Subjects of International Law

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A. Notion and Significance

1. Definition

1 According to the traditional understanding of → *international law* only some of the various actors on the international scene are subjects of international law and thus possess international legal personality. International law replaced the medieval order of Europe by creating legal relations between entities claiming to be sovereign (→ *Sovereignty*), equal and independent (→ *Territorial Integrity and Political Independence*; see also → *History of International Law, Ancient Times to 1648*). In fact, the international legal personality of these entities was a necessary prerequisite for the development of international law. Thus, → *State*[s] are the most obvious and universally accepted subjects of international law (see also → *States, Equal Treatment and Non-Discrimination*). But there are many other candidates ranging from international organizations (→ *International Organizations or Institutions, General Aspects*; see also → *International Organizations or Institutions, History of*; → *International Organizations or Institutions, Responsibility and Liability*), dependent territories (→ *Non-Self-Governing Territories*); belligerent groups (→ *Humanitarian Law, International*); multinational enterprises; and → *non-governmental organizations* ('NGOs') to the individual (→ *Individuals in International Law*). As a working definition, subjects of international law may be defined as entities which are capable of possessing international rights and duties.

2. Historical Development

2 Although States are the traditional subjects of international law, already in the 18th and 19th centuries a number of atypical subjects of international law were accepted (→ *History of International Law, 1648 to 1815*; see also → *History of International Law, 1815 to World War I*). The → *Holy See* took part in international relations as a subject of international law right from the beginning of its development (→ *Concordats*). Other atypical subjects recognized in the 19th century were → *free cities*, constituted as such by the → *Vienna Congress (1815)*, eg Krakow. Also, non-sovereign Member States of federations—such as the constituent States of the German Reich after 1815 or the cantons of the Swiss

federation—were attributed some degree of international legal personality (→ *Federal States*; see also → *Confederations of States*). The same holds true for belligerent parties exercising effective control over certain territories.

3 The European Commission for the Danube was the first international organization which was granted a limited international legal personality (see also → *European Commission of the Danube, Jurisdiction of the [Advisory Opinion]*; see also → *Advisory Opinions*). Since it had the possibility to exercise some sort of territorial jurisdiction, it may be said that during that period international legal personality was limited to subjects exercising territorial jurisdiction. Already the creation of the administrative unions in the late 19th century may be viewed as a move towards enhanced international co-operation through international organizations (→ *International Administrative Unions*). This was emphasized after the end of World War I with the creation of the → *League of Nations* and the → *International Labour Organization (ILO)* as almost universal international organizations (→ *Universality*). However, as a strictly legal question the endowment of international organizations with international legal personality only came up after the creation of the → *United Nations (UN)*, when in 1949 the organization sought to bring a claim for reparations concerning injuries which one of its employees had suffered while being in active service of the organization. In the ensuing advisory opinion the → *International Court of Justice (ICJ)* ruled that the UN must be considered an 'international person' (→ *Reparation for Injuries Suffered in the Service of the United Nations [Advisory Opinion]* ['*Reparation for Injuries*'] 185 ; see also → *International Courts and Tribunals*; → *Judicial Settlement of International Disputes*). It attributed absolute international legal personality to the UN. In sum, the major changes in the area of international personality during the first half of the 20th century concerned the acceptance of international organizations as new subjects of international law. Today, the international legal personality of international organizations is generally accepted. Nevertheless, some questions as to its concrete extent remain open (see paras 5–6 below).

3. Current Significance

4 The debate after World War II was concentrated on the international legal situation of groups (→ *Group Rights*) and other corporate entities as well as the individual (→ *History of International Law, since World War II*). The development of international law in the second half of the 20th century may be described as a move towards the creation of international rights and duties of the individual and groups. With the adoption of international → *human rights* catalogues such as the → *Universal Declaration of Human Rights (1948)* (UNGA Res 217 A [III] [10 December 1948] GAOR 3rd Session Part I 71), the → *International Covenant on Civil and Political Rights (1966)* ([adopted 19 December 1966, entered into force 23 March 1976] 999 UNTS 171), the → *International Covenant on Economic, Social and Cultural Rights (1966)* ([adopted 16 December 1966, entered into force 3 January 1976] 993 UNTS 3) and corresponding regional developments in the Americas (American Convention on Human Rights: 'Pact of San José, Costa Rica' [signed 22 November 1969, entered into force 18 July 1978] 1144 UNTS 123; → *American Convention on Human Rights [1969]*) and in Europe (Convention for the Protection of Human Rights and Fundamental Freedoms [signed 4 November 1950, entered into force 3 September 1953] 213 UNTS 221; → *European Convention for the Protection of Human Rights and Fundamental Freedoms [1950]*) the decades after World War II led to the creation of individual rights on the international level (see also → *African Charter on Human and Peoples' Rights [1981]*). At the same time, the Nuremberg Trials may be viewed as an early step in the development of → *international criminal law*, which may be seen at the origin of international duties for the individual (see also → *International Military Tribunals*). Compared with the earlier situation this implies a potential broadening of the circle of subjects of international law towards individuals, groups, and multinational enterprises.

