

## OECD AND RUSSIA MUTUAL INTERNATIONAL RESPONSIBILITY

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*Issues of mutual international responsibility in the OECD and its country-members are of debating and problematic character. Emerging international responsibility in the framework of a tentative Russian membership in the OECD should be considered when assessing the risks associated with the accession to this international organization, especially given the assumptions about future trends in the OECD development.*

At present Russia is actively expanding international cooperation, including the integration into international organizations. Thus, Russia's accession to the WTO is already done, and now Russia is in progress of joining the Organization for Economic Cooperation and Development (hereinafter the OECD, the Organization). Russia's accession to the international organization entails the emergence of international liabilities. In this context it is of interest to consider the mutual international responsibilities of OECD and Russia within the framework of the planned interaction.

Responsibility of international organizations is one of the elements of its legal standing and can occur as a result of any breach of international law (violation of international legal act of an international organization).

For example, the UN International Court of Justice has found that the UN as an international organization is responsible for the behavior of its official bodies or agents<sup>1</sup>. Therefore, in terms of international law, the international responsibility of an international organization is expressed in any breach of international law by the bodies or entities which represent the international organization within the international community.

Activity of an international organization is based on its constituent acts, that is, documents that define the legal standing in view of the goals and objectives of the international organization. In regard to the OECD, we would like to note, that the constituent documents, i.e., the Convention<sup>2</sup> and the Protocols<sup>3</sup> thereto, contain no provisions governing the liability of OECD and its country-members. Therefore, to define international responsibility of the OECD, one should refer to the rules of international laws governing the international responsibility of international organizations.

Under the international legal framework, there are no universal international treaties that would regulate the responsibility of international organizations. Thus, on the basis of the analysis of the provisions on responsibility of international organizations, it can be concluded that to date, the rules governing the international responsibility of international organizations are secured and act effectively in the international activities of the two spheres – nuclear and space<sup>4</sup>. These areas are quite narrow and the international instruments governing them cannot be applied to all areas of legal framework of international relations, including those with the participation of the OECD.

The issue of the responsibility of international organizations has been repeatedly raised by the UN International Law Commission. The results of this work are the Draft Articles on responsibility of international organizations, adopted by the International Law Commission on June 3, 2011<sup>5</sup>. This project is now a major international legal act setting out the principles of the international responsibility of international organizations. It is assumed that on the basis of this project an inter-

1 ICJ. Reports, 1999. P. 88–89.

2 The Convention of the Organization for Economic Cooperation and Development // <http://www.oecd.org/general/conventionontheorganisationforeconomicco-operationanddevelopment.htm>

3 Additional Protocol No.1 to the Convention of the OECD; Additional Protocol No.2 to the Convention of the OECD; Additional Protocol No.1 to the OECD Convention on legal capacity, privileges and immunities of the Organization.

4 Declaration of Basic Principles of States in the Exploration and Use of the Outer Space of December 13, 1963, the Outer Space Treaty of January 27, 1967, the Convention on International Liability for Damage Caused by Space Objects of March 29, 1972 and others in the designated areas and the Vienna Convention on Civil Liability for Nuclear Damage of April 21, 1964, the Brussels Convention on the Liability of Operators of Nuclear Ships of April 25, 1962, etc.

5 <http://untreaty.un.org/ilc/reports/2011/russian/chp5.pdf>

national convention<sup>1</sup> can be developed. It should be noted, that the basic provisions of the Project Article V “Responsibility of International Organizations” already exist in the form of international legal standards<sup>2</sup>.

Based on the foregoing, we can assert that the issue of international responsibility of international organizations is regulated either by constituent acts of these organizations (which actually occurs in practice, including those of the OECD constituent documents), or by the specific international treaties, or by general international law. As noted above, there is a certain lack of universal treaty rules governing the general provisions of the international organizations responsibilities. The available to date UN Articles Draft is the international act, the adoption of which would resolve legal uncertainty in the framework of international responsibility of international organizations, but will not be able to remove this problem completely.

Thus, the issues of responsibility of international organizations in some aspects are uncertain, which raises concerns in the context of the potential accession of Russia to the OECD, since there are no real mechanisms for regulating the international responsibility of the OECD as an international organization to the country-members and entails certain risks for the country-members in terms of participation in it, because the nature of the OECD activities implies a direct impact on virtually all areas of the member-country. Analysis of the Road Map of the Russian Federation in regard to the Convention of the OECD suggests that Russia as a country guided by the aim of accession to the OECD should demonstrate a commitment to the OECD guidelines included in more than 70 decisions and acts of the OECD with a legally binding and or recommended in respect of various areas, from the investment to environmental aspects. That is, the OECD activity is universal. Adherence to the norms and principles of the OECD is expressed through transforming them into national legislation of Russia, which inevitably puts the country in a more vulnerable, dependent status on the international organization: the country should actively change its national legislation in accordance with rules and regulations of the OECD as one of the main conditions of accession to the OECD and further effective cooperation.

In this regard, the question arises: is the international member-country bears any responsibility to the international organization in terms of their obligations, for example, in case of non-performance or poor performance of its obligations? The constituent acts of the OECD do not include provisions on the responsibility of member-countries of the OECD in the event of failure to comply with the adopted acts. However, one can note the presence in the OECD acts of the so-called “soft law”<sup>3</sup> at the sectoral level. Thus, there can be noted not only the absence of the direct mechanism of responsibility of the member-country to the OECD, but also of the specific legal consequences of such a responsibility for the failure to comply with the OECD acts.

