CHAPTER 5

The International Legal Personality of NATO

5.1 Introduction

International legal personality is a concept of international law used to distinguish between entities that are relevant to the international legal system and those which are excluded from it. Entities that have international legal personality are subjects of international law and have rights and obligations under international law. Only subjects of international law can be held responsible for violations of breaches of international obligations. Without international legal personality an international organization cannot be held responsible under international law. For this reason, it is essential to determine whether NATO has international legal personality.

The existence of NATO’s international legal personality has been debated in legal literature. Some authors deny NATO of having such status in international law. Gazzini, for example, states that “[f]or the time being, NATO remains an institutional union acting through common organs.” Others allocate a more relative international legal personality to NATO. Schermers and Blokker argue that closed organizations, such as NATO, have legal personality only with those

2 The ILC’s Articles on the Responsibility of International Organizations explicitly limits responsibility under international law to those international organizations “possessing their own international legal personality”, ILC, Article 2, Draft Articles on the Responsibility of International Organizations, 2011. ILC, First report on responsibility of international organizations, A/CN.4/532, 26 March 2003, para. 15 “When considering a definition of international organizations that is functional to the purposes of the draft articles on responsibility of international organizations, one has to start from the premise that responsibility under international law arise only for a subject of international law”.
who have recognised them explicitly. Most authors, including Zwanenburg, Pellet, Reichard and Cohen-Jonathan, consider that NATO does have international legal personality. Their arguments, as well as those arguments against the existence of NATO’s international legal personality will be examined in this chapter.

The starting point for determining the indicia or characteristics of international organization that possess international legal personality is the Advisory Opinion of the International Court of Justice in “Reparation for injuries suffered in the service of the United Nations”. Paragraph 5.2 examines the ICJ’s Opinion and related literature to establish the indicia of international legal personality and how they are applied to international organizations.

Paragraph 5.3 will determine whether the indicia are present at NATO in order to reach a conclusion whether NATO has international legal personality. The observations made in Chapter 3 on the key moments in the development of NATO are relevant here, as they explain that NATO has developed from an institutional union to an international organization separate from its member States. Also, reference is made to Chapter 4 which has examined the tasks and powers of the various organs of NATO and illustrate the autonomy of NATO in relation to the member States.

Paragraphs 5.4 and 5.5 examine whether jurisprudence and State practice confirm the existence of international legal personality of NATO. A direct affirmation of the international legal personality in international jurisprudence, as the ICJ did with respect to the international personality of the United Nations in its Advisory Opinion in the Reparations case, would resolve the question whether NATO has such status in international law. Unfortunately, such explicit confirmation is not (yet) available, but there are some decisions that indirectly touch upon the subject, in particular before the International

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