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Responsibility of international organizations

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Comments and information received from Governments and international organizations

Report of the Secretary-General

I. Introduction

1. The International Law Commission adopted the articles on the responsibility of international organization at its sixty-third session, in 2011. In its resolution [66/100](#) of 9 December 2011, the General Assembly took note of the articles on the responsibility of international organizations, presented by the Commission, the text of which was annexed to that resolution, and commended them to the attention of Governments and international organizations without prejudice to the question of their future adoption or other appropriate action.

2. In its resolution [69/126](#) of 10 December 2014, the General Assembly reiterated its commendation of the articles and requested the Secretary-General to invite Governments and international organizations to submit information on their practice regarding decisions of international courts, tribunals and other bodies referring to the articles on the responsibility of international organizations, as well as written comments on any future action regarding the articles. In addition, the Assembly decided to include the item in the provisional agenda of its seventy-second session, with a view to examining, inter alia, the question of the form that might be given to the articles.

3. By notes verbales dated 7 January 2015 and 12 January 2016, the Secretary-General invited Governments to submit, no later than 1 February 2017, their written comments on any future action regarding the articles on the responsibility of international organizations. In those notes verbales, he also invited Governments to submit information on practice regarding decisions of international courts, tribunals and other bodies referring to the articles. The Under-Secretary-General for Legal Affairs, the Legal Counsel, also addressed a communication dated 8 February 2016 to 22 international organizations and entities bringing to their attention resolution [69/126](#) and inviting them to submit, no later than 1 February 2017, comments and information in accordance with the request of the General Assembly.

* [A/72/50](#).



4. As at 26 April 2017, the Secretary-General had received written comments from nine Governments: Australia (dated 1 February 2017), Czechia (dated 2 February 2017), Denmark (joint submission of 18 April 2017), El Salvador (dated 17 January 2017), Finland (joint submission of 18 April 2017), Iceland (joint submission of 18 April 2017), Norway (joint submission of 18 April 2017), Oman (dated 18 June 2015) and Sweden (joint submission of 18 April 2017). He had also received written comments from 29 entities: Asian Development Bank (joint submission of 31 January 2017), Bank for International Settlements (joint submission of 31 January 2017), Black Sea Trade and Development Bank (joint submission of 31 January 2017), Caribbean Development Bank (joint submission of 31 January 2017), Council of Europe Development Bank (joint submission of 31 January 2017), Food and Agriculture Organization of the United Nations (joint submission of 31 January 2017), Inter-American Investment Corporation (joint submission of 31 January 2017), International Bank for Reconstruction and Development (joint submission of 31 January 2017), International Civil Aviation Organization (joint submission of 31 January 2017), International Criminal Court (dated 24 March 2017), International Development Association (joint submission of 31 January 2017), International Labour Organization (ILO) (joint submission of 31 January 2017), International Maritime Organization (joint submission of 31 January 2017), International Monetary Fund (joint submission of 31 January 2017), International Organization for Migration (joint submission of 31 January 2017), International Telecommunication Union (joint submission of 31 January 2017), Multilateral Investment Guarantee Agency (joint submission of 31 January 2017), Nordic Investment Bank (joint submission of 31 January 2017), Organization for Economic Cooperation and Development (dated 27 March 2017), United Nations Educational, Scientific and Cultural Organization (joint submission of 31 January 2017), United Nations Industrial Development Organization (joint submission of 31 January 2017), Universal Postal Union (joint submission of 31 January 2017), West African Development Bank (joint submission of 31 January 2017), World Bank (dated 18 March 2016), World Health Organization (joint submission of 31 January 2017), World Intellectual Property Organization (joint submission of 31 January 2017), World Meteorological Organization (dated 22 February 2017) and World Trade Organization (joint submission of 31 January 2017). The United Nations also submitted written comments (dated 2 February 2017).

II. Comments on any future action regarding the articles on the responsibility of international organizations

A. Comments by Governments

Australia

[Original: English]
[1 February 2017]

While valuing the contribution that the International Law Commission's articles on the responsibility of international organizations have made to discussions on the topic, Australia would not support the elaboration of a convention on the basis of the articles. Australia observes that there remain significant differences of opinion among States on the principles that should govern the responsibility of international organizations. Australia is therefore of the view that the level of consensus that would be required to successfully conclude a convention is not currently present.

Czechia

[Original: English]
[2 February 2017]

In view of the insufficient relevant practice and the fact that the articles on the responsibility of international organizations represent not only codification but also progressive development of international law, the Czech Republic would currently favour the articles being adopted as an annex to a General Assembly resolution. Under such circumstances the articles may become proof of the existence of an *opinio juris* if they are applied in practice, similar to the articles on responsibility of States for internationally wrongful acts.

