range of issues at the global level and, in some cases, on the legal situations of individuals or entities within States, the question of their international responsibility is assuming greater practical importance. Consequently, Mexico considers that the law of responsibility of international organizations, together with that of responsibility of States for internationally wrongful acts, is a key element in strengthening the rule of law at the international level. The current draft represents an important step in that regard and the work of the International Law Commission and the Special Rapporteur deserves our recognition and gratitude.

3. It is clear that the current draft and the articles on the responsibility of States for internationally wrongful acts are complementary. It is for this reason that Mexico welcomes the Commission's approach in being guided, mutatis mutandis, by the parameters of the articles on State responsibility. That complementarity, together with the scarcity of practice regarding the attribution of conduct and responsibility of international organizations, means that the articles on State responsibility and the commentaries thereon are a natural guide for the current draft.

4. However, the diversity of types of international organizations and the wide range of their activities pose very specific challenges for international law, and for the topic of responsibility in particular. In general terms, Mexico considers that the Commission has responded well to these specific challenges of international organizations. In some draft articles, however, it would appear that the particular characteristics of international organizations and the way in which they differ from States deserve greater attention, or rather, greater clarity, in the respective commentaries.

Netherlands

[Original: English]

1. Some Governments and academics have questioned the need to have a set of articles on responsibility of international organizations. There is limited practice, as is demonstrated by the reports of the Special Rapporteur and by the comments given by international organizations. There are hundreds of international organizations, but only some 20 of them have sent comments, and these comments are at times extremely brief. So it seems pertinent to ask whether it is really necessary to elaborate rules on responsibility of international organizations.

2. The Netherlands is of the view that it is necessary and that such rules would contribute to the further development of the international legal order. In the 1960s, Special Rapporteur Robert Ago stated that it was "questionable whether such organizations had the capacity to commit international wrongful acts" and that "international organizations were too recent a phenomenon and the question of a possible international responsibility by reason of alleged wrongful acts committed by such organizations was not suited to codification".[2] However, in the twenty-first century this is no longer the case. The number of international organizations has increased considerably; their activities have multiplied and affect both international relations and the daily life of private individuals. Although it is of course true that they do not all commit internationally wrongful acts every day or even every year, at present there is increasing practice in which it is claimed that such acts have been committed by international organizations. It is generally agreed that international organizations have the capacity to act at the international level, within the scope of their powers. However, it cannot be excluded that they act wrongfully. Therefore it is necessary to have a system in place, a set of general rules for this purpose, even though there is no extensive practice.

3. Alternatively, in the absence of such rules, it is likely that national and international courts that are confronted with claims against international organizations and their members would seek inspiration from the State responsibility articles, and would use those articles by analogy. They would have to do so in an ad hoc and improvised manner, each court taking its own decision whether and to what extent the State responsibility articles can be applied mutatis mutandis. Instead, it would be preferable for these courts to be able to benefit from the existence of general rules on responsibility of international organizations, drafted in an open and multilateral process. It is for these reasons that the Netherlands supports the work of the International Law Commission on this topic and does not share the criticism that there is no need for the articles. Moreover, the absence of such articles may impede the future exercise of powers by international organizations, as well as the possible establishment of new international organizations whenever the need arises. The elaboration of rules on responsibility of international organizations is a necessary step in the development of the international legal order, in which an increasing number of activities are carried out by international organizations. It cannot be excluded that some of these activities amount to internationally wrongful acts, and it is no longer accepted that international organizations cannot be held accountable.

[2] *Yearbook of the International Law Commission, 1963*, Vol. II, annex I, pp. 229 and 234.

