

# Research Report

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General Assembly

Sixth Committee (Legal)

Revising the scope of international organizations  
in the "Draft articles on Responsibility of  
International Organizations"



MUNISH



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<b>Forum</b>	General Assembly 6 <sup>th</sup> sub commission
<b>Issue:</b>	Revising the scope of international organizations in the "Draft articles on Responsibility of International Organizations"
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## Introduction

Since World War Two, countless international organizations (IOs) have been created. Most notable of these organizations is the United Nations. In 1949, there was a ruling by the International Court of Justice that said that the United Nations had an implied legal personality. The effects of this are important; as a legal personality, the UN does not only have rights, but also obligations and responsibilities.

Legal responsibility is a topic under international law that is in essence paradoxical. First of all, there are international legal concepts that apply to various member states of the UN due to treaties or other agreements, but all of those agreements have to be coherent with each member state's legislation, so in fact, there is no single "international law" (i.e. no country will agree to an international legal principle if it goes against its own legal doctrine or jurisprudence).

However, in the light of the many international organizations that have been created in the past few years (and their actions for which they are responsible, but not yet accountable), there is a new problem that legislators all over the world and in the UN face. This is the fact that international organizations have little legal responsibilities over their actions, while most of the responsibility over their actions falls under that of the member state that either let the act happen or aided in its fulfillment. There has been an attempt to codify the responsibilities of these organizations in the Draft Articles, written by the International Legal Commission in 2001.

The above is the legal description of the problem; however, it is important to give an explanation that is thorough about the principles that are involved in this issue. An international organization in this issue can refer to any organization that has at one point to



do with legal responsibility, however, it is desirable and practical to limit the definition of an international organization to an organization that has been set up by treaty between member states. This drastically reduces the problem of having to define an organization by other means, and it gives a clear boundary of the responsibilities of said organizations. This is also the definition used in article 2 of the draft articles.

When speaking of responsibilities, the most common (and controversial) responsibility is "responsibility for an internationally wrongful act". This is an act that goes against international law, and is performed by the IO. There are four chapters in the articles, but in fact, it is much better to divide the draft articles into three main elements.

The first section is attribution. Attribution in essence means to what extent an internationally wrongful act can be seen as performed by the IO. According to article 5, any organ or member of an IO that performs an internationally wrongful act, should be considered as the IO performing the act. The second chapter of the draft articles is Preclusions. This is a separate chapter, but in fact, it is so closely connected to the first chapter, that it is impossible to tell them apart. Preclusions refers to those conditions (such as self-defense) that excuse the IO from having committed an internationally wrongful act.

The second element (and third chapter) of the draft articles is content of the international responsibility. This section therefore encompasses how exactly the IO should respond to an internationally wrongful act committed by itself (for example, to offer the guarantee of non-repetition).

The last element of the draft articles is reparation to the victims. This encompasses what an IO must do to the victims after an internationally wrongful act has been committed.

In other words, the draft articles contain what an IO is, when they are liable, and what they should do if they have done something wrong. However, there are criticisms towards the draft articles, and there have been calls to renew them. That is what this research report is about.

## Definition of Key Terms

### Draft Articles

The draft articles have been written by the International Legal Commission in order to codify the responsibility of the IOs under international law. There are also Draft Articles on



the responsibility of member states. These are very similar to the draft articles upon which this research report is based.

### Legal responsibility

Legal responsibility is to what extent, in this case IOs, are liable for internationally wrongful acts. It is therefore a measure to see to what extent the IOs have to be held accountable for the acts that they have committed.

### Internationally wrongful act

An internationally wrongful act according to the draft articles is an act that is attributable to an international organization. The act is attributable because of action (the IO itself actively performed the act), or omission (the IO did nothing, or not enough), to stop the wrongful act from happening. An internationally wrongful act is therefore a breach of the obligations of an IO to another IO, a member state, or an individual. If attributable, the IO faces responsibility.

### Organs or agents of an international organization

As stated in the introduction, not only the IO has to be the entity that committed the internationally wrongful act. If an organ or an agent of the organization committed the act, then the IO is responsible. An organ of an IO is a part of the IO, a section. For example, the GA6 is an organ of the UN. An agent is a person directly linked to the IO, for example, a peace keeper of the UN is an agent. If a peace keeper violates international law, the UN is responsible under the draft articles.

### Acknowledgement

Even if an international organization is not attributable directly under the conditions outlined in articles 6-8 of the draft articles (attribution), it may still be held responsible for an internationally wrongful act if it acknowledges an internationally wrongful act as its own. Acknowledgement is therefore claiming responsibility over an act.

