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STATEMENT

**by, Representative of the Russian Federation in the Sixth Committee
of the 59-th session of the UN General Assembly M.Zabolotskaya on item
144 of the agenda “Report of the International Law Commission”**

November 8, 2004

Mr. Chairman,

The Russian delegation has followed with interest the debate in the Commission on **the topic “Responsibility of International Organizations”** because, we believe, it is of great practical importance. We note with satisfaction the progress achieved by the Commission at its last session in debating one of the most complicated aspects of the topic relating to “attribution of conduct to an international organization”. In this regard I would like to express particular thanks to the Special Rapporteur professor G. Guy.

We support the general approach of the Commission according to which a conduct of an international organization is considered to be a conduct of its organ or an agent in the performance of functions of that a organ or agent (draft article 4). It is based on the well-known decision of the International Court of Justice on compensation of a damage caused by injuries suffered on duty of the UN in 1949.

We believe it is important that the criteria of an “effective control” was included into draft article 5 (“the conduct of an organ or an agent placed at the

disposal of an international organization by a State or another international organization”).

Questions arise with respect to draft article 6 (“Excess of authority or contravention of instructions”) of which the wording was borrowed in full from articles on responsibility of States. One cannot but notice that article 6 implies a different criteria of attribution of conduct to an international organization than the one given in draft article 4 (specifically it concerns the use of the wording “in that capacity” pertaining to the organ or agent of an international organization instead of wording of “in the performance by its organ or agent of functions of that organ or agent”). In our view, it is worth thinking about combining paragraph 1 of article 4 and draft article 6 into one. Thus, article 4 would stipulate a uniform criteria of attribution of conduct to an international organizations subject to be applied to both the conduct “within the authority” and the conduct *ultra vires* (criteria according to which the conduct attributed to an international organization should take place “in the execution by its organ or agent of functions of that organ or agent”).

We are not totally clear about the motives which made the Commission to decide when determining the notion “rules of organization” get away from a quite satisfactory, in our view, definition it had worked out earlier which had been laid down in article 2 (f) of the 1986 Vienna Convention.

Draft article 7 (“Conduct acknowledged and adopted by an international organization as its own”) so far raises no questions. We find it relevant the way the question was posed that in this case one has to speak about attribution of responsibility rather than about wrongful conduct.

I would like to share certain preliminary commentaries with regard to question the Commission raises before the members of the Sixth Committee.

Question 1. In our view there is no doubt that, at least, a part of “rules of organization”, for instance, constituent instruments of international organizations - in

most part they are international treaties - are a part of the international law. In this case a breach by an international organization of its obligations stemming from such acts in respect of member States and, eventually, in certain cases in respect of its agents may entail the responsibility of the organization. In this regard, we see no reason for the exclusion from the scope of draft articles of a question of international legal responsibility of international organizations in respect of its members and possibly of agents. At the same time at least at this stage we see no necessity to formulate in draft articles special provisions relating to this question.

Question 2. We believe it is not feasible a priori to rule out a possibility that an international organization makes reference to a “necessity” as to a circumstance excluding a wrongful act. In this connection, one can examine, for example, a situation, which is in no way a hypothetical one. An international organization carries out a research with the use of a nuclear reactor or of another unit which is exceptionally hazardous. An abnormal situation emerges in the course of the research. To avoid a considerable damage the international organization, the operator, will have to take action in breach of its international obligations stemming from an agreement on the terms of its location so as to avoid causing of a damage to the States on whose territory it is based.

Question 3. The answer to the question whether responsibility can be attributed to an international organization for wrongful conduct of the State which had taken place at the request or through authorization given by that international organization is dependent on the state of affairs. Thus had the request been aimed at execution by a member State of a deliberately wrongful act it is evidently possible to speak about a joint responsibility of the international organization and the Member State? The things are different in case while fulfilling a request of an international organization which in itself contained no call for a wrongful conduct the member State resorted to

such a manor of fulfilling this request which was in breach of rules of international law

With regard to the case when a wrongful conduct of a member State was authorized by an international organization, including *post factum*, in our view this is also is one of the reasons of joint responsibility of an international organization and a member State.

Thank you Mr. Chairman