4. The Netherlands is of the opinion that the criticism that the Commission has all too often simply copied the State responsibility articles is unfounded. The decision of the Commission to take as a starting point the articles on State responsibility deserves full support for three reasons. First, the articles on State responsibility are sufficiently general to be suitable also to other international legal persons. Moreover, it has taken the Commission some decades and five Special Rapporteurs to arrive at a set of articles on State responsibility. The Commission has therefore rightly decided, in preparing articles on the responsibility of international organizations, not to reinvent the wheel and to avoid restarting the discussion on complex responsibility issues where there was no need to do so. The third reason is the need to develop a single coherent body of rules on international responsibility. While it has taken the State responsibility articles as a starting point, the Commission has approached the issue of responsibility of international organizations with an open mind. International organizations have been invited to provide comments and inform it about their practice. The Special Rapporteur has carefully collected and analysed all available practice, as well as doctrine in the field. Often this has not resulted in draft articles that depart from the State responsibility articles. However, this has never happened without extensive prior analysis and discussion. Moreover, on various issues the Commission has concluded that the State responsibility articles had to be adjusted to fit international organizations, or has introduced new articles. The Commission and its Special Rapporteur have demonstrated that they have not treated the State responsibility articles as sacrosanct.

5. The Netherlands agrees that there is much diversity among international organizations. Some are universal, others have only a few members. Some perform general or political functions, others are very specific or technical. The cooperation in some organizations is of a purely intergovernmental nature, while it is supranational in the European Union. Nevertheless, while such differences should not be denied, the Netherlands is of the opinion that they should not prevent the elaboration of general rules on responsibility of international organizations. It should not be forgotten that, while there is one single set of articles on State responsibility, there exist considerable differences between States. In terms of size of population and territory, political power, economic strength and culture, countries such as China and the United States of America are fundamentally different from countries such as Andorra and Tuvalu. Furthermore, the draft articles on responsibility of international organizations are sufficiently general to cover the wide variety of existing international organizations. It is wrong to assume that the existing wide variety of international organizations should require a similarly wide variety of responsibility rules. As indicated in the definition of international organizations in draft article 2, the draft articles apply to organizations that possess international legal personality. As international legal persons, they are capable of bearing rights and obligations. To the extent that they have obligations under international law, it cannot be excluded that they violate such obligations. If this happens, it must be possible to hold them responsible. This is true for any international organization having international legal personality. At the same time, both the State responsibility articles and the draft articles on the responsibility of international organizations recognize that there can be special regimes (*lex specialis*) of international responsibility rules. These provisions serve as a safety valve in cases where the general articles are felt to be too much of a straitjacket and where, therefore, special responsibility rules should apply.

Switzerland

[Original: French]

The phrase "responsibility of an international organization for an internationally wrongful act" is used several times in the text of the draft articles. However, the titles of Part two, chapter IV, and Part five refer to the responsibility of an international organization or of a State in connection with the act. We would prefer for uniform wording to be used throughout the text.

B. Specific comments on the draft articles

Part one
Introduction

1. Draft article 2
Use of terms

Czech Republic

[Original: English]

The Czech Republic considers the "rules of the organization" to be a part of international law. However, the rules of the organization do not play exactly the same role in all draft articles on the responsibility of international organizations. While in some instances their international nature is obvious (e.g., in the context of draft articles 4 and 9), elsewhere they have a role analogous to that played by internal law in the context of the rules on State responsibility (draft articles 5 and 31 of the articles currently under consideration).

Mexico

[Original: Spanish]

1. Mexico considers that the International Law Commission rightly applied the criterion of "objective" legal personality, following the example of the International Court of Justice in its landmark case on *Reparation for Injuries Suffered in the Service of the United Nations*. Furthermore, it fully agrees that the organization's legal personality must be its own, i.e. distinct from that of its members, the corollary of which is that it "does not exclude the possibility of a certain conduct being attributed both to the organization and to one or more of its members or to all its members".[3] Both objective legal personality and the emphasis on the organization's own personality are key premises for the functionality and effectiveness of the present articles, with regard to attribution of the conduct and responsibility of the organization and, where appropriate, of its members.

2. The question of international organizations being able to include "other entities", in addition to States, among their members reflects to a considerable extent the current situation of international organizations by extending the scope of application *ratione personae* of the current draft beyond that of traditional intergovernmental organizations. Mexico considers this to be the right approach.

[3] A/64/10, para. 51, article 2, commentary, para. (10).

However, it would appear that the draft has not gone far enough in this regard, particularly in light of the respective commentaries. If the intention is to include hybrid or mixed organizations composed of States, other international organizations and private entities, as mentioned in the commentaries,[4] then the exclusion of organizations established by instruments of internal law would leave outside the scope of application a series of hybrid organizations whose activities are conducted in the transnational arena and whose conduct has clear repercussions for international law. These issues clearly reflect the difficulties raised by the diversity of the existing types of international organizations.

