International Organizations or Institutions, Responsibility and Liability

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A. The Impact of the Responsibility of International Organizations

1 The phenomenon of international organizations (see also → International Organizations or Institutions, General Aspects) began in the 19th century, but it is only since the end of World War II that they have become more relevant players in international law. Currently, more than 250 international organizations exist. The multiplication of actors in international relations by the creation of organizations must be considered as one of the most important developments of international law in the last 60 years (→ Subjects of International Law).

2 International organizations act in almost all fields of interest in international law, such as the maintenance of peace, the protection of human rights, international trade, regional integration, common defence, transboundary communication, environmental protection, technical harmonization, international research, etc. Although the Member States create the international organizations and define their objectives, functions, and powers, the international organizations exercise these functions and powers as their own.

3 International organizations most often develop their activities on an international level; they conclude treaties, order military actions, participate in financial transactions, and issue regulations and other forms of law with a binding character. Sometimes international organizations act on a national level, concluding contracts, exercising property rights, or committing a tort. All these activities may affect States, other international actors, or individuals. Those who act may do wrong. Therefore, the extension of the activities of international organizations in quality and in quantity raises the question of responsibility and liability.

4 The notion of responsibility is understood as accountability for acts which are wrongful under international law. The notion of liability in international law is much more opaque: sometimes it is used when a subject under international law is held accountable for lawful acts (→ Liability for Lawful Acts); sometimes it is applied to actions of private operators in a regime regulated by international law such as the Space Treaty; quite often, however, the notions of liability and responsibility are used interchangeably. This article will use the notion of liability in the last sense. Accountability for lawful acts will be called strict liability.

B. Development of the Notion of Responsibility of International Organizations in International Law

5 This topic was neglected for a long time. Although the question of the liability of the United Nations had been discussed in the early 1960s when the United Nations Operation in the Congo (‘UNUC’) took place, State practice and scholarship rarely dealt with this problem. It was only after 1985 when the → International Tin Council (ITC) went bankrupt that the international community and international lawyers started to pay due attention to this topic, which is all but the counterpart of the well-developed activities of international organizations in the international realm. Since the late 1980s, the literature in this field has expanded. The → Institut de Droit International dedicated a session to this question and elaborated a draft resolution; the → International Law Association (ILA) in 2004 adopted a Final Report on the Accountability of International Organizations which encompasses the questions of responsibility and liability; and since 2000 the → International Law Commission (ILC) has been elaborating a draft on the Responsibility of International Organizations which was adopted in a first reading in 2009.

6 The main problems of the responsibility of international organizations concern, first, the applicability of principles of international State responsibility to international organizations; and, second, the relationship between the international organization and
its Members (States) with respect to the distribution of the responsibility.

C. Elements of the Responsibility of International Organizations

1. The Legal Personality of International Organizations

For a long time, it has not been clear if international organizations may bear international responsibility. States, considered to be the only actors in international law, were vested with exclusive responsibility → State Responsibility. This perspective started to change when it was recognized that international organizations could possess—limited—subjectivity under international law. The first important case which tackled this question was the case → Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion) in which the → International Court of Justice (ICJ) established a close link between the subjectivity and the capacity to bear rights and obligations in international law.

The legal personality of international organizations was not mentioned in the constituent instruments of the first international organizations. Even in recent times, some instruments leave this question open, as the example of the European Union demonstrates, as its character remained in limbo until the Lisbon Treaty entered into force. Nowadays, however, many founding treaties of international organizations expressly attach legal personality to them. But even without an explicit attribution of subjectivity, an international organization can be considered to have a legal personality if it has its own powers and its own organs which may act in the name of the organization.

