



Statement on behalf of the European Union

By

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at the Sixth Committee

on the Agenda item 85:

"Responsibility of international organizations"

United Nations

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– CHECK AGAINST DELIVERY –

Mr./Madam Chair,

I have the honour to speak on behalf of the European Union.

Mr./Madam Chair,

The European Union and its Member States would like to congratulate the ILC and its Special Rapporteur, Professor Giorgio Gaja, who has carried out the project on the responsibility of international organizations for internationally wrongful acts from the inclusion of the topic in the ILC's programme of work in 2002 to its finalization by the ILC in 2011. We appreciate the work by the ILC and the Special Rapporteur on a topic gaining ever more importance given the large number of international organizations and the complex web of legal relations between States and international organizations.

The Draft Articles on the responsibility of international organizations set out a comprehensive legal regime following the model adopted by the ILC with regard to State responsibility. They set out, among others, rules on the attribution of conduct to the international organization, on the content, as well as on the implementation of the international responsibility of an international organization.

They equally lay down rules on the organization's responsibility in connection with the act of a State, as well as a *lex specialis* clause (Draft Article 64).

As one of the international organizations potentially impacted by the rules of international law on the responsibility of international organizations, this topic is of particular interest to the European Union. In that connection, we would like to make several remarks:

First, among the great variety of international organizations, the European Union is an international organization that has achieved the highest degree of integration. Therefore, it qualifies as a **special case** not only in line with the law of the European Union but also with the jurisprudence and practice of international adjudication mechanisms in which the European Union has been involved. The EU Member States have transferred competences and decision-making authority to the European Union on a number of subject matters. The European Union has a specific legal order. Under certain conditions, the EU Treaties and EU legislation enjoy direct effect – thus creating rights for individuals -, and are directly applicable in the EU Member States. Furthermore, the EU law enjoys supremacy over the national law of EU Member States in case of conflict between the EU and national law.

Second, the European Union and its Member States are subject to the principle whereby international obligations and responsibility between an international organization and its Member States are allocated according to the **special rules** of the organization itself and are not necessarily shared between the organization and its Member States. For instance, the European Union may bear sole responsibility for its Member States' action when that Member State is implementing EU legislation in areas of exclusive EU competence.

Third, the European Union and its Member States note that the Draft Articles include a provision on **lex specialis**. According to Draft Article 64, the ILC Draft Articles do not apply where 'special rules of international law' govern the rules of responsibility of the international organization in question. Such special rules of international law 'may be contained in the rules of the organization applicable to the relations between an international organization and its members.' According to the rules governing the relationship between the EU and its Member States, the conduct of EU Member States may be attributed to the European Union where Member States act in the execution of EU law.

Therefore, in the case of the European Union, this question of apportionment of obligations and responsibilities should in principle be clearly distinguished from the question of attribution of conduct.

I thank you.