3. That said, it is perfectly evident that the codification and development of rules on the responsibility of hybrid entities which, while established under national private law, operate transnationally, goes beyond the purpose and scope of the present draft. It might therefore be appropriate to consider the possibility of including explicit mention of those hybrid entities in the commentaries, specifically in paragraph (2) of the commentary to article 2, which mentions that

> "the fact that an international organization does not possess one or more of the characteristics set forth in article 2, subparagraph (a), and thus is not within the definition for the purposes of the present articles, does not imply that certain principles and rules stated in the following articles do not apply also to that organization".

4. With regard to the statement that international organizations may be established by a treaty "or other instrument governed by international law", it would be advisable to ask what would happen in the case of international organizations or entities established by resolutions or decisions, including when the entity in question does not consider the said resolution or decision to be a formal agreement and the said instrument is not governed by international law. An interesting case in this context is that of the Financial Action Task Force (FATF). According to its own definition, it is an intergovernmental body with 32 States and two international organizations as members, as well as a number of observer organizations. It is supported by a secretariat housed in the premises of the Organization for Economic Cooperation and Development (OECD) (of which FATF is not a member) and has a rotating presidency. It also has a monitoring mechanism "covering more than 170 jurisdictions", provides for the suspension of its members in the event that they fail to comply with its recommendations and has even established a set of criteria for the application, by its members, of "countermeasures" against "non-cooperative countries or territories" outside its membership. Nonetheless, unlike some FATF-style regional bodies — such as the South American Financial Action Task Force on Money Laundering (GAFISUD), which was established in 2000 by a constitutive memorandum of understanding signed by 10 countries in the region — FATF was established not by an official instrument governed by international law, but by a declaration of the Group of Seven in 1988.

5. Hence, despite all the above-mentioned characteristics, a body such as FATF would not fall within the scope of the present articles. In view of the number and the growing importance of these types of quasi-official intergovernmental bodies and networks, it would be advisable for the Commission to consider mentioning them in the commentaries. That could be done, as with hybrid or mixed entities established

[4] Ibid., para. (13).

by instruments of domestic private law, in paragraph (2) of the commentary on article 2.

Switzerland

[Original: French]

Switzerland considers that the definition given for the term "rules of the organization" in article 2 (b) of the draft articles is not sufficiently precise to make its meaning clear. In view of the importance of this concept to the draft, we believe that the meaning needs to be clarified.

Part two
The internationally wrongful act of an international organization

Chapter II
Attribution of conduct to an international organization

2. General comments

Mexico

[Original: Spanish]

Mexico welcomes the approach taken by the Commission under this heading. Paragraph (4) of the introductory commentary, which clarifies that dual or even multiple attribution of conduct cannot be excluded, is especially important. Although, as the Commission has indicated, it does not occur very frequently in practice, dual or multiple attribution of conduct is essential in order to ensure that attribution is not diluted among the various members of the organization and that the question of international responsibility is not evaded. In light of potential human rights violations, it is very important to avoid such evasion of responsibility. Dual or multiple attribution is the correct approach in order to combat such evasion.

3. Draft article 6
Conduct of organs or agents placed at the disposal of an international organization by a State or another international organization

Czech Republic

[Original: English]

It would be appropriate to require that in determining who has "effective control", all factual circumstances of the case should be taken into account.

Mexico

[Original: Spanish]

1. At the outset, Mexico expressed its clear preference that the criterion for attribution of the conduct of an organ or agent placed at the disposal of an

international organization by a State or another international organization should be effective control over the conduct.

2. As clearly illustrated in the Commission's commentary on article 6, especially with regard to recent jurisprudence, effective control over conduct should be understood as a factual criterion, in other words, as operational control over the specific conduct in question. The reference in the commentary to article 6 of the articles on State responsibility, specifically to "exclusive direction and control", is especially important in this context.

3. The current draft reflects new realities and trends in relation to international organizations, which is important and laudable. At the same time, it is striking that draft article 6 does not envisage the scenario of private actors placed at the disposal of an international organization. This is perfectly feasible and is likely to occur ever more frequently in the future. The Commission could consider the inclusion of private actors, both individuals and entities, under draft article 6.