Denmark, Finland, Iceland, Norway and Sweden (joint submission)

[Original: English]
[18 April 2017]

The Nordic countries would like to thank the International Law Commission for its work on the articles on the responsibility of international organizations. We note that in general the articles, together with the commentary, already serve as a useful tool for practitioners and scholars.

In drafting the articles on the responsibility of international organizations, the Commission relied on the relevant articles on State responsibility. We would like to underline that we support this approach. However, as the Commission has recognized, the nature of international organizations merits a number of modifications and alternative solutions. Careful consideration should in this respect be made of the particular role and functions of organizations in international cooperation.

Furthermore, while the Nordic countries are generally supportive of the substantive content of the articles, we also realize that at this stage they are not always based on consistent and general practice. On certain issues, for example some aspects of attribution and the precise nature of a dual responsibility for international organizations and their member States, it seems that the law is not settled to a degree that merits codification in a convention.

Therefore, while we congratulate the Commission on bringing the articles on the responsibility of international organizations an important step further towards maturity, we also query whether the articles have matured or crystallized to such a degree that they will ultimately be ratified by an adequate number of States.

The Nordic countries find that these articles for now should continue to serve as useful inspiration, and be further refined, in the future practice of States and international organizations. For these reasons, at present we do not support the elaboration of a convention.

The Nordic countries would like to express their appreciation to the International Law Commission for taking note of and acting on our previously submitted comments. We would highly appreciate the Commission taking into account, in any further work on this important topic, the observations made by the Nordic countries in connection with the sixty-first session of the Commission in 2009, regarding certain aspects of the commentary to the present draft article 7 and the responsibility of international organizations in peacekeeping operations.¹

¹ See [A/C.6/64/SR.15](#), paras. 25-27.

El Salvador

[Original: Spanish]

[17 January 2017]

In the previous sessions in which the topic was considered, El Salvador observed with satisfaction the conclusion of the work carried out by the International Law Commission and by the Special Rapporteur, Giorgio Gaja,² and hereby reaffirms its support for the important work of codification and progressive development undertaken by the Commission.

El Salvador recognizes the importance of the principle of responsibility in international law. By that principle, every act attributable to a State or an international organization that constitutes a breach of an obligation in force for the same is an internationally wrongful act and entails international responsibility. Therefore, as in the case of States, an international organization that interacts with other subjects of international law must also be required to incur certain consequences as a result of its acts.

Although the articles adequately reflect this principle, adopting a binding instrument on the subject still poses multiple difficulties due to the scarcity of practice on its application to the large variety of international organizations. To discuss the form that the articles drafted by the Commission should take in the future, it would be immensely useful to have previously examined the initial compilation of the decisions taken by international courts, tribunals and other bodies that will be submitted by the Secretary-General during the current session.

In the light of the above, the Republic of El Salvador considers that the item should remain on the agenda of the Sixth Committee, with a view to monitoring practice with regard to the responsibility of international organizations and to then deciding at a later date whether the articles are ripe for uniform application.

Oman

[Original: Arabic]

[18 June 2015]

1. Overview of the articles on the responsibility of international organizations

There has been an increase in the number of international organizations, which now implement a wide range of mandates and play a prominent and unprecedented role in the international arena. The International Law Commission is to be commended for its efforts to formulate principles for establishing the international responsibilities of such organizations. However, despite its commendable efforts, the Commission has encountered a number of difficulties because there is little existing practice in this area. In addition, international organizations are very diverse, as are their purposes, and they are also different in nature from States.

The United Nations will naturally be affected by those principles because they will guide its practice and the practice of Member States. They will also guide the practice of regional and specialized agencies.

The articles have been formulated along the same lines as the articles on the responsibility of States. Much work has been done on the responsibility of States, and there are numerous international judicial precedents, norms and legal writings in that regard. Indeed, the principles established in that area are well known.

² See [A/C.6/66/SR.18](#), paras. 45-47.

Not very much has been written regarding the responsibility of international organizations, and not all of the relevant principles and terms are in line with United Nations practice.

2. Articles on the responsibility of international organizations

International responsibility is defined as the body of legal provisions applicable to subjects of international law should they perpetrate acts that violate their international obligations and cause harm to other subjects of international law.

The articles establish the responsibility of an international organization for an internationally wrongful act and that such actions are attributable to that organization and its organs. The articles also provide for circumstances precluding wrongfulness for illegal actions and reparation for the injury caused by the internationally wrongful act.

Formulating articles on the responsibility of international organizations will undoubtedly contribute to the codification of international law insofar as:

(a) They will establish key considerations in terms of the responsibility of international organizations and will clarify how States should take those considerations into account;

(b) They will constitute recognition that organizations have the right to do so;

(c) A systematic approach in this area will strengthen the reparation mechanisms provided under international law and bolster international peace and security;

(d) The articles will complement efforts by the International Law Commission to codify international law, thereby strengthening the rule of law at the international level.

