Translated from Russian

Future action with regard to the International Law Commission's articles on the responsibility of international organizations

The responsibility of an international organization for a breach of its international obligations is an integral element of its legal personality. This issue is becoming more and more urgent. Furthermore, it is no longer a theoretical issue, and the lacuna in this area is becoming increasingly unacceptable. In addition, damage caused by international organizations may be even more serious than that caused by States.

In our view, the topic of responsibility of international organizations under international law is, overall, ripe for codification in the form of a convention, and we are therefore in favour of beginning work on a new international treaty, which could, moreover, be based on the articles on the responsibility of international organizations prepared by the International Law Commission in 2011.

We consider that the articles on the responsibility of international organizations, of which the General Assembly took note in 2020 through its resolution 75/143, "without prejudice" to possible future action in that regard, are generally balanced and, for the most part, take into account the specific features of international organizations as subjects of international law, although some of the provisions require further debate, in particular the question of the right of self-defence of an international organization.

We note the practical need for further analysis of the issue of the responsibility of international organizations towards their member States arising from the breach by organizations of the provisions of their constituent instruments. In that connection, we consider it important that article 10, paragraph 2, of the articles establishes the premise that a breach of international obligations by an international organization may also include a breach of the organization's obligations towards its member States. This includes obligations arising from its constituent instruments.

In that context, we cannot help but note the negative trend of organizations, and also their secretariats, exceeding their authority. Examples include illegitimate "attribution" mechanisms with quasi-investigative powers. These mechanisms are clearly established in violation of the rights of the States members of such organizations. Examples of such mechanisms include the attribution functions vested in the Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons; the ongoing independent mechanism to collect evidence of the most serious crimes and violations of international law committed in Myanmar since 2011, established by the Human Rights Council in its resolution 39/2; and the so-called investigative mechanism for Syria established by the

General Assembly in its resolution 71/248, in excess of its authority, that is, in violation of the Charter of the United Nations. The risk associated with the establishment of such mechanisms, in excess of the authority of organizations and their secretariats, is that their conduct under international law is considered to be an act of the organization in question, which can lead to negative consequences in the context of the responsibility of international organizations.

At the same time, we note that no practical mechanisms have, as yet, been established for holding international organizations accountable under international law. As a rule, organizations do not become parties to international treaties containing provisions that oblige them to settle disputes through an independent judicial body. The competence of the International Court of Justice, in accordance with its Statute, is restricted to disputes between States. The fact that international organizations have immunities prevents the involvement of national courts. The elaboration of a convention on the responsibility of international organizations could help to eliminate that lacuna.

Practice in the application by courts of the International Law Commission's articles on the responsibility of international organizations

There are examples of situations in which national and international courts have dealt with issues relating to the responsibility of international organizations. They have referred in their decisions to the Commission's articles on the subject, which are an authoritative source for judges. This is demonstrated by the compilation of such decisions contained in the report of the Secretary-General (A/75/80), which was provided as an update in accordance with General Assembly resolution 72/122. However, in our view, it would be more appropriate if such decisions were made on the basis of rules that had the approval of States. We believe that the elaboration of a convention on this subject would enable courts, in their decisions, to rely on an instrument with binding legal force, which would inevitably lead to an expansion of judicial practice in this area.

There have been no references in the decisions of the national courts of the Russian Federation to the Commission's articles on responsibility of States. There is, however, a substantial body of judicial practice in Russia relating to the civil liability of international organizations in private-law and labour disputes. This practice confirms that an international organization has the status of a legal person (legal personality). Nonetheless, such practice is not directly related to the articles, since "issues of responsibility or liability under municipal law are not, as such, covered by the … articles" (paragraph (3) of the commentary to article 1).