Switzerland

[Original: French]

Article 6 refers to the notion of "effective control". Despite the commentary provided by the International Law Commission, which is relatively long and includes a wealth of examples, it would appear that one issue has not been addressed: the actual definition of "effective control". Since this notion has been a subject of contention between the International Court of Justice (the case concerning *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), 1986) and the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v. Serbia and Montenegro*), 2007) and the International Criminal Tribunal for the former Yugoslavia (the *Tadić* case), we would have liked to have some clarification. What are the criteria for presuming that an international organization has effective control over the organs or agents at its disposal? Is this the same reasoning as that defended by the International Court of Justice?

4. Draft article 7
Excess of authority or contravention of instructions

Czech Republic

[Original: English]

Draft article 7 does not clearly point out the qualitative difference between an excess of authority by an organization as such (with regard to the specific nature of its legal personality) and an excess of authority by an individual organ or agent. Despite the present wording of the article, the Commission's commentary tries to extend this attribution rule to both situations. This is highly disputable and the commentary contradicts itself in some instances. The key should be the interpretation of the words "in that capacity". In cases where it must be evident to any entity (a State or an international organization) acting in good faith that certain conduct manifestly exceeds the scope of the legal personality, special and functional, of the international organization concerned, the organ's ultra vires conduct should not be attributed to the organization.

Switzerland

[Original: French]

In the context of acts committed by an international organization, or by one of its organs or agents, that exceed the authority of the former or the latter, we consider the element of good faith to be important. We therefore believe that it would be useful to add to article 38 ("Contribution to the injury") a statement to the effect that where an international organization's conduct is clearly wrongful — that is, where the member States or international organizations are in a position to be aware of it — the latter should so comport themselves as to limit the injury suffered and should not be able to seek reparation for an injury arising from such conduct. Such an addition would be particularly valuable where the international organization adopts a non-binding recommendation.

5. Draft article 8
Conduct acknowledged and adopted by an international organization as its own

Mexico

[Original: Spanish]

1. Mexico agrees with the Commission that the criteria that guided its drafting and adoption of article 11 of the articles on State responsibility are applicable *mutatis mutandis* to international organizations. Given that various international organizations are required, as part of their functions, to address situations that do not involve their own conduct, the potential practical relevance of this draft article is considerable.

2. In the opinion of Mexico, it would be advisable for the commentary to address the temporal aspect more clearly. The commentary to article 11 of the articles on State responsibility makes it clear that conduct is attributable where it has subsequently been acknowledged and adopted by a State as its own. Such a clarification would also be appropriate in the context of the present articles, particularly in the light of the ex post facto acknowledgement or adoption of conduct by international organizations, and would be of great practical relevance in this context.

3. It would also be appropriate to provide more in-depth commentary on the criteria that distinguish an organization's acknowledgement and adoption of conduct as its own from mere support for that conduct.

Chapter IV
Responsibility of an international organization in connection with the act of a State or another international organization

6. Draft article 13
Aid or assistance in the commission of an internationally wrongful act

Switzerland

[Original: French]

While the commentary on article 13 refers to article 16 of the draft articles on the responsibility of States, it is clear that the condition of intention is not mentioned in the text of either of those articles; it appears only in the commentary on article 16. Consequently, in view of the overriding importance of this condition, we believe that it would be appropriate to specify, in the commentary on article 13, that the commentary on article 16 of the draft articles on the responsibility of States is also applicable.

7. Draft article 16
Decisions, authorizations and recommendations addressed to member States and international organizations

Czech Republic

[Original: English]

The purpose of draft article 16, as it is understood by the Czech Republic, is to ensure that international organizations do not escape responsibility in cases where a member State violates an international obligation while acting in compliance with a request contained in an act of the international organization. The case law of the European Court of Human Rights (ECHR) (in particular in *Bosphorus*) and the European Court of Justice (in particular in *Kadi*) is unequivocal, a fact which is reflected in the Commission's commentary.