This leads to the next question: who has to accept the international subjectivity of an international organization? It is beyond doubt that the Member States granting the legal personality to an international organization cannot deny it. Likewise, States that conclude an agreement with an international organization recognize it as a subject under international law, at least implicitly. Most problematic is the relationship with States that never directly or indirectly recognized an international organization. Some scholars declare that → recognition constitutes the legal personality of an international organization vis-à-vis the recognizing State; without such recognition the international organization is only the sum of its members; questions of responsibility concern only the Member States; and for a non-recognizing State the international organization does not exist. It is argued that States can never conclude a treaty which brings about negative effects to third States (pacta tertis nec nocent nec prosunt) (Seidl-Hovenveldt [1961] at 497,502; Schmalenbach at 64). If States could find international organizations that act on their behalf, exercising powers transferred by the Member States, and bear the exclusive responsibility, the Member States could evade their own responsibility. Therefore, the founding treaty would have a detrimental effect on third States if it entailed the exclusive responsibility of the international organization. This position is further supported by the argument that international law does not provide for an equivalent to a limited liability corporation. Other scholars attach objective legal personality to international organizations that are independent from recognition and established exclusively by the founding instrument. They refer to the advisory opinion of the ICJ in Reparation for Injuries in which it decided that the United Nations also enjoys a legal personality vis-à-vis States that do not recognize it. However, the ICJ hinted at the specific character of the United Nations which, as a universal organization, encompassed almost all States that at that time existed. The commission established by the Institut de Droit International to prepare a resolution on ‘the legal consequences for member States of the non-fulfilment by international organizations of their obligations toward third parties’ enclosed in its proposal on the responsibility of international organizations of 1994 in Art. 2 (c) a provision according to which an international organization exists independently of the recognition by another State. However this was not
incorporated into the resolution finally adopted by the members of the Institut de Droit
International, not because this position was not accepted, but because the resolution was
focusing exclusively on the liability of Member States for international organizations
possessing an international legal personality. The actual draft of the ILC on Responsibility of
International Organizations describes an international organization as an
organization ‘which includes States among its members insofar it exercises in its own capacity
certain governmental functions’ (Art. 2). In a discussion on the topic, the rapporteur emphasized
that the draft exclusively deals with the responsibility of an international organization as
an actor under international law; it does not answer the question of when an association of
States may be considered an international organization and who has to accept it. However,
it is held that the characterization of an international organization as a subject under
international law is a fact of question, not of its recognition (UN ILC Special Rapporteur G Gaja
‘First Report on Responsibility of International Organizations’ [26 March 2003] UN Doc
A/CN.4/532 at 11). In a comment to the Draft Articles on Responsibility of International
Organizations the ILC points out that the ICJ shares the position that the international legal
personality of an international organization has an objective character (UN ILC ‘Draft Articles
on Responsibility of International Organizations’ at 48). The answers of the States to the
Draft Articles on Responsibility of International Organizations favour the concept of an
objective subjectivity of an international organization.

10 The criteria to be applied for the establishment of the international legal personality of an
international organization are the constitution of own organs, the existence of own
objectives, and a sufficient independence from the Member States. Under this perspective, the
foundation of an international organization cannot be qualified as a treaty having detrimental
effects for third States. The third States are not normatively bound by the founding treaty, but they
have to accept the outcome. Once an international organization with its own legal
personality has been created, it is a fact in international law.

2. The Link between International Subjectivity and International Responsibility

11 As an independent subject, the international organization has to bear the
responsibility and liability for its own actions. The concept of the responsibility of
international organizations already has been recognized in international law. The ICJ stated:

International organizations are subjects of international law and, as such, are
bound by any obligations incumbent upon them under general rules of international law,
under their constitutions or under international agreements to which they are parties.
(Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt
[Advisory Opinion] [1980] IC Rep 73 at 89–90)