In the context of the above, it is relevant to pay attention to the popular opinion in regard to the fact that international law is weak due to its failure to be binding enough<sup>4</sup>. However, F.F. Martens believed that the basis of legal norms governing international relations is a unified understanding of the civilized states of the need for international legal framework and the consequent voluntary consent to recognize its obligations<sup>5</sup>. Thus, necessary compliance with international rules is determined, basing on the voluntary recognition of such rules as binding by the subjects of the international law. In the context of the OECD, the voluntary consent of the acceding country to adopt the rules and regulations of the Organization is expressed by adoption of an international treaty on accession to the OECD, for example, in relation to Russia such an agreement will be signed between the OECD and the Russian Federation and in case of a positive decision of the OECD Council in regard to Russia’s readiness to become a member of the Organization. Thus, the failure of its international obligations, the international organization entails the international responsi-

1 Same source, P. 85.

2 I.I.Lukashuk. International law: a special part. Ed. 3, revised. And add. – Moscow: Wolters Kluwer, 2005. P. 517 sec.

3 For example, in the OECD Code of Liberalization of Current Invisible Operations there is included the member’s right to apply to the Organization in the event of suffering damage from another member-country by a breach of liberalization measures in the application of domestic measures restricting implementation of current invisible operations. If the Organization finds that the internal measures taken by the member-state led to the disruption of OECD liberalization measures, the Organization may make proposals for the removal or amendment of such internal measures (Article 16).

4 See: Jellinek G. Die rechtliche Natur der Staatenfertrage. Berlin, 1880. P. 16, 38–39.

5 F.F. Martens. The modern International Law of Civilized Nations. T 1. St’P., 1898. P. 189–190.

bility in accordance with international law. Thus, the failure of the international organization to perform its international obligations entails the international responsibility in accordance with the international law.

Based on the foregoing, we see that the international responsibility of international organizations in regard to its members, as well as the responsibility of country-members to the Organization is mainly governed by the common international law. In this regard, the following question arises: in the context of cooperation between Russia and the OECD, what authority will decide the dispute giving rise to the international responsibility of either the Organization or its members? Currently there is no such an authority. However, the relevance of this issue is based on the policy of the OECD in recent years, which is associated with an active increase in the number of country-members of the Organization, which will enable the OECD to strengthen and expand its expertise and global impact on the policies of the country-members, enhance its credibility as an international organization in the world. Since its inception in 1961, the OECD was “closed organization” with a permanent, virtually unchanged membership of the small group of countries – the original members of this organization. Over thirty-plus years, the new members of the OECD became only four countries (Finland, New Zealand, Japan, Australia). However, since the early nineties of the XX century, the OECD has implied the policy of enlargement. Thus, as part of the “first wave” of expansion in the OECD between 1994 and 1996 the Organization was joined by: Mexico, Czech Republic, Hungary, Poland and Korea. During the “second wave” from 2000 to 2010 the OECD was joined by five other countries: Slovakia, Chile, Slovenia, Israel and Estonia. OECD always was actively cooperating with the non-member-countries, which is in line with its tasks under the OECD Convention on the establishment in 1961, but did not invite them to accession. In addition, since 2007, cooperation was intensified with such countries as Brazil, China, India, Indonesia and South Africa through enhanced cooperation, with a view to possible membership of these countries in the OECD, as well as adoption of a number of documents that define the policy of expansion (Report “Strategy to Ensure Coverage and Expansion» [C (2004) 60]; Resolution of the OECD for the expansion and intensification of contacts, adopted by the Council at the level of Ministers on May 16, 2007; General Procedure for Future Accession, adopted by the Council at its 1155<sup>th</sup> session of May 10-13, 2007). Member-states that joined the OECD in the first and second wave of expansion are the countries in transition or developing economies, while the original OECD members were only developed countries (USA, Canada, France, Germany, Austria, etc.).

Thus, to date, the OECD includes and interacts with various countries of economic and legal development, which inevitably leads to an objective need for effective mechanisms for the resolution of disputes through an authorized body, which is now missing in the OECD. Administrative Tribunal of the OECD has the power of decision-making on labor disputes between employees within the Organization and the OECD Secretary-General<sup>1</sup>. Thus, it cannot position itself as an authority having jurisdiction in the area of disputes resolution between the OECD and its members.

It appears that these trends in the OECD development, based on the experience of other international economic organizations like the OECD have a universal character (WTO, the UN ECOSOC, etc.), having the authorities to resolve disputes and the laying an international responsibility, indicate the advisability of forming an OECD similar body with the authority to resolve disputes between the OECD and its member countries that are non-members. In connection with the designated prospects may change the nature of international responsibility in the membership of the OECD, which should be considered when evaluating Russia risks associated with the accession to this international organization. In connection with the designated prospects, the nature of international responsibility in the membership of the OECD may be changed, which should be considered when evaluating Russia’s risks associated with the accession to this international organization.

Summing up the mutual responsibility of the OECD and its members, including Russia, in the case of a successful accession to the Organization, it should be noted that the current issues of international responsibility are controversial and largely transitional in nature and should be resolved in each particular situation, taking into account provisions of the basic instruments of international organizations, the rules of general international law, as well as the current enforcement practices of the countries. ●

1 <http://www.oecd.org/administrativetribunal/abouttheoecdadministrativetribunal.htm>