B. The Subjects of International Law

1. States and International Organizations

5 The international legal personality of States has never been put into question. They have been and continue to be the traditional and most important subjects of international law. In addition, development during the 20th century has led to the recognition of international governmental organizations as subjects of international law. According to the ICJ in its advisory opinion on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, requested by the → *World Health Organization (WHO)*, the object of the constituent instruments of international governmental organizations is 'to create new subjects of law endowed with a certain autonomy, to which the parties entrust the task of realizing common goals' (*Legality of the Use by a State of Nuclear Weapons in Armed Conflict [Advisory Opinion]* 75; → *Nuclear Weapons Advisory Opinions*). The founding documents of international organizations only rarely expressly confer international legal personality, see eg Art. 281 European Community Treaty ('ECT'; → *European [Economic] Community*; see also → *European Community and Union, Actor in International Relations*; → *European Community and Union, Party to International Agreements*; → *European Community, Membership in International Organizations or Institutions*). In the absence of an express provision, an interpretation has to be made, taking account of the context, to decide on whether or not they actually do possess international legal personality (→ *Interpretation in International*

Law). In its advisory opinion on *Reparation for Injuries* the ICJ followed a functional approach which asks whether or not the organization needs international legal personality in order properly to fulfil the tasks entrusted to it (*Reparation for Injuries* 178–9).

6 While the legal personality of NGOs still is an unsettled issue, it should be noted that they are increasingly recognized as relevant actors on the international scene (see also → *Environment, Role of Non-Governmental Organizations*; → *Human Rights, Role of Non-Governmental Organizations*; → *Non-State Actors*). For example, Art. 71 → *United Nations Charter* ('UN Charter') provides for a specific status of consultation for NGOs within the United Nations Economic and Social Council (→ *United Nations, Economic and Social Council [ECOSOC]*; see also → *International Organizations or Institutions, Observer Status*). The details for acquiring consultative status have been set out in more detail in ECOSOC Resolution 1996/31 of 25 July 1996 (→ *International Organizations or Institutions, Secondary Law*). This resolution distinguishes three categories of NGOs according to their respective fields of activities and grants them certain rights of participation in the work of the organization. While this recognition within the UN system cannot automatically attribute international legal personality to the organizations concerned, one cannot ignore either that their influence and status have become more important. This has led some authors to the conclusion that, at least in some situations, partial international legal personality of NGOs is no longer completely excluded.

2. Atypical Subjects of International Law (Holy See, Sovereign Order of Malta, International Committee of the Red Cross)

7 The Holy See and the Sovereign Order of Malta (→ *Malta, Order of*) traditionally have been accepted as subjects of international law. The same holds true for the → *International Committee of the Red Cross (ICRC)*, an organization established in 1863 as a private Swiss association for fulfilling humanitarian tasks in times of war. The ICRC's role in the promotion and implementation of the laws of war has led to it being endowed with specific rights under the 1949 Geneva Conventions (→ *Geneva Conventions I–IV [1949]*). It has also entered into international → *treaties* with a number of States and international organizations such as the UN.

3. Non-Self-Governing Peoples, Insurgents, and Movements of National Liberation

8 The acceptance of the groups mentioned in this heading as subjects of international law is a delicate issue. The government is the authoritative representative of a State (→ *Governments*; → *Representatives of States in International Relations*). Hence, governments are usually reluctant to admit a specific international status for non-self-governing peoples, insurgents, or → *national liberation movements* (see also → *Combatants, Unlawful*; → *Resistance Movements*; → *Wars of National Liberation*). This is due to the fact that from their point of view the issues in question are considered purely domestic (→ *International Law and Domestic [Municipal] Law*; see also → *Domaine réservé*). However, when a rebel movement has gained de facto control of a certain territory and where the upheaval has reached a certain degree of intensity, certain international rules of the laws of war do apply and render the belligerent group a subject of international law (see also → *Armed Conflict, International*; → *Armed Conflict, Non-International*).