12 Some multilateral treaties dealing with the responsibility under international law explicitly
establish the responsibility of international organizations (see, eg 1972 Convention on
International Liability for Damage Caused by Space Objects; Art. 5 of Annex XI UN Convention
on the Law of the Sea). However, this is still the exception; this is also due to the fact that
international organizations are often not addressed by these treaties. The—financial
—responsibility of international organizations is sometimes mentioned in their constituent
instruments, however, most often in the context of the question to what extent the Member States
have to share it (see below para. 26). There have been many incidents in which the question of
responsibility of international organizations under international law came up. A
situation where this problem was discussed at an early stage was during the peacekeeping
operations of the United Nations. The Secretary-General declared that the United Nations will bear
responsibility for all acts conducted under the effective control, ie operational command and
control, of this organization (UNGA ‘Financing of the United Nations Protection Force: Report of the Secretary-General’ [20 September 1996] UN Doc A/51/389 paras 17–18). In such cases, national and international courts rejected the responsibility of Member States that contributed troops to missions under the command of the United Nations (HN v The State of the Netherlands [Judgment of 10 September 2008] District Court in the Hague Case No 265615 [2008] 55 NILR 440; Behrami and Behrami v France [ECtHR] and Saramati v France Germany and Norway [ECtHR] [Decision of 2 May 2007] para. 140). In the Westland Helicopter case (Westland Helicopters Ltd v the Arab Organization for Industrialization [Interim Award Regarding Jurisdiction] ICC Case No 3879/AS [1984] 23 ILM 1071; Westland Helicopters Arbitration [Annulment of Award with Respect to Egypt] Court of Justice of Geneva and the Federal Tribunal [1989] 28 ILM and then in the above-mentioned international Tin Council case, for the first time, the responsibility of an international organization for economic activities was discussed on a large scale.

3. The Analogous Application of the Principles of State Responsibility

13 The notions of responsibility and liability in international law have been developed for States. Art. 57 ILC Draft on State Responsibility affirms that the provisions of this draft are ‘without prejudice to any question of the responsibility under international law of an international organization, or of any State for the conduct of an international organization’.

14 However, the international norms on State responsibility to a large extent have been transferred to international organizations. It does not mean that international organizations have the same obligations as States; this is a question of primary law. It is generally recognized that the legal personality of an international organization is determined by the functions it has to fulfil. The responsibility of a subject under international law comes into play when the entity violates a primary obligation, whatever its primary obligation may be. But if an international organization violates its obligations under international law it is not only accepted that it may be held responsible, but that the rules of State responsibility are applied by analogy, albeit with some variations, to the responsibility of international organizations (ILA Final Report at 27)

15 The elements of the responsibility of an international organization are similar to those of a State. The responsibility of the organization is established if there is a breach of an obligation under international law and if this breach is attributable to the international organization. These elements of responsibility have also been confirmed by the ILC Draft Articles on Responsibility of International Organizations which is closely based on the ILC Draft Articles on State Responsibility.

(a) Breach of an Obligation under International Law

(i) Obligations Imposed on International Organizations

16 An international organization can be held responsible only for the breach of obligations which are imposed on them. International organizations are bound by the treaties which constitute them. No international organization can create its own powers and competences. These are defined by the will of the Member States, as a rule through international treaties. International organizations must act within the framework of these treaties. They are not only objects of these treaties which create them, but, as acting subjects, they have to keep within the lines drawn by the will of the Member States. The constituent instruments of an international organization do not differ from any other form of international law with respect to their binding effects (see → Lockerbie Cases [Libyan Arab Jamahiriya v United Kingdom and United
States of America). The corollary of the independence of international organizations from their Member States as subjects under international law is their obligation to respect the limits for actions set up by the Member States. Even if the founding treaties constitute a special regime, it remains within international law, the violation of which entails international responsibility. This responsibility, however, exists only vis-à-vis the Member States as parties to the founding instruments.

17 It goes without saying that international organizations have to comply with all obligations deriving from treaties to which they are parties. The treaty making power of international organizations has been recognized as far as these treaties fall within the functions with which the international organizations have been vested. In case of a breach of a treaty, the international organization is held responsible towards the other treaty parties.

18 The question to what extent customary international law is binding upon international organizations is more troublesome to answer, for example in the context of human rights law or humanitarian law. This cannot be answered in a general way, but only case by case. The United Nations declared its willingness to be bound by humanitarian law, and it is the prevailing position that international organizations must respect human rights in so far as they have become customary law. The binding customary norms of course encompass these of a jus cogens character. As far as an international organization is bound by a customary norm, it can be held responsible for a breach of this norm.