Mexico

[Original: Spanish]

1. This provision relates both to binding decisions of international organizations (art. 16, para. 1) and authorizations and recommendations of such organizations (art. 16, para. 2). The first situation is clear. The second offers a scenario that borders on incitement. Mexico is convinced that all possible steps must be taken to prevent and avoid evasion of responsibility, whether by members of the organization or by the organization itself, and that this should be the object and purpose of the present articles. In this regard, we welcome the rule set out in article 16, paragraph 2.

2. However, since there are no clear rules on incitement as a criterion for the attribution of responsibility except in specific cases established in treaties, such as

incitement to genocide,[5] Mexico considers that the responsibility of an organization derived from the conduct of one of its members when acting upon its recommendation or based on its authorization should be attributed on the grounds that the said conduct takes place pursuant to, not simply because of, that authorization or recommendation. The latter would appear to be a very vague criterion that could include incitement in general terms.

Chapter V
Circumstances precluding wrongfulness

8. General comments

Mexico

[Original: Spanish]

1. Mexico is one of the States that has declared in previous discussions that the chapter on the circumstances precluding wrongfulness was one of the most difficult parts of the current draft because those circumstances are too similar to the corresponding rules in the articles on State responsibility, whereas they are, in fact, very different. For example, the Mexican delegation mentioned during Sixth Committee discussions in 2004 that the Commission should consider that the essential interests of an organization could not, by definition, be equated with the essential interests of a State. Mexico is pleased to note that article 24 has re-established this critical distinction, especially by defining "essential interest" as an interest "of the international community as a whole". Nonetheless, it could be difficult to identify in specific cases.

2. In general terms, Mexico continues to see practical difficulties with any mention of the circumstances precluding wrongfulness in respect of international organizations, especially in the cases of "necessity" (art. 24), countermeasures (art. 21) and "self-defence" (art. 20).

9. Draft article 20
Self-defence

Czech Republic

[Original: English]

The concept of self-defence, which has been elaborated with regard to States but should be used also with regard to international organizations, seems especially difficult, although it is likely to be relevant only to the acts of a small number of organizations, such as those administering a territory or deploying an armed force. As regards these two examples, one cannot but agree with the former, since in such cases an international organization may exceptionally perform functions similar to that of a State (e.g., the United Nations Transitional Administration in East Timor or the United Nations Interim Administration Mission in Kosovo). As regards the latter

[5] See para. (9) of the commentary to chapter IV of the articles on State responsibility (*Yearbook of the International Law Commission 2001*, vol. II).

example, the Commission itself puts it in a relative light by stating that the question of the extent to which United Nations forces are entitled to resort to force depends on the primary rules concerning the scope of the mission. However, if the entitlement to resort to force depends only on the primary rules concerning the mandate of the mission, the inclusion of self-defence in the draft articles on the responsibility of international organizations does not make much sense.

Republic of Korea

[Original: English]

[See the comment under general comments above]

Part three
Content of the international responsibility of an international organization

Chapter I
General principles

10. Draft article 31
Irrelevance of the rules of the organization

Republic of Korea

[Original: English]

Draft article 31 originates from article 27 of the Vienna Convention on the Law of Treaties between States and International Organizations and from article 32 of the articles on State responsibility, which forbids States from relying on their internal law as justification for failure to comply with their obligations. However, unlike States, international organizations act and have limited functional authority based on their constituent instruments and internal rules. The draft article should be reformulated so as to emphasize that international organizations cannot rely on their internal rules for the sole purpose of justifying their failure to comply with their international obligations.

Mexico

[Original: Spanish]

The irrelevance of the rules of the organization as justification for failure to comply with its obligations under international law is another case in which Mexico considers that the analogy with the corresponding rule for States, i.e. the irrelevance of internal law as justification for non-compliance, is problematic. Many have pointed out that the rules of the organization may be either internal rules or rules of international law. This normative inconsistency could give rise to serious problems in application of the present article.

Chapter II
Reparation for injury

11. Draft article 39
Ensuring the effective performance of the obligation of reparation

Republic of Korea

[Original: English]

Draft article 39 places too great of a burden, mostly financial, on member States. To reduce the unnecessary burden on members and ensure the efficient implementation of the responsibility of an international organization, the present formulation could remain, with an additional specification in the commentary that the responsibility of members is limited only to the respective international organization, and not towards an injured State or an injured international organization.

