PART I

THE EVOLUTION OF INTERNATIONAL ORGANISATIONS
AND INTERNATIONAL GOVERNANCE
CHAPTER TWO

THE RELATIONSHIP BETWEEN INTERNATIONAL ORGANISATIONS AND THEIR MEMBER STATES – WHO PAYS THE CHECK?

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1. Introduction

Within the theme ‘the evolution of international organisations and international governance’ there are many issues worth exploring, both legal and non-legal. This chapter focuses on only a small portion of them, and concerns the relation between international organisations and their member states. The perspective is legal. Building inter alia on the so-called ‘NATO cases’ before the International Court of Justice1 and the European Court of Human Rights,2 two questions will be specifically addressed. These have in common that they are part of a broader study by the International Law Commission (ILC) on the topic of responsibility of international organisations,3 which the ILC sought to complete at its session in the Spring and Summer of 2011.

The activities of international organisations4 have been continuously broadening during the past decades. Accordingly, international organisations have been vested with an increasing amount of rights and duties. When realizing their purposes, they exert increasing influence on third parties.5

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1 Legality of Use of Force (Yugoslavia v. United States of America); Legality of Use of Force (Serbia and Montenegro v. United Kingdom); Legality of Use of Force (Yugoslavia v. Spain); Legality of Use of Force (Serbia and Montenegro v. Portugal); Legality of Use of Force (Serbia and Montenegro v. Netherlands); Legality of Use of Force (Serbia and Montenegro v. Italy); Legality of Use of Force (Serbia and Montenegro v. Germany); Legality of Use of Force (Serbia and Montenegro v. France); Legality of Use of Force (Serbia and Montenegro v. Canada); Legality of Use of Force (Serbia and Montenegro v. Belgium), judgment of 15 December 2004 (preliminary objections).

2 Bankovic et al v. Belgium and 16 other states, Application no. 52207/99, 12 December 2001 (GC) (inadm.).

3 In support of the ILC elaborations on the Draft Articles on Responsibility of International Organisations, a study group of the International Law Association is currently engaged in studies on this matter. The present author is a member of this Study Group, under the chairmanship of ILC member Dr E. Valencia Ospina. This contribution is partly based on earlier works by the present author for the ILA Study Group.

4 In the present chapter, international organisations refers exclusively to intergovernmental organisations.

5 The term third parties encompass all entities other than Member States of the particular organisation (i.e. non-member states, individuals, companies etc.).