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Properties of international legal subjects

- Are there any in common?

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Contents

Summary

This thesis aims to uncover the three properties of definition, recognition and independence shared by international legal subjects. These properties are included in the underlying conceptual scheme of who or what we accept as an international legal subject. The conceptual scheme is developed through the events, experiences, needs etc. within the international community. By uncovering the properties, we find that the conceptual scheme about international legal subjects is yet elusive and to be settled by further events, experiences, needs etc. It is therefore impossible to identify the determining factors of who or what is accepted as an international legal subject within the international community.

Sammanfattning

Den här kandidatplatsen syftar till att kartlägga de tre egenskaperna definition, erkännande och självständighet, vilka är gemensamma för juridiska folkrättssubjekt. Egenskaperna utgör en del av de underliggande uppfattningarna om vem eller vilka vi accepterar utgöra juridiskt folkrätts-subjekt. De underliggande uppfattningarna utvecklas genom händelser, erfarenheter, behov etcetera inom det internationella samfundet. Genom att kartlägga egenskaperna upptäcker vi att de underliggande uppfattningarna om juridiska folkrättssubjekt är svårdefinierade. Det återstår ytterligare händelser, erfarenheter, behov etcetera för att de ska bli stabilt etablerade. Därmed är det också omöjligt att identifiera de avgörande faktorerna till vem eller vad som accepteras som ett juridiskt folkrättssubjekt inom det internationella samfundet.

Abbreviations

conceptual Scheme	underlying conception or perception
ICJ	the International Court of Justice
Influential factors	factors composing conceptual schemes
International organisation	International governmental organisation
Manifestations	manifestations of conceptual schemes in the physical reality
UDHR	the Universal Declaration of Human Rights
UN	the United Nations
Subject	International legal subject

1 Introduction

1.1 Background

This paper has its background in my curiosity for how the rights of future generations best could be enforced. Now, this may seem unrelated to the properties of international legal subjects (hereafter "Subjects") but while pondering on this thought the idea of future generations as its own Subject appeared. After researching the different perspectives of various legal scholars, it became apparent that future generations as a Subject would require a whole other form than those of the current Subjects. None of the existing Subjects include for example the inherent elements of the future nor unborn generations (uncapable to express their will). However, both of these elements must be considered when deciding the potential scope of Subject of future generations. The draft content of a thesis treating the idea of future generations as its own Subject quickly became very complex. Addressing all the different ways in how future generations would deviate as a Subject and at the same time look at solutions to potential problems of this deviation would require a lot more pages than that of a Bachelor thesis. Such an exposition would first have needed a thoroughly assessment of the landscape in which current Subjects emerge and exist. This, to know how future generations as a Subject could and would fit therein. By landscape the structural place, function, background, etc. in the international community is meant.

Considering the above, the focus for this thesis was delimited to currently existing Subjects and their landscape. That way a part of the above-described complexity is addressed which can also pave the way for additional studies of future generations as its own Subject.

1.2 Purpose and research question

To answer the research question of what the determining factors to who or what is accepted as a Subject within the international community, this paper aims to uncover the in common properties of existing Subjects. Finish legal scholar Visa A.J. Kurki has studied legal personhood

in Western jurisdiction and, illuminates the significance of the conception underlying our willingness to accept or dismiss someone or something as a legal person in Western legal orders.[1] Having found inspiration in his work, this paper is based on the thought of there being a conception underlying the international community's willingness to accept or dismiss something or someone as a Subject. There are many ways of labelling an underlying conception; belief, perception, idea, or maybe conviction. As we shall see in chapter 2, Visa A.J. Kurki uses the term "conceptual scheme", a term that will also be used in this paper. A conceptual scheme can be conscious but many times subconscious.

The international community's conceptual scheme about Subjects lays the foundation for the determining factors of what or who can constitute a Subject. By looking at the properties that existing Subjects have in common we approximate the (most likely) subconscious conceptual scheme about Subjects. The belief around what they are, how they function, their form etc. For the sake of structural delimitations, the Subjects studied are limited to states, international governmental organisations, and individuals. By uncovering the properties of these three Subjects, and thereby approximate the conceptual scheme about Subjects, we have a better chance at answering the research question for this paper: "what are the determining factors to who or what is accepted as a Subject within the international community?".

With the risk of appearing repetitive, but with the intention to remove all possible uncertainty around the purpose and research question of this paper, the purpose and research question are the following:

The purpose of this thesis; to uncover properties that Subjects states, international governmental organisations and individuals have in common.

The research question of this thesis; "what are the determining factors to who or what is accepted as a Subject within the international community?".