(ii) Attribution of a Breach to the International Organization

19 The breach must be attributable to the international organization. This is always the case if an organ or an agent of the international organization undertakes an action or makes an omission which constitutes a breach of international law, if the organ was acting within the competences of the international organization. With respect to actions beyond these powers—ultra vires acts—the practice of international law is not so clear. As international organizations may act only insofar as they are empowered to do so, one could conclude that all ultra vires acts by definition cannot be qualified as acts of the international organization. However, recent developments show that international organizations assume responsibility for ultra vires acts of their organs or individuals which were authorized by the international organization with powers, if they are exercising functions of the international organization. The ICJ held in Certain Expenses of the United Nations (Advisory Opinion) that violations of the internal distribution of powers do not free the UN from bearing the consequences of these acts. In Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Advisory Opinion) ([1999] ICJ Rep 62), the court stated that all agents of the UN must take care not to exceed their functions in order to avoid claims against the UN. Art. 7 ILC Draft Articles on Responsibility of International Organizations states that the acts of an organ, an official, or another person entrusted with the functions of an organization shall be considered an act of the organization if the organ, official, or person acts in this capacity ‘even though the conduct exceeds the authority of that organ or agent or contravenes instructions’.

20 When States or other international organizations put their own organs or agents at the disposal of an international organization, the responsibility in a case of a breach of international law is attributed according to the control exercised over the respective organ or agent. This has been discussed especially in the context of peacekeeping forces or other cases where States contribute troops to the missions of the UN. As a rule, the UN assumes responsibility for the actions of peacekeeping forces as subsidiary organs of the UN or for troops under the flag of the UN, in so far as they are under the control and the command of the UN. In the case Behrami and Behrami v France and Saramati v France Germany and Norway (at para. 135), the European Court of Human Rights (ECtHR) excluded the responsibility of troop-
contributing States with the argument that the UN exercised ‘ultimate authority and control’ and NATO had an effective control.

21 Under certain circumstances, a breach may be attributed to an international organization and to another subject under international law, most often the Member States. However, this is irrelevant for the establishment of the responsibility of the international organization. The responsibility of the international organization is not subsidiary to the possible responsibility of a co-author participating in the breach of international law.

22 International organizations—like States—may refer to circumstances excluding responsibility. The draft of the ILC on the responsibility of international organizations mentions the same exceptions to responsibility, namely consent, self-defence, countermeasures, force majeure, distress, and necessity.

23 Most disputable as a circumstance excluding responsibility is self-defence, because self-defence in the sense of Art. 51 UN Charter as well as in customary international law is limited to armed attacks against States. Extending this concept to international organizations means that they shall have the right to take measures in case of an attack, as might happen in peacekeeping operations; however, such events are closer to forms of border incidents which do not trigger the mechanisms of self-defence. Nevertheless, the UN Secretary-General has emphasized several times the right of troops under UN command to self-defence in a case of an armed attack.

D. The Co-Responsibility of Member States for Breaches of International Law by International Organizations

1. The Problem

24 The co-responsibility of Member States for breaches of international law by international organizations belongs, strictly speaking, to the field of State responsibility. However, it arises exclusively in cases regarding the responsibility of international organizations, and it answers the question of responsibility after a breach of international law by an international organization, so illustrating the responsibility of an international organization. Therefore, it shall be dealt with in this context.

25 Even if it has become clear that international organizations as subjects under international law are responsible for their actions, this does not automatically exclude a co-responsibility of the members of the organization. One main argument in favour of the concurrent responsibility of the Member States of an international organization—also used in order to exclude the legal personality of an international organization vis-à-vis third States not recognizing the international organization—derives from the fact that States, by founding an international organization, may escape from their international responsibility. Transferring State power to international organizations could have the consequence that a new subject under international law is exercising State power without being bound by international law, especially by international treaties concluded by the Member States. Further, international organizations, unlike States, dispose of limited funds; they do not have a territory or a population creating the material resources. They are economically poorer than States. For this reason, various concepts have been developed regarding the co-responsibility of Member States for the actions of international organizations: the Member States are considered to be jointly and severally responsible for the actions of international organizations at the same level as the organizations; the Member States have a subsidiary responsibility jointly and severally, or they share the responsibility according to their shares in the international organization. A coherent solution of this problem has not been established in international law.
2. Practice in International Law Concerning the Extension of the Responsibility to the Members of an International Organization