### Composite act

An IO can also perform various acts that in conjunction lead it to be an internationally wrongful act. A composite act is therefore a combination of various acts that together form one breach of its obligations to the members of the IO.



## Restitution, compensation, and satisfaction

These three terms cannot be dissociated from one another, and are therefore under the same heading. Restitution is restoring the situation as it was before the internationally wrongful act was committed. It must be a reasonable task insofar it is possible to restore by monetary means. Compensation goes further than restitution. Compensation is the financial replacement of the damage that cannot be made good under restitution. Satisfaction is the last step in these measures of “making up for the damage”, and it is an acknowledgement from the IO to the persons involved to offer apologies for the internationally wrongful act insofar those acts have not been made good by restitution or compensation. It may, however, never be humiliating for the IO.

## General Overview

The draft articles were created after a long period of international intervention by IOs while their responsibilities were in essence not documented. The problems arose concurrently with the creation of IOs. The first IO was created in the 19<sup>th</sup> century, although at that time, their role in international political matters was extremely limited.

However, there have been increasingly more situations in which there are international organizations that are involved in international (humanitarian) operations, and failures. The very first organization that can be categorized as one of such IOs, is the UN itself. It was created in 1945 after the Second World War as a way to prevent any further wars. In that sense therefore, the United Nations had a legal personality, which was confirmed by the International Court of Justice in 1949.

After the United Nations strongly expanded in the years after its creation, more and more subsidiary bodies were created. Organizations such as UNICEF are for example also IOs under the Draft Articles, for two reasons. First of all, they are organs of the United Nations, and second of all, they are organizations created by treaty.

In more recent times, there have been more operations in humanitarian situations that were under the responsibility of international organizations. One of these, for example, was ISAF's intervention in Afghanistan, partly under the command of NATO. Both of these organizations would be categorized as IOs by the Draft Articles, and their responsibilities are disputed. Examples like these stress the importance of defining the legal responsibilities of international organizations.



For now, it seems that the Draft Articles have created a division in the legal community between those who think that the Draft Articles are a step forward into creating a better legal surrounding for victims of internationally wrongful acts, and those who think that this is a not sufficiently moderated and unilateral decision from the International Law Commission.

### Call for the implementation of the draft articles and their drafting

There have been many operations in the past few years conducted by IOs under the command of other IOs or member states. During these operations, it might happen, and it does happen, that international law is not always abided to. This would be a major problem for the victims desiring compensation or reparation for the damage that has been done, because it is often not clear what organization is liable for the damage.

A simple solution is complete codification of the international responsibilities of international organizations. The International Law Commission started in its 54<sup>th</sup> session to try and draft these articles. In the 56<sup>th</sup> session they were approved, and are now used as a guideline for the responsibilities of international organizations.

### Reception of the draft articles

Even with the large amount of requests to codify the responsibilities of IOs, the reception of the draft articles was mixed. On one hand there is the UN, which has been extremely supportive of the Draft Articles. The UN has issued quite a lot of resolutions that support the Draft Articles, and suggest their implementation. The UN sees this as a good opportunity to not only codify the responsibilities of the IOs, but also as a way to set precedents for future cases and as a way to prevent further internationally wrongful acts from happening. According to the UN, the Draft Articles are a thorough and effective way to deal with the many responsibilities attached to this problem.

Then, there are those, who affirm that the Draft Articles fail at doing what they should: providing clear standards to how the responsibilities must be codified. Some scholars agree that the Draft Articles are too long, and not efficient, seeing as most of the principles in the articles can be combined into fewer articles, thus making the document clearer. Other scholars criticize the ILC for not asking enough input from member states and IOs, while there is a third group of scholars who believe that having a case study of several situations where IOs have been sued is a better solution to this problem.



## Major Parties Involved and Their Views

### International Law Commission (ILC)

The International Legal Commission (ILC) is a body responsible for codifying international law. It was created by the General Assembly in 1948, and its aim is to construct a more concise, and clear (international) legal framework. The ILC has drafted the Draft Articles on the Responsibility of International Organizations between its 54<sup>th</sup> and its 56<sup>th</sup> session. Per session, the ILC handles different topics that need to be addressed.

### United Nations (UN)

The UN was one of the parties in this conflict that asked for the drafting of the Draft Articles, and is therefore very supportive of them. There have been several resolutions requesting the implementation of the draft articles in practice.