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[1] Kurki, Visa A.J. et al (2017) *Legal Personhood: Animals, Artificial Intelligence, and the Unborn*, Springer International Publishing AG p. 74.

1.3 Material and method

The examination of properties in common for Subjects is made with a legally philosophical perspective of the law that exists, *de lege lata.* In order to accomplish such examination, an assessment to identify *de lege lata* is firstly required. For that the doctrinal legal method, which include analysis, interpretation, and evaluation of legal sources, is used. However, the conceptual scheme underlying the international community's willingness to accept or dismiss someone or something as a Subject has been affected by different events taken place in history. By exploring the circumstances that gave way to the three chosen Subjects on their journey to becoming Subjects we discover the landscape in which the shared properties emerged and exist.[2] Sociological factors play an important role in understanding the conceptual scheme underlying *de lege lata* and especially so since the horizontal structure (as oppose to the vertical structure in domestic law) of international law entail an active dynamic between the different powers influencing international law. Therefore, the studies are also influenced by sociology of law.

Article 38 of the ICJ statue state that the primary sources of international law are international conventions, international customary law, and general principals of law while judicial decisions and judicial doctrine are subsidiary sources. However, since this thesis is using a combination of the doctrinal legal method and sociology of law, most research have been done through the studies of judicial doctrine. Studying conventions, international customary law and general principles alone exclude important sociological factors that are important for exploring the conceptual scheme and its properties. Occasionally, western legal judicial doctrine has been used in the name of sociology of law however never for determining *de lege lata* of international law.

1.4 Structure

Firstly, and in chapter 2 an introduction to the work of Visa A.J. Kurki is given. This is because his work has inspired so much of this thesis and an introduction serves the understanding of further readings. In chapter 3 the development of contemporary Subjects is examined and the circumstances in which the Subjects emerged is being explored. After demonstrating that varying factors drives the evolution of international subjecthood chapter 4 continues to uncover

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[2] Maria Nääv & Mauro Zamboni (ed.) (2018), *Juridisk metodlära,* 2nd edn., Studentlitteratur, p. 21–22 & 209–210.

the different properties of the conceptual scheme underlying who or what is accepted as a Subject under international law. Here, one subcategory of the properties for each Subject is presented. Finally, chapter 5 presents a discussion and conclusion.

1.5   Delimitations

There has been made delimitations with regards to both the Subjects and the examined properties. The exploration of contemporary Subject's properties has been delimited to three Subjects: states, international governmental organisations, and individuals. Hence, groups of individuals have been excluded (different groups of individuals are granted rights under international law for example peoples).[3] The reason is that groups of individuals is a newer form of Subject that would have required separate studies. Furthermore, the properties of the conceptual scheme are non-excusive. Many more properties in common for Subjects are likely to influence how we view Subjects but, the limit is here set at three.

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[3] Rose, Cecily et al. (2022), *An Introduction to Public International Law*, Cambridge University Press p. 39.

2 Visa A.J. Kurki, an inspiration for this thesis

It has previously been mentioned in section 1.2 that this paper is inspired by Finish legal scholar Visa A.J. Kurki and, ahead one can find further references to his work. To better understand the ways it has been an inspiration, this chapter presents an introduction to parts of his work deemed as relevant.

In the preface to his book *A Theory of Legal Personhood* Visa A.J. Kurki tells how the legal status of animals led him to review the most generally accepted theory on legal personhood in Western jurisdictions, the so-called Orthodox View. However, as he finds this theory outdated and non-representative of how the view on legal personhood seem to be expressed in rules and regulations, he creates a new theory. This new theory, the Bundle theory, is established by identifying properties (however he uses the term "incidents" instead of properties) of different legal persons. The different legal persons possess different combinations of fulfilled properties giving them unique set of legal personhoods. [4] The essence of Visa A.J. Kurki's ideas is that the properties related to legal personhood are non-inherent to legal persons but are instead reflecting how we understand legal persons. We think of legal persons as possessors of these certain properties (one could also call them attributes, characteristics etc.). If they lack these properties, they are incongruent with the understanding (also, the conceptual scheme) we have of legal persons. Therefore, we are also more likely to dismiss them as legal persons. As stated in section 1.2, he calls this conception underlying our willingness to accept or dismiss someone or something as a legal person in Western legal orders for a conceptual scheme. He defines it as "ways of thinking about things".[5] In fact, a conceptual scheme is often underlying anything that we take as a truth, not just how we perceive the nature of legal persons. An example of another conceptual scheme can be how we assume a "normal life" shall play out; school, university, marriage, kids, and family, work 9-5 and then retirement. Another example

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[4] Kurki, Visa A.J. (2019) *A Theory of Legal Personhood*, Oxford University Press p. 3 & 15.
[5] Kurki, Visa A.J. et al (2017) *Legal Personhood: Animals, Artificial Intelligence, and the Unborn*, Springer International Publishing AG p. 74.

on a more governmental level is that we expect all states to have certain predetermined institutions, such as a judicial system. Those two examples represent conceptual schemes of "how things just are".