(a) Provision on Responsibility in Constituent Instruments

26 Whereas most founding instruments of international organizations do not deal with the question of responsibility of Member States for activities of the international organization (see eg the UN Charter), some delineate the distribution of responsibility between the international organization and the Member States. Especially since the crisis of the International Tin Council, the statutes of international organizations expressly fix the financial obligations of Member States. Many statutes of international organizations involved in economic activities directly or indirectly limit the payments of Member States to the contributions to the funds established for the economic activities. Art. II (3) Articles of Agreement of the International Development Association reads: ‘No member shall be liable, by reason of its membership, for obligations of the Association’ (see also Art. II (4) Articles of Agreement of the International Finance Corporation; Art. II (6) Articles of Agreement of the International Bank for Reconstruction and Development). In case of the dissolution of an international bank, as a rule, its remaining debts shall be paid through the assets of the bank; a supplementary payment by the Member States to settle open debts is not provided. If a Member State withdraws, it has to pay only the arrears which it owes to the organization. Similar provisions can be found in commodity agreements (Commodities, International Regulation of Production and Trade) where the responsibility of Member States for the debts of the international organization is excluded. However, the interpretation of such clauses is ambiguous because they could reflect a general opinion that the Member States are not liable for the activities of the international organization. On the other hand, it could be argued that Member States feel urged to insert such a provision in order to exclude a responsibility which otherwise would exist, although only vis-à-vis the international organization.

(b) Provisions on Responsibility in Other Treaties

27 However, the practice of international law does not prove that Member States will generally be responsible for the actions of the international organization. It may be concluded from international treaties addressing questions of responsibility that, as a rule, Member States are not considered to be responsible for the activities of international organizations. The UN Convention on the Law of the Sea states in Art. 4 (5) of Annex IX that the access of an international organization to the Convention does not confer any rights under the Convention on the Member States of the international organization. This implies that obligations will also not be extended to the Member States; this is confirmed by Art. 6 of Annex IX which rules that any State Party of the Convention may request an international organization or its Member States that has the responsibility in respect of any specific matter. It means that Member States are not automatically held responsible for the obligation of an international organization; they are considered to have joint and several responsibility vis-à-vis another State Party if they do not answer the request. This responsibility is a consequence of the silence. Other treaties extend their applicability to international organizations under the condition that at least the majority of the Member States of the organization ratifies the treaty, which could lead to the conclusion that the Member States would be held liable for the international organization (Art. XXII (1) Convention on International Liability for Damage Caused by Space Objects; Art. 6 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space). According to Art. XXII Convention on International Liability for Damage Caused by Space Objects a claim for damage caused by an international organization must first be presented to the international organization; the Member States will have to pay damages, but only when the international organization does not pay an agreed or determined sum. The Member States are qualified as guarantors of the liability of the international organization, but they do not automatically share the responsibility of...
28 The relationship between the international organization and its Member States was also discussed during the elaboration of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations ([1989] 25 ILM 543). A provision—Art. 36 bis—declared that a treaty concluded by an international organization gives rise to rights and obligations of the Member States if this follows from the constituent instrument of the international organization. Such duties could even derive from an implicit consent of the Member States to accept such obligations. The provision was not incorporated in the treaty (on the Treaties concluded between International Organizations), because, apart from the European Economic Community, no other case could be found of such an extension of the obligations deriving from a treaty of an international organization. But this provision shows that even in cases of treaty obligations, the Member States must have given their consent in order to be bound by them. If treaty obligations of international organizations are not extended to their Member States, the States cannot be held liable for breaches of the treaties by the international organizations. Separate obligations and common responsibility do not go together.