9 The process of → *decolonization* which started after World War II brought about a number of organized groups which fought on behalf of their people against the respective colonial power (→ *Colonialism*). The process of decolonization having today been practically completed, the importance of national liberation movements as subjects of international law is diminishing, with, however, the → *Palestine Liberation Organization (PLO)* in the territories occupied by → *Israel* as an important exception (see also → *Arab-Israeli Conflict*; → *Israel, Occupied Territories*). In contrast to insurgents, the effective control of territory has not been a significant element for the qualification of national liberation movements as subjects of international law. In fact, only a few of them ever did control territory effectively (see also → *Occupation, Belligerent*; → *Occupation, Pacific*). In the majority of cases the movements were based in a neighbouring country and operated from there (see also → *Neighbour States*). The legal basis for their recognition as subjects of international law is considered to be the right to → *self-determination*. It is a matter of controversy whether the same line of argument can be applied to minorities (→ *Minorities, International Protection*; see also → *Minorities, European Protection*).

4. Mandated Territories, Trusteeship Territories, and Internationalized Territories

10 At the end of World War I the League of Nations established a → *mandates* system which was basically designed to deal with the colonies of the defeated powers (Art. 22 Covenant of the League of Nations [28 June 1919, entered into force 10 January 1920] 225 CTS 195). The system was taken up after World War II in Chapters XII and XIII UN Charter, which transformed the League of Nations mandates into UN trusteeships (Art. 77 (1) (a) UN Charter ; → *United Nations Trusteeship System*). The exact legal status of such territories was a matter of various legal controversies, the most notorious concerning the legal status of South West Africa, the later → *Namibia* (→ *South West Africa/Namibia [Advisory Opinions and Judgments]*; see *International Status of South-West Africa [Advisory Opinion]* [1950] ICJ Rep 128; *Legal*

Consequences for States of the Continued Presence of South Africa in Namibia [South West Africa] notwithstanding Security Council Resolution 276 [1970] [Advisory Opinion] [1971] ICJ Rep 16). Furthermore, in its 1992 decision in the → *Certain Phosphate Lands in Nauru Case (Nauru v Australia)* the ICJ held that the common administration of Nauru by the United Kingdom, Australia and New Zealand did not imply that this tripartite 'administering authority' constituted an independent subject of international law (*Case concerning Certain Phosphate Lands in Nauru [Nauru v Australia] [Preliminary Objections]* [1992] ICJ Rep 258). Since the independence of Palau in 1994 all territories formerly under trusteeship have either become independent States or joined neighbouring countries (see also → *New States and International Law*). It may thus be concluded that the international legal personality of mandated and trusteeship territories is no longer an issue of relevance.

11 A related matter which is of considerable relevance concerns internationalized territories (→ *Internationalization*). In recent years, the United Nations Security Council (→ *United Nations, Security Council*) has resorted to conferring administrative functions for certain territories on newly created UN Agencies (see also → *United Nations, Specialized Agencies*). By agreement between the Cambodian factions a United Nations Transitional Authority in Cambodia ('UNTAC') was established in 1991 (→ *Cambodia Conflicts [Kampuchea]*). The most recent and most extensive application of → *international administration of territories* by the UN concerns the United Nations Civil Mission in → *Kosovo* ('UNMIK') which was established by UNSC Resolution 1244 (1999) of 10 June 1999 and covers all aspects of public governance, including legislation (see also → *Good Governance*). A similar model was followed in East Timor, where UNSC Resolution 1272 (1999) of 25 October 1999 endowed the United Nations Transitional Administration in East Timor ('UNTAET') with 'overall responsibility for the administration of East Timor'. The issue of whether these UN missions possess independent international legal personality does not seem to have been addressed. Since the traditional concept of international personality relies strongly on the administration of territory, it would be logical to attribute international legal personality to these missions.

5. Indigenous Peoples

12 Although → *indigenous peoples* have been granted specific rights under the ILO Convention (No 107) concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries and Convention (No 169) concerning Indigenous and Tribal Peoples in Independent Countries, it has been made clear in both conventions that the use of the term people does not imply a respective general qualification under international law. Therefore, until recently, current international practice did not seem to include indigenous peoples in the right to self-determination (→ *State Practice*). However, the United Nations Human Rights Council (→ *United Nations Commission on Human Rights/United Nations Human Rights Council*) adopted in 2006, as one of its first actions, the draft for a United Nations Declaration on the Rights of Indigenous Peoples, which contains in its Art. 3 the express recognition that indigenous peoples have the right to self-determination. If this approach is continued, indigenous peoples may qualify as subjects of international law in the future (see also → *Codification and Progressive Development of International Law*).