Now, without any negative opinion about people living a "normal life" or states having judicial systems, these are just examples of how we understand the world. How we assume things are and supposed to be. The conceptual scheme is like a program that we are sometimes aware of and other times not. It can be a conscious or subconscious program running in the background of how we perceive the world and how we make our choices. Sometimes the program could benefit from a totally different but better replacement and other times it could be enough with just a bug fix or an upgrade. Of course, there is also the option of the program being good just the way it is.

It is the above-described identification of legal persons' properties and the idea of a conceptual scheme that has inspired the exploration of Subjects in this paper. Just like there is a conceptual scheme ruling the willingness to accept or dismiss someone or something as a legal person in Western jurisdictions, there is probably one for our willingness to accept or dismiss Subjects in international law. One can wonder why it would be purposeful making the conceptual scheme about Subjects conscious. Why is it important to understand the underlying beliefs of who or what we accept or dismiss as Subjects? A reminder of the background to this paper is here in place. To potentially advocate for future generations (or, any other entity or group) being their own Subject one could benefit from knowing the existing landscape of Subjects well. This way it is easier to see where and how a new Subject would fit into the international community's conceptual scheme about already existing Subjects. It facilitates the assimilation to a new way of thinking and hence being met with less resistance.

While chapter 4 will dive into the identification of properties in common for Subjects the following chapter introduces us to the historical and sociological landscape in which the three chosen Subjects (states, international governmental organisations, and individuals) emerged.

3　The development of contemporary Subjects' emergence

3.1　States

States are the first and main Subjects in the international community. From the dawn of international law, occurring at the Peace of Westphalia 1648, until the first half of the twentieth century states were recognized as the only type of Subject. Europe had a history of wars and other destructive conflicts which the continent now understood was anything else than the solution to the problems of coexistence. The claim of state independence and the demand of the respect thereof, gave instead rise to international law (and therefore also the international community). From there the concept of international rights and duties emerged.[6] States were the only actors who at the time could then require fulfilment of their rights and be expected to perform obligation under international law. But as the collaboration of the international community expanded the creations of international governmental organisations (hereafter "international organisations") came around. It soon became clear that there was need for international organisations to also enjoy some degree of independence. That was when the view of international subjecthood began to change.

3.2　International organisations

A push in the direction of this change came around after the Second World War in 1949 when the ICJ, in its advisory opinion *Reparation for Injuries Suffered in the Service of the United Nations*, evaluated the nature of the UN.[7] It was there concluded that international legal subjecthood was required for UN's fulfilment of its intended functions and that the nature of legal subjects in any legal order depended upon the needs of its community. It was also said that different Subjects may enjoy different capacities and that its nature and rights can be distinct from one another. In other words, it was concluded that Subjects may take other forms than that of a state and, that there therefore was room for a variation of Subjects. Furthermore, the

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[6] Roucounas, Emmanuel (2019), *A Landscape of contemporary theories of international law,* Koninklijke Brill NV, p. 293.
[7] Rose, Cecily et al. (2022), *An Introduction to Public International Law*, Cambridge University Press p. 35-36.

advisory opinion stated that the ICJ considered the UN to be a legal subject, but that its rights and duties were limited in comparison to those of a state.[8]

The reasoning, that international legal subjecthood was required to fulfil the international organisation's functions (functional legal subject), entailed a possibility for international organizations to implicitly obtain the status of a Subject. However, in most modern constituting treaties of an international organisation a provision claiming legal subjecthood is included granting them the status as a Subject explicitly.[9]

Summarizing the emerging development of international organisations as a Subject, they were the first non-state actors who obtained status as a Subject, however not to the full capacity of states. States are the only ones with full capacity and all others enjoy partial capacity. Furthermore, both subjecthood can by international organisations be obtained implicitly or explicitly.