(c) The Court Practice

29 The European Court of Human Rights, when dealing with conduct involving international organizations of which parties to the → European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) are members, establishes a liability of the party to the Convention only if the conduct in question is attributable to it. If the conduct has to be attributed to the international organization, the Member States are not automatically held liable for the actions of the international organization (Behrami and Saramati para. 140). Responsibility of a Member State to an international organization can be established if the Member State, when founding or joining the international organization, did not take the necessary measures to guarantee that the international organization will respect the obligations deriving from the European Convention on Human Rights in an equivalent way (Bosphorus v Ireland [ECtHR] Reports 2005-VI 107, para. 155; Waite and Kennedy v Germany [ECtHR] Reports 1999-I 393, para. 67). But here, the State will respond for its own conduct—omission—not for the conduct of the international organization. In the most famous case of the International Tin Council, the English Courts, as far as they decided on the responsibility of the Member States for the financial manoeuvres of the international organization, did not establish such an extension of the responsibility of the international organization to the Member States. The Advocate General came to the same conclusion in a proceeding on the same matter before the European Court of Justice.

(d) Drafts on the Responsibility of International Organizations

30 With reference to this practice, the Institute of International Law in 1995 adopted a resolution which states in Art. 6 that: ‘there is no general rule of international law whereby States members are, due solely to their membership, liable ... for the obligations of an international organization of which they are members’. The International Law Commission, when dealing with the responsibility of States for the conduct of international organizations in the Draft Articles on Responsibility of International Organizations regarding the question of assistance, included a provision in Art. 61:

1. Without prejudice to articles 57 to 60, a State member of an international organization is responsible for an internationally wrongful act of that organization if:

   a) It has accepted responsibility for that act; or
b) It has led the injured party to rely on its responsibility.

2. The **international responsibility** of a State which is entailed in accordance with paragraph 1 is presumed to be subsidiary.

31 The **International Law Association** took the same position in its final report on the Accountability of **International Organizations** of 2004.

32 **Responsibility** of the Member States for the acts of the **international organization** based on their membership cannot be established under **international** law. The introduction of such a **responsibility** for membership—be it joint and several, concurrent, subsidiary, or whatever—would run counter to the idea of inter-State co-operation through independent **international organizations**, because to the extent to which the Member States will be held liable for the actions of the **international organization** they will try to keep them under control.

3. **The Financial Obligations of the Member States**

33 It follows from the foregoing that States are not responsible for the acts of **international organizations**, neither concurrently nor subsidiarily. However, the Member States have to fulfil their financial obligations which derive from the constituent or other instruments dealing with the relationship between the **international organization** and its members. The financial obligations may be limited to a certain amount, as has been the case with respect to the buffer stock of some commodity **organizations**. Most of the respective instruments require, from the Member States, the payment of financial contributions to the budget of the **international organization**. The payments should cover the **international organization**’s expenses. Damages to be paid by the **international organization** form part of the expenses and must be included in the budget as the ICJ held in *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal (Advisory Opinion)* ([1954] ICJ Rep 47). The ICJ decided in the *Certain Expenses* case of 1962 that the payments of the members must meet all the costs of the **international organization**. It also includes the expenditures which are due as a consequence of **responsibility** for a breach of **international** law. It means that States have to pay the expenditures of the **international organization** according to the share which has been attributed to them, as far as there is no limitation of their liability as, eg, in the cases of the commodity agreements. In this sense, one can say that the Member States are indirectly liable for the action of the **international organization**. The provisions on the contributions to an **international organization** form part of the internal rules. Third States that have been violated by the **international organization** cannot refer to these rules. However, they may insist on the payment by the Member States. The Member States cannot on the one hand claim the separate personality of the **international organization** and on the other hand undermine it by withholding the contributions.

4. **Responsibility** of Member States in Cases of a Breach of **International** Law by an **International Organization**

