1. Introduction

There are no doubts today that both States and international organizations are subjects of international law. They possess international legal personality, although it is not necessarily identical in its scope and nature. In case of breach of international law (i.e. an internationally wrongful act) by an international organization, the question of responsibility arises. Who is responsible in such a case: the international organization, its member States, both of them, or neither of them?

Responsibility is a key concept of any legal order, including the system of international law. Therefore, it is not surprising that the late Sir Ian Brownlie, in starting his ambitious project on the ‘System of the Law of Nations’, focused the first volume on State responsibility. Regrettably, he did not complete this project, but he developed his views on the responsibility of States and international organizations in other writings, including his Principles. As a member of the International Law Commission, Sir Ian Brownlie took part in the work on the codification of the rules on the responsibility of international organizations, although he had already resigned from the Commission in 2008, several years before the adoption of the articles in 2011.

The Special Rapporteur, Professor Giorgio Gaja, presented in total eight reports on the topic from 2003 to 2011. At its session in 2009, the Commission completed the first reading and adopted provisionally the text of 66 draft articles with a commentary. Before the second reading started, the Commission decided

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to transmit the draft articles to Governments and international organizations for their comments and observations. By January 2011, many States and international organizations submitted their comments. Then, at its session in 2011, the Commission adopted on second and final reading a set of slightly amended draft articles on the responsibility of international organizations. With a newly added article 5, the entire project amounted to 67 draft articles.

It is clear that such a complex and controversial matter, as is the codification of rules on the responsibility of international organizations, will continue attracting the interest of the doctrine of international law. The applicability of rules on State responsibility to the responsibility of international organizations appears to be generally accepted, even though the special nature of international organizations, being entities created by States, is readily acknowledged. In my view, however, the simple transposition of rules on State responsibility to the responsibility of international organizations should have certain limits. This concerns in particular the nature of the rules of the organization, which are different from the internal law of States, and the issue of the *ultra vires* conduct of the organization.

One of the hardest problems is drawing a line between the responsibility of an international organization and its member States. Can international organizations be responsible for the acts of States and, conversely, can States be responsible for the acts of international organizations? If so, to what extent? It seems that this question may not receive the same answer from the point of view of general international law as opposed to the framework of special treaty regimes, such as regimes on the protection of human rights, on regional economic integration, etc.

The problem arises in situations where the organization and its member States are bound by the same obligation. In particular, this may be the case if both the States and the organization are parties to a given treaty. (For example, the European Union and its members are parties to the GATT and other WTO agreements and, after the accession of the EU, are both bound by the European Convention on Human Rights.) A similar problem can also appear in circumstances where the

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5 Responsibility of international organizations. Texts and titles of draft articles 1 to 67 adopted by the Drafting Committee on second reading in 2011 (A/CN.4/L.778).
7 In the recent literature, see for example, the ‘Symposium on Responsibility of International Organizations and of (Member) States’, *JOLR* (2010), 9–77.