### Individual Member States

Of course, the Draft Articles will affect the responsibility of the states that are involved. For example, it is likely that states will have to bear less responsibility once the articles are finally implemented, but there is one problem: many states feel that they have not been asked for their input in the creation of the draft articles, and therefore feel that there has not been sufficient interest in their opinions. Member states are also affected by the Draft Articles on the Responsibilities of Member States, which has also been drafted by the International Law Commission.

## Timeline of Events

The development of the Draft Articles is not very long, but the background leading towards them encompasses a considerable time span.

<b>Date</b>	<b>Description of event</b>
1924	The League of Nations first states its intentions to create a commission like the ILC
1930	League of nations codification conference, which set many legal standards on issues such as nationality and passports



1939-1945	World War 2, the importance of an international organization such as the UN is once more revealed
1945	Creation of the UN
1947	Creation of the ILC
Most of the 20 <sup>th</sup> century	There are international conflicts all around the world in which the different IOs play a significant role. There are various scandals over the treatment of civilians by states and international organizations. These are seen as calls to codify the responsibilities of both states and international organizations
2000	The ILC drafts the draft articles on the responsibility of states
2001	First reading of the draft articles on the responsibilities of states
2002	The ILC starts drafting the Draft Articles on the responsibilities of international organizations
2009	First reading of the draft articles

## UN involvement, Relevant Resolutions, Treaties and Events

The UN has been quite actively involved in the matter of the draft articles, because the UN has called for the creation of the Draft Articles, and it has supported them in statements.

- Draft Articles on the Responsibility of International Organizations, 2011, **(A/66/10, para. 87)**
- Draft resolution **(A/C.6/66/L.22)** (Responsibility of international organizations)

## Evaluation of Previous Attempts to Resolve the Issue

There have not been many previous attempts to solve the issue, except for the Draft Articles themselves, and various reports on them, because this issue is so difficult to



moderate. There have been many suggestions dating a long time back, but there has been no concrete solution that has been suggested to tackle the problems that occur, according to some, due to the implementation of the Draft Articles. However, the entire process that led to the creation of the draft articles, can be seen on itself as a way of the international community, the ILC and the UN, to create a more sustainable legal background for this kind of legal issues, and therefore as a sign of political goodwill.

## Possible Solutions

Given that there has been a lot of criticism to the draft articles, there are various measures that can be taken in order for the draft articles to be either improved and clarified, or replaced by something better.

One of the solutions is to replace the draft articles with a case study of International Organizations that have committed an internationally wrongful act. This is a very long and costly project, but above all, the greatest risk in this matter is that the same conclusions will probably be drawn at the end of the case study as in the draft articles. The delegates should therefore consider if they are willing to “steer” the process, or consider if this steering is against the principle of neutrality of law.

Another solution for this problem is to cut down on the number of articles. The draft articles provide in almost any situation that may or may not arise. Therefore, the articles can be reformed in such a way that they are more efficient. The delegates may opt to merge articles, or re-write them, or even better: give the ILC guidelines by which they have to re-write the Draft Articles.

Delegates may consider starting an investigation in which the ILC requests input from all member states in the question, before any of the other solutions described in this part are discussed. That may prevent future criticism, and may aid the Draft Articles in getting implemented sooner.

It is also important that there is a distinction between different types of international organizations. The Draft Articles assume that all international organizations are equal, but are they? Should the International Monetary Fund have the same legal responsibilities as the International Committee of the Red Cross? With different classes, it is not meant that there should be a distinction between profit and non-profit, seeing as the draft articles only handle organizations that are created by treaty.



This brings us to the next solution: many internationally wrongful acts are also committed by a corporation, so why couldn't a corporation be included in the draft articles? Delegates can urge the ILC to include corporations in the draft articles, although the reasons for doing so should always be kept in mind.

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## Appendices

This site provides delegates with the text of the actual draft articles:

[http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9\\_11\\_2011.pdf](http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_11_2011.pdf)

This site provides delegates with more information on agenda item 81 from the GA6

<http://www.un.org/en/ga/sixth/66/ILC.shtml>



This volume from the German Law journal provides delegates with some criticism and observation on the Draft Articles and the application:

[http://www.germanlawjournal.com/pdfs/Vol13-No5/PDF\\_Vol\\_13\\_No\\_05\\_511-541\\_Articles\\_Gal-Or%20&%20Ryngaert.pdf](http://www.germanlawjournal.com/pdfs/Vol13-No5/PDF_Vol_13_No_05_511-541_Articles_Gal-Or%20&%20Ryngaert.pdf)

This thesis gives more information about the related subject of state responsibility:

<http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1557482&fileId=1564336>

