CHAPTER TEN

RESPONSIBILITY OF INTERGOVERNMENTAL ORGANIZATIONS

10.1 Introduction

The ability of intergovernmental organizations (IGOs) to possess international rights and obligations is a necessary corollary to the international personality of IGOs discussed in chapters 2.2 and 8 above. The legal position of IGOs as subjects of public international law inevitably raises questions of their international responsibility, i.e. to what extent IGOs are answerable for their internationally wrongful acts under public international law.

Some earlier writers on the subject of international organizations focused on problems related to the legal position of IGOs vis-à-vis non-member States and reached the general conclusion that international responsibility of the organization in relation to non-members, in lieu of its member States, would require some form of recognition or consent by the third party right holder or “creditor”. Today it is widely accepted that all legal subjects of international law are in possession of international rights and obligations and that there is a clear link between their legal personality and international responsibility for illegal or wrongful acts.¹

10.2 The International Law Commission’s work

In its work on State responsibility the International Law Commission (ILC) expressly limited the scope of its draft articles with respect to responsibility of international organizations and responsibility of States for the conduct of

¹ “The fact that international organisations may be held accountable for the consequences of their illegal or wrongful acts is widely accepted. Liability is thus generally presented as the logical corollary of the powers and rights conferred upon international organisations”, Sands and Klein, Bowett’s Law of International Institutions, Oxford 2001, p. 513. Diez de Velasco speaks of the right to participate in relations of international responsibility, Las organizaciones internacionales, 14th ed., Madrid 2006, pp. 79–83.
an international organization.\(^2\) In 2002, on the recommendation of the UN General Assembly in its resolution 56/82 and after the conclusion of a complete set of draft articles on State responsibility, the ILC included the topic of the responsibility of international organizations in its program of work. Giorgio Gaja was appointed Special Rapporteur and a working group was established with a view to studying the basic concepts of scope and purpose of such responsibility and to recommend a set of draft articles to the ILC.

What constitutes an international organization for the purpose of international responsibility?

In his first report, on the scope of work on responsibility of international organizations, the Special Rapporteur took a functional approach to the definition of intergovernmental organizations for the purpose of the ILC’s work on international responsibility. The report notes that only legal subjects of international law can become bound by obligations incumbent on them under rules of public international law. Conversely, an entity has to be regarded as a subject of international law even if only a single obligation is imposed on it under international law. Thus, should an obligation exist for an international organization under international law, the question of that organization’s responsibility may arise.”\(^3\) This line of reasoning will tend to become circular in nature; however, the report further notes that the acquisition of legal personality depends on the “actual establishment” of an organization having “sufficient independence” from its members. “The characterization of an IGO as a subject of international law thus appears as a question of fact.”\(^4\)

During its 55th session in 2003, the ILC decided to continue the work on this functional approach and thereafter adopted the following wording in draft Article 2:

> For the purposes of the present draft articles, the term “international organization” refers to an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities.\(^5\)

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2 Doc. A/RES/56/83 annex, Article 57.
3 The report States that norms of international law cannot impose on an entity “primary” obligations or “secondary” obligations under international law – as e.g. international responsibility – in case of a breach of one of the “primary” obligations, unless that entity has legal personality under international law, cf. doc A/CN.4/332, 26 March 2003, para. 15.
4 Ibid. para. 19. This comes very close to what is described in chapter 2 above as objective international legal personality of sovereign communities.
5 Cf. doc A/58/10.