34 Member States may be held responsible for the actions of **international organizations** in exceptional cases. If States found an **international organization** with the sole purpose of circumventing their own obligations, they will be held responsible for the actions of the **international organization** which acts instead of them. States must not hide behind an entity created by them which accomplishes activities which pursued by the States directly would be qualified as a breach of **international** law. This has been laid down in Art. 60 ILC Draft Articles on Responsibility of **International Organizations**. If a State exercises coercion or helps an **international organization** in committing a breach of **international** law, it will be held liable. This is not a liability derived from the violation of **international** law by the **international organization**, but it is a direct **responsibility** of the State for its own conduct. On the same
grounds, the **responsibility** of a State is established when it exercises direction or control over the commission of an **internationally** wrongful act by the **international organization**. The concept of direction or control does not encompass the exercise of powers within organs of the **international organization** with which a Member State is vested. Within the **international organization**, the States act as part of the **organization** and under the limitation of its rules. If they were held responsible, it would come close to a **responsibility** for membership which has been rejected. Only in exceptional cases, when the action of the **international organization** is determined by a State in a way that it has to be identified as an act of the State, will the latter be held responsible. Especially in cases of small **international organizations**, the objectives of which coincide with the interest of a State and where the structures convey the power to the State to use the **international organization** as its own organ, one may reach such a conclusion. The **responsibility** of a State is also engaged when it accepts the **responsibility** for the acts of the **international organization**, as it is provided by the above quoted Art. 61 ILC Draft Articles on **Responsibility of International Organizations**.

### E. Strict Liability

35 The question of strict liability of **international organizations** has not yet attracted specific attention in academia and it did not play a role in the practice of **international** law (however see the Convention on **International Liability for Damage Caused by Space Objects**). *Mutatis mutandis*, the rules of State liability for lawful acts and the principles of the **responsibility** on **international organizations** as elaborated above—specifically with respect to the relationship between the **international organization** and its Member States—will have to be applied.

### F. Responsibility of International Organizations under Municipal Law

36 The question of the **responsibility** of **international organizations** under municipal law played a role in the case of the **International Tin Council**. The English courts, which had to decide the case, raised the question of whether an **international organization** which is incorporated under English law has to be treated as an English corporation or on the basis of the **international** treaty by which it has been founded. In the English cases, the question was not definitively settled. However, as an **international organization** is created under **international** law by **international** instruments, it seems to be logical that the structures of the **international organization** as conceived under **international** law will have to be respected by the national courts. This includes the separation of **responsibility** between the **organization** and its Member States.

### G. Implementation

37 The implementation of the **responsibility** of **international organizations** still meets problems, mainly because of the deficiency of jurisdiction over **international organizations**. National courts are blocked because the **international organizations** enjoy immunity; an **international** court with general jurisdiction over **international organizations** does not exist. There are only some **international organizations** (like the European Union) which have established a court that decides on claims brought against the **organization**.

38 In recent times, some **international organizations**, eg the **International Bank for Reconstruction and Development** (‘IBRD’) or the **International Development Agency** (‘IDA’), have established inspection panels. In contrast to the United Nations Joint Inspection Unit, which is limited to an internal inspection of the management of the UN in order to improve it and to raise the efficiency of that **organization**, the inspection panels of the IBRD and the IDA have the function of investigating claims by groups affected on the territory of the borrower by the respective bank’s
money lending and its consequences. However, they are limited to the control of the compatibility of the actions or omissions of the respective banks with the internal directives, such as the operational directives, the bank procedures, or the operational policies which are relevant for a given project. This control does not include the possibility of checking whether bank has respected international law in general. The inspection panel does not give binding decisions but only recommendations which the management will implement at its discretion. As some of the internal directives serve the protection of guarantees under international law, the inspection panels may be qualified as an embryonic form of remedy against specific violations of international law.

H. Assessment

39 In spite of the increasing case law and the attempts to codify rules for the responsibility of international organizations, the discussion on this topic has not come to an end. The easier question in this context is the responsibility of international organizations as such. Here, the rules and principles of State responsibility mutatis mutandis will be applied by way of analogy, as the draft of the ILC and the practice of the international and national courts show. However, the problem if, to what extent, and in what way the Member States will share responsibility is not conclusively settled. International law does not offer solutions which can be adopted by way of analogy. Analogies from municipal law can be drawn only to a very limited extent. The case law has not established a settled international practice and the provisions in the various international instruments have not yet introduced a definite general solution. It certainly will take some time until a balance has been struck between the independence of the international organizations as separate subjects under international law and the interest of third States and other subjects under international law in having an entity which can effectively meet claims which derive from breaches of international law. However, recent developments—case law and the ILC Draft Articles on Responsibility of International Organizations—show that membership as such will not entail responsibility for the breach of international law by an international organization.

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