Chapter III
Serious breaches of obligations under peremptory norms of general international law

12. Draft article 40
Application of this chapter

Czech Republic

[Original: English]

Perhaps the most difficult and controversial question is whether an international organization can violate *jus cogens* and whether in such case the responsibility is incurred by the organization and/or its member States. The solution adopted by the Commission in draft articles 40 and 41 reflects the provisions of articles 40 and 41 of the articles on State responsibility. However, the Commission's commentary does not offer any examples of serious breaches of obligations under peremptory norms of general international law committed by international organizations. On the contrary, the only relevant examples of practice concern the duty of international organizations not to recognize as lawful a situation created by a breach of such obligation and the duty to cooperate to bring such breach to an end. These examples are certainly important; however, one might well question their relevance to the codification of the responsibility of international organizations, since they all concern the response of international organizations to breaches of peremptory norms committed by States.

Part four
The implementation of the international responsibility of an international organization

Chapter I
Invocation of the responsibility of an international organization

13. Draft article 48
Invocation of responsibility by a State or an international organization other than an injured State or international organization

Czech Republic

[Original: English]

While most of the rules on the implementation of the international responsibility of international organizations do not pose major problems, draft article 48 is an exception: an organization may invoke responsibility only if the interest of the international community underlying the obligation breached is included among the functions of the international organization. In practice there will presumably be disputes as to whether or not the functions of the given organization will justify a certain entitlement.

Chapter II
Countermeasures

14. Draft article 56
Measures taken by an entity other than an injured State or international organization

Czech Republic

[Original: English]

The most problematic article in this chapter is draft article 56.

Part five
Responsibility of a State in connection with the act of an international organization

15. Draft article 57
Aid or assistance by a State in the commission of an internationally wrongful act by an international organization

Czech Republic

[Original: English]

Draft articles 57 to 59 mirror draft articles 13 to 15. Since the commentary offers practically no examples, the provisions were presumably adopted "just in case".

16. Draft article 60
Responsibility of a member State seeking to avoid compliance

Czech Republic

[Original: English]

By establishing an international organization and endowing it with competences and immunities, a State cannot absolve itself of responsibility for a breach of its own obligations.

Mexico

[Original: Spanish]

Mexico welcomes this draft article, which it considers to be of great importance and a vital aspect of the object and purpose of the current draft.

17. Draft article 61
Responsibility of a State member of an international organization for the internationally wrongful act of that organization

Czech Republic

[Original: English]

State practice as well as case law show that member States are not as a rule held responsible for the wrongful acts of international organizations. The first exception (in paragraph 1 (a)), i.e., the case when the State accepts responsibility, is on the whole acceptable. Rather more questionable is the second exception (paragraph 1 (b)), mainly because of the considerable lack of clarity. In this case, the condition for incurring responsibility is not implicit consent, but the existence of circumstances that have led the injured party to rely on the State's responsibility for the conduct of an international organization. The Commission's commentary does not throw much light on the issue.

Part six
General provisions

18. Draft article 63
Lex specialis

Czech Republic

[Original: English]

Draft article 63 is fully acceptable for the Czech Republic when special rules (including the rules of the organization) are supplementing general rules, especially if they regulate the implementation of responsibility. Such rules may also regulate relations of responsibility between an organization and its member States. However, they should never preclude the responsibility of an international organization, unless it is attributed to a member State. It would also be undesirable for the Czech Republic, to allow the setting of double standards — to have different yardsticks for different organizations, or even for a single organization, depending on the dispute settlement body (e.g., the World Trade Organization, ECHR or the European Court of Justice).

Mexico

[Original: Spanish]

1. Given the great diversity in the types and functions of international organizations, the *lex specialis* rule is of considerable practical importance in the context of the current draft. In this regard, the Commission is invited to consider the possibility of including other examples in the commentary in order to give a broader overview of the specific situations that article 63 seeks to regulate.

2. In this respect, it would be appropriate to mention the system of responsibility of the International Seabed Authority for damage arising out of wrongful acts in the exercise of its powers and functions, established in article 22 of annex III to the 1982 United Nations Convention on the Law of the Sea. Article 139 of the Convention, which deals with damage caused by an international organization, is also relevant.