6. Independent Agencies Created by International Organizations

13 A quite recent development concerns the creation of so-called agencies endowed with legal personality by international organizations. It has become quite common within the first pillar of the European Union to establish Community Agencies by an act of secondary legislation (→ *International Organizations or Institutions, Secondary Law*). The most recent example is the establishment of the European Agency for the Management of Operational Cooperation at the External Borders, FRONTEX (see Council Regulation [EC] No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union; 'Frontex Regulation'). Usually, these agencies are expressly granted legal personality without any specification as to whether this implies international legal personality (see Art. 15 Frontex Regulation; Art. 7 Council Regulation [EEC] No 1210/90 of 7 May 1990 on the Establishment of the European Environment Agency and the European Environment Information and Observation Network; Art. 59 Council Regulation [EEC] No 2309/93 of 22 July 1993 laying down Community procedures for the Authorization and Supervision of Medical Products for Human and Veterinary Use and Establishing a European Agency for the Evaluation of Medical Procedures; see also → *European Community and Union Law and International Law*). Until now this development seems to have remained restricted to the EC. From the practice of the UN it is clear that subsidiary organs of the United Nations General Assembly (→ *United Nations, General Assembly*), the UNSC or the ECOSOC do not enjoy an independent legal personality. Even with respect to the ad hoc tribunals concerning → *Rwanda* and Yugoslavia this principle seems to have been respected (→ *International Criminal Tribunal for Rwanda [ICTR]*; → *International Criminal Tribunal for the Former Yugoslavia [ICTY]*; see also → *Yugoslavia, Dissolution of*), which may be inferred from the fact that, for example, the headquarters agreement for the ICTY was concluded between the Netherlands and the UN and not the ICTY itself (→ *International Organizations or Institutions, Headquarters*).

14 It is nevertheless possible to envisage a similar development outside the European context in the general law of international organizations. This raises the question of whether or not international organizations have an autonomous capacity to create new subjects of international law. Where such a capacity is expressly provided for in the founding document of the international organization in question, the international legal personality of the newly created agency operates at least vis-à-vis the Member States concerned. But even in the absence of an express authorization it is possible to assume—on the basis of the arguments of implied powers used by the ICJ with respect to the international legal personality of the UN (→ *International Organizations or Institutions, Implied Powers*)—that an implicit authorization has been granted, wherever the substantive competence transferred necessarily requires the creation of independent agencies. Furthermore, notably with respect to third States, it is always possible to construct the international legal personality of independent agencies upon acts of → *recognition* where such actions have been taken.

7. Individuals

15 The position of international law with respect to individuals has changed considerably in the last 50 years. Under traditional international law, individuals were under the exclusive control of States. Even the body of general international law which related to the position of → *aliens* was, although motivated in part by the intention to protect aliens as human beings, in principle a matter between the State of residence and the State of → *nationality*. Individuals were mediated in international law by the States involved in their treatment in a specific situation and had no legal position of their own (see also → *Diplomatic Protection*). This traditional position is reflected in the advisory opinion of the → *Permanent Court of International Justice (PCIJ)* concerning *Pecuniary Claims of Danzig Railway Officials who have Passed into the Polish Service, against the Polish Railways Administration,* which stated in 1928 with respect to a treaty between Germany and Poland, that this treaty, 'being an international agreement, cannot as such create direct rights and obligations for private individuals' (*Jurisdiction of the Courts of Danzig [Advisory Opinion]* 17).

16 International law has undergone an evolutionary development in this respect. It is undisputed that international treaties may create individual rights and obligations. The most obvious examples are the numerous human rights treaties which have been concluded since 1945. The relevant issue of interpretation is now whether or not a treaty creates individual rights (see eg → *LaGrand Case [Germany v United States of America] [Judgment]* 494).