3. Views

Although most established norms on international responsibility have been codified in international law, certain articles do not draw on the practices and established norms of States or international tribunals. With a view to entrenching those articles and increasing familiarity with them, we believe that they should be included, as a first step, in a non-binding document that can serve as a source of guidance for countries and international tribunals. If the new principles become entrenched, negotiations could be held with a view to enshrining them in a binding international instrument.

B. Comments by international organizations

1. International Criminal Court

5. As to the future action regarding the articles on the responsibility of international organizations, the International Criminal Court underscores the relevance of this topic and would like to be involved in any further consideration regarding the articles.

Asian Development Bank, Bank for International Settlements, Black Sea Trade and Development Bank, Caribbean Development Bank, Council of Europe Development Bank, Food and Agriculture Organization of the United Nations, Inter-American Investment Corporation, International Bank for Reconstruction and Development, International Civil Aviation Organization, International Development Association, International Labour Organization, International Maritime Organization, International Monetary Fund, International Organization for Migration, International Telecommunication Union, Multilateral Investment Guarantee Agency, Nordic Investment Bank, United Nations Educational, Scientific and Cultural Organization, United Nations Industrial Development Organization, Universal Postal Union, West African Development Bank, World Health Organization, World Intellectual Property Organization and World Trade Organization (joint submission)

6. In the general commentary that accompanies the articles on the responsibility of international organizations, the International Law Commission states that the main difficulty that it faced in elaborating those articles was the limited availability of pertinent practice. The scarcity of relevant practice renders the Commission's work on the responsibility of international organizations predominantly an exercise in the progressive development of international law. As a statement about how international law ought to evolve, many of the articles remain controversial. Together, these features explain why caution is warranted before relying on the articles. These features also explain why, in our view, negotiating a treaty based on these articles would be premature.

7. The International Law Commission's general commentary describes some of the reasons for practice related to the responsibility of international organizations being so limited. The main reason, according to the Commission, is that "practice concerning responsibility of international organizations has developed only over a relatively recent period".³ Another is "the limited use of procedures for third-party settlement of disputes to which international organizations are parties".⁴ As a result, the Commission itself recognizes that, for many of the articles, "the border between codification and progressive development" is moved "in the direction of the latter".⁵

8. Practice relating to the responsibility of international organizations is not accumulating quickly. The organizations that have signed these comments have not identified any examples of practice that match the United Nations Legal Counsel's request. Thus, the challenges that the International Law Commission faced in its initial efforts to develop the articles persist at present.

9. Furthermore, as the International Law Commission developed the draft articles, numerous international organizations submitted comments, both individually and jointly, in which they raised serious concerns both about the Commission's overall approach and about particular draft articles.⁶ These concerns included the excessive alignment of the articles on the responsibility of States and international organizations, notwithstanding the significant differences between States and international organizations and the significant differences among international organizations. We welcome the commentaries that the Commission added and the modifications that it made to the draft articles in response to these submissions. In particular, we appreciate the recognition in the general commentary of the principle of speciality and of the fundamental importance of article 64 (*lex specialis*). We also

³ See A/66/10, para. 88 (general commentary, para. 5).

⁴ Ibid.

⁵ Ibid.

⁶ See A/CN.4/545, A/CN.4/556, A/CN.4/568 and Add.1, A/CN.4/582, A/CN.4/593 and Add.1, A/CN.4/609 and A/CN.4/637 and Add.1.

appreciate the confirmation that the articles represent secondary rules. In other areas, however, the commentaries and modifications did not adequately address our manifold concerns.

10. Because many of the articles remain controversial and largely unsupported by practice, we urge great caution in relying on the articles as an authoritative statement of positive law. We respectfully call attention to the International Law Commission's general commentary on the consequences of the diverging levels of practice underpinning its work on the responsibility of States, on the one hand, and the responsibility of international organizations, on the other, and in particular the Commission's recognition that "the provisions of the present draft articles do not necessarily yet have the same authority as the corresponding provisions on State responsibility".⁷

11. Under these circumstances, we likewise urge great caution with respect to any future action concerning the articles. In our view, any steps towards negotiating a convention based on the articles would be premature. In resolutions [66/100](#) of 9 December 2011 and [69/126](#) of 10 December 2014, the General Assembly took note of the articles and commended them to the attention of Governments without prejudice to the question of their future adoption or further appropriate action. In our view, no further action by the Assembly is necessary at this time.

2. Organization for Economic Cooperation and Development

12. [The Organization for Economic Cooperation and Development submitted comments that were substantially similar to the joint submission of 31 January 2017.]

3. United Nations

13. We note that the International Law Commission, when it submitted the draft articles on the responsibility of international organizations to the General Assembly, recommended to the General Assembly "to consider, at a later stage, the elaboration of a convention on the basis of the draft articles" ([A/66/10](#), para. 85 (b)).