17 A similar development has taken place with respect to the creation of international obligations for individuals. In 1945, the Charter annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis stated the → *individual criminal responsibility* for → *crimes against peace*, → *war crimes*, and → *crimes against humanity* (see also → *Criminal Responsibility, Modes of*; → *Responsibility of States for Private Actors*). The Nuremberg Tribunal consequently stated that 'international law imposes duties and liabilities upon individuals as upon States' (*Judgment of the Nuremberg International Military Tribunal 1946* [1947] 220). This principle has been taken up in Art. 25 Rome Statute of the → *International Criminal Court (ICC)* and in UNSC Resolutions 827 (1993) of 25 May 1993 and 955 (1994) of 8 November 1994 concerning the establishment of international ad hoc tribunals for the prosecution of war crimes on the territory of the Former Yugoslavia and Rwanda respectively.

18 These developments lead to the conclusion that the individual today has acquired a legally relevant position in international law. It has internationally been granted rights and is made subject to obligations which—in many instances—have a procedural corollary, eg the individual complaint mechanism in international human rights protection (→ *Human Rights, Individual Communications/Complaints*; see also → *International Courts and Tribunals, Standing*). For this reason, the individual today is usually qualified as a—partial—subject of international law by international legal doctrine (see also → *International Legal Theory and Doctrine*). Although many norms of international law are, for reasons of their content, only applicable to States, the general acceptance of individuals as—partial—subjects of international law marks an important shift in the structure of international law. It reduces the traditional State-centrism and will in the future contribute to a further restructuring of its role in the domestic legal systems.

8. Multinational Enterprises

19 Multinational enterprises or transnational corporations, as they are also sometimes called, are another candidate for functionally limited international legal personality. The phenomenon as such is not really new. In fact, the Hanseatic League is viewed as a very early version of an internationalized corporate body. Nevertheless, the need to qualify the international legal position of transnational corporations is mainly a development of the period after 1945.

20 From a strictly legal perspective it is especially the development in international investment law which leads to the conclusion of their—partial—international personality (→ *Investments, International Protection*). According to the principles applied in the → *International Centre for Settlement of Investment Disputes (ICSID)*, States and multinational companies are considered equal parties to a dispute once it has been brought to ICSID dispute settlement procedures

(see notably Art. 25 Convention on the Settlement of Investment Disputes between States and Nationals of other States [opened for signature 18 March 1965, entered into force 14 October 1966] 575 UNTS 159). This necessarily implies an international legal position of the respective corporation.

C. The Concept of International Legal Personality

1. International Legal Personality and International Legal Capacity

21 The terms international legal personality and international legal capacity describe the same characteristic, namely the fact that an entity is capable of possessing international rights and/or duties. In the following both terms are used interchangeably.

22 From these two concepts the capacity to act in the international sphere in a legally relevant manner should be distinguished. This capacity presupposes international legal personality. However, it does not imply that each subject of international law has the same capacity for action. The individual is, for example, in some areas granted substantive rights, without necessarily having a procedural right to defend these rights internationally (see also → *International Courts and Tribunals, Procedure*). With respect to the international legal personality of international organizations, traditional doctrine tends to mix their international legal personality and their capacity for action: their so-called partial international legal personality is limited by the competences granted to them in the founding documents (see para. 23 below). An overall evaluation of the international developments concerning international legal personality must focus more intensively on the distinction between international legal personality and the capacity to act in a legally relevant manner.

2. Full and Partial International Legal Personality

23 Current legal doctrine distinguishes between partial and full legal personality. This distinction is well reflected in the advisory opinion on *Reparation for Injuries*, in which the ICJ stated that the 'subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights' (*Reparation for Injuries* 178). Under this distinction only States are accorded full legal personality, which implies that, in principle, States possess all international legal rights and are subject to all international legal duties. By contrast, other subjects of international law, such as international organizations, are only considered partial subjects in the sense that their rights and duties are limited by the founding documents in which the respective rights and obligations are conferred upon the organization by the founding States. Consequently, their international personality is seen as being confined to the rights and duties mentioned in these founding documents and as not stretching to other areas of international law.

3. Objective and Relative International Personality

24 The predominant role of States in the international system is still reflected in the distinction between objective and relative international personality. By reason of the principle of sovereign equality enshrined in Art. 2 (1) UN Charter, States enjoy international legal personality vis-à-vis all other subjects of international law (→ *States, Sovereign Equality*). In contrast to this—objective—international legal personality, the international legal personality of other subjects of international law, notably of international organizations, is considered to be relative in the sense that it has to be recognized in order to come into being. The underlying principle is the *pacta tertiis nec nocent nec prosunt* maxim according to which a third person may not automatically be bound by an agreement between others (→ *Treaties, Third-Party Effect*).

25 In *Reparation for Injuries*, the ICJ came to a different conclusion with respect to the UN. According to the ICJ, due to its almost universal membership the UN enjoys objective international legal personality (*Reparation for Injuries* 185; see also → *International Organizations or Institutions, Membership*). While it is true that the factual basis for the ICJ's conclusion has become even stronger today—of the arguably 193 States existing on the globe, 192 are members of the UN—the rationale of the ICJ is still questionable: if the reason for according only relative international personality to international organizations must be seen in the principle that third States cannot be bound by an agreement among others, it is difficult to see how the quasi-universal character of an organization could change that principle even in the case of a single non-member. If on the other hand quasi-universal membership is the relevant criterion, then a number of other organizations would also qualify for objective international personality. The best analysis of the existing practice since 1945 seems to be that the creation of an international organization implies a presumption according to which it is also endowed with international legal personality, a presumption which may, of course, be rebutted in each individual case.

4. Original and Derived Subjects of International Law

26 A related distinction is the distinction between original, or *born*, subjects of international law and derived, or *created*, subjects of international law. In view of the historic development (see paras 2–3 above), States are qualified as original subjects of international law. This implies that an entity, once it has been qualified as a State, automatically enjoys full international legal personality. The same does not hold true for subjects other than States. International organizations, for example, do not possess international legal personality by their own will but depend on the action of States as their creators. Hence they are often qualified as created subjects of international law. The distinction, although it may have some descriptive value, is of limited practical relevance. It does not indicate in which specific areas a created subject does possess international legal personality.

5. Domestic and International Legal Personality

27 A further distinction must be made between domestic and international legal personality. International legal personality does not automatically imply national legal personality and vice versa. For many international organizations it is not sufficient that they possess international legal personality; for their proper functioning they also need to possess legal personality in the national legal orders of their Member States. The EC is, for example, expressly endowed with both national and international legal personality. While Art. 281 ECT provides for international legal personality, Art. 282 ECT covers the legal personality of the EC in its Member States in order to ensure the proper exercise of its functions.

D. Evaluation: From International Legal Personality to International Legal Relationships

28 The doctrine of international legal personality reflects that traditional international law is an actor-centred law, which focuses intensively on the issue of subjects of international law. However, there can be little doubt that the concept and meaning of international legal personality have developed considerably over the last century. As already indicated, it is essentially a development in which the number of subjects was broadened. For this reason, today, some authors even refuse to use the term subjects of international law and prefer to speak of participants (see Higgins 48). This change of terminology is an adequate description of the broadening of subjects of international law. However, the price which has to be paid is a loss of legal precision. It was exactly the legal significance of the concept of international legal personality to allow for a distinction among the many actors on the international scene. While some could acquire internationally created rights or be made subject to international legal obligations, others could not. With the introduction of the term ‘participant’ this important distinction gets blurred.

29 It is therefore submitted that it is preferable to stick to the existing terminology and to continue to use the notion of subjects of international law for those entities which are capable of holding rights or of being made subject to obligations created by international law. The broadening of subjects, most notably the inclusion of the individual among the subjects of international law, requires laying more emphasis on differences in the capacity to act. It seems to be clear from the above analysis that not all of the subjects of international law have the same capacity to act. Even in modern international law its bulk is only applicable to States. The traditional international legal doctrine links this difference to the legal personality in distinguishing partial and full international personality.

30 This link should be questioned. Many domestic legal systems operate differently. They distinguish capacities for certain action from the legal personality as such: there can be no doubt that each individual is endowed with legal personality, while not being able to perform certain acts. Individuals usually cannot legislate, they cannot adopt administrative acts, etc. However, these limitations do not depend on their legal personality. Whether or not a person can act in a specific manner depends on the applicable norms which allow or prohibit a certain action, not on his or her legal personality. The same idea could be transferred to international law. One would then have to ask which norms govern a specific behaviour. The question would not be who acts, but rather whether the action in question is governed by international law or not. The focus consequently shifts from the international legal personality to what could be called an international law relationship.

31 If the observation is correct that the reason for the primordial relevance of the notion of subjects of international law is the actor-centred structure of traditional international law, and if it is equally correct that the traditional actor-centred order is currently being, perhaps not really replaced, but at least supplemented and in part modified by a subject-oriented structure, then it may help as a first step to give up the notion of international legal personality as the cornerstone of international law and replace it with the notion of an international law relationship. This would most probably change little in terms of the answers to specific legal questions, but it would contribute to a re-conceptualization of international law which takes into account the proliferation of its subjects which has taken place throughout the 20th century.

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