14. However, we are also conscious of the fact that the articles on the responsibility of international organizations are intrinsically linked to the articles on the responsibility of States for internationally wrongful acts. In this regard, we note that, at the seventy-first session of the General Assembly, the Sixth Committee established a working group on the responsibility of States for internationally wrongful acts to further examine the question of a convention on the topic or other appropriate action on the basis of the articles drafted by the International Law Commission ([A/71/505](#), para. 5).

15. We also note that the General Assembly, in its resolution [71/133](#) of 13 December 2016 on the responsibility of States for internationally wrongful acts:

(a) Acknowledged the possibility of requesting, at its seventy-fourth session, the Secretary-General to provide the General Assembly with information on all procedural options regarding possible action on the basis of the articles, without prejudice to the question of whether such possible action is appropriate (para. 5);

(b) Encouraged all Member States to continue the substantive dialogue on an informal basis during the period prior to the seventy-fourth session of the Assembly (para. 7);

(c) Decided to further examine, within the framework of a working group of the Sixth Committee and with a view to taking a decision, the question of a

⁷ See [A/66/10](#), para. 88 (general commentary, para. 5).

convention on responsibility of States for internationally wrongful acts or other appropriate action on the basis of the articles (para. 8).

16. In the light of the above, the General Assembly could consider any future action regarding the articles on the responsibility of international organizations on the basis of any action taken with respect to the articles on the responsibility of States for internationally wrongful acts at the seventy-fourth session of the Assembly or at its subsequent sessions. This approach also seems to be warranted in view of the fact that there does not appear to be significant new practice related to the articles since the Assembly took note of them at its sixty-sixth session. Consequently, at this stage, the Assembly may not have sufficient materials before it to take a decision on the future status of the articles.

4. World Bank Group

17. The World Bank has no additional comments to make at this stage, other than those already communicated in 2011.⁸

5. World Meteorological Organization

18. The World Meteorological Organization shares the views expressed in the joint submission submitted by the World Intellectual Property Organization on 31 January 2017.

III. Information on practice regarding the articles on the responsibility of international organizations

A. Information submitted by Governments

Australia

[Original: English]
[1 February 2017]

Australia has not been party to any proceedings before international courts, tribunals or other bodies in which the articles on the responsibility of international organizations have been considered.

The articles have not been considered by domestic Australian courts or tribunals.

Czechia

[Original: English]
[2 February 2017]

As regards the Secretary-General's request for information concerning the decisions of international courts, tribunals and other bodies referring to the articles on the responsibility of international organizations, the Czech Republic is not aware of any such decision. The Czech Republic would only mention that the Advocate General of the Court of Justice of the European Union, Nils Wahl, refers to the articles in his opinion in the joint cases C-8/15 P, C-9/15 P and C-10/15 P.⁹

⁸ See [A/CN.4/637](#).

⁹ *Ledra Advertising Ltd and others v. European Commission and European Central Bank*, Opinion of Advocate General Wahl, 21 April 2016.

El Salvador

[Original: Spanish]

[17 January 2017]

With regard to the requested information on national practice in the matter, there is no record of the application of the articles on the responsibility of international organizations in El Salvador.

B. Information submitted by international organizations

1. International Criminal Court

19. As to information regarding the International Criminal Court's practice in connection with decisions of international courts, tribunals and other bodies referring to the articles on the responsibility of international organizations, there are no known references to the articles in the Court's judicial decisions.

2. International Labour Organization

20. To date, the International Labour Organization has no practice to report in connection with decisions of international courts, tribunals or other bodies referring to the articles on the responsibility of international organizations.

3. Asian Development Bank, Bank for International Settlements, Black Sea Trade and Development Bank, Caribbean Development Bank, Council of Europe Development Bank, Food and Agriculture Organization of the United Nations, Inter-American Investment Corporation, International Bank for Reconstruction and Development, International Civil Aviation Organization, International Development Association, International Labour Organization, International Maritime Organization, International Monetary Fund, International Organization for Migration, International Telecommunication Union, Multilateral Investment Guarantee Agency, Nordic Investment Bank, United Nations Educational, Scientific and Cultural Organization, United Nations Industrial Development Organization, Universal Postal Union, West African Development Bank, World Health Organization, World Intellectual Property Organization and World Trade Organization (joint submission)

21. The organizations that have signed these comments have not identified any examples of practice that match the United Nations Legal Counsel's request.

4. Organization for Economic Cooperation and Development

22. The Organization for Economic Cooperation and Development has no practice with regard to decisions of international courts, tribunals and other bodies relating to the articles on the responsibility of international organizations.

5. United Nations

23. The United Nations wishes to confirm that it has no further materials to share at this stage regarding decisions of international courts, tribunals and other bodies referring to the articles and information on the practice of Governments and international organizations with respect to the articles.