3.3 Individuals

The most prominent examples of individuals as a Subject are within the areas of human rights and international criminal law and both these became relevant after the Second World War.[10] Rights are found in the area of human rights and obligations in the area of international criminal law. Having rights and duties in these areas means individuals fulfil the general definition of a Subject (the capacity to obtain rights or duties under international law).[11]

The main purpose for the international community to be concerned with human rights was at first the maintenance of international peace and state relations. The purpose was hence not to grant individuals any rights under international law. In the UN charter, provisions of respect for human rights and fundamental freedoms were included but they did not create any direct human rights state obligations. However, they did establish a legal foundation for the development of further human rights instruments. Examples of such instruments are the Universal Declaration on Human Rights (UDHR), adopted in 1948. Even though the UDHR lacks binding effect its influence is recognizable as it has served as inspiration for subsequent binding human

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[8] *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 174, 178-179.

[9] Rose, Cecily (2022), *An Introduction to Public International Law*, Cambridge University Press, p. 36 & 145-146.

[10] Henriksen, Anders (2019) *International law*, (2nd edn.), Oxford University Press, p. 166–167 & 303

[11] Rose, Cecily (2022), *An Introduction to Public International Law*, Cambridge University Press, p. 35 and 39.

rights instrument. The rights of individuals under international law (hence their status as a Subject) has therefore gradually been developed. Seeing it through this perspective, we have a Subject, like the Subject of international organisations, that has been developed from what it first was, a tool to obtain another goal. International organisations were initially developed to facilitate state collaborations and the rights of individuals were developed as a tool for maintenance of international peace. International organisations obtained status as Subjects for practical reasons, to fulfil their functions. It could be suggested that the view on individuals as Subjects also had to do with practicality. Granting them enforceable rights (and duties) makes dealing with potential violations a little more tangible. Pointing out specific individuals with violated rights or unfulfilled duties brings character to a court case. It leaves a more serious impression than a case about violations *of "mere" rules* as opposed to violations *against individuals.* However, natural law theories propose that the rights of individuals reflect the inherent value in them. From this perspective, the Subject of individuals has emerged because of the international community's normative evaluations, instead of practical reasons. The fact that some of the rights in modern human instruments are considered fundamental (such as the right to life, liberty, and security[12]) and reflect international customary law strengthens the idea of the whole international community finds some truth therein.[13] In reality, the Subject of individuals is probably a result of both normative evaluations as well as practicality.

3.4   Concluding remarks of chapter 3

The above shows us how the event of the Second World War gave way for many changes to international law and while states are considered to be the main producers of international law[14] the development of international law is also motored by many other factors besides states. The international community now constitute a blend of different Subjects and other actors, whos' function, needs, will, values, ideas etc. influence the legal landscape they are in. International organisations obtaining functional legal subjecthood is an example of how the needs and function of an actor influence their chances of receiving the status of a Subject.

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[12] Article 3, the Universal Declaration of Human Rights, 10 December 1948.
[13] Rose, Cecily et al. (2022), *An Introduction to Public International Law*, Cambridge University Press, p. 187-188.
[14] Roucounas, Emmanuel (2019), *A Landscape of contemporary theories of international law,* Koninklijke Brill NV, p. 428-429.

Sometimes the international community's willingness to acknowledge international organisations as Subjects comes down to pure practicality. Other times the factors determining an actor's prospects for obtaining subjecthood are of normative nature, like for example in the case of individuals. What is deemed as practical and normative is always changing along with different events that the international community as a collective experience.

This chapter has served in illuminating different ways how existing Subjects have emerged. Such understanding is relevant as it affects the conceptual scheme about the Subjects and the properties they are given.

4 Properties of contemporary Subjects

4.1 Introduction

The above chapter served in introducing the different paths that led international organisations, individuals, and groups of individuals to becoming Subjects. International law is being under constant evolution and the landscape of Subjects has gone from state centred to include a variety of actors. According to the ICJ, the nature of legal subjects in any legal order is dependent on the needs of the community.[15] With evolution, some needs may sustain while others are being replaced with new needs. There will always be change and this change will always impact our conceptual scheme of the world.

Regarding Subjects we currently lack any international regulations or rules on who or what can obtain the status of a Subject. Now, this may be perceived as less of an issue - there are many more important legal problems to be solved within the international community. However, debates about new potential Subjects (such as for example future generations) are topical, risk becoming illusory and hyper theoretical without a concrete legal context and without *de lege lata*. The fact that some actors are more likely than others to obtain the status of a Subject show that the existence of a conceptual scheme about Subjects is real. Put differently, despite the absence of international regulations or rules about who or what can become a Subject, the international community still holds a conceptual scheme about it. By reviewing the properties in common for Subjects we approximate the conceptual scheme about Subjects. A better understanding for landscape in which Subjects exist and emerge can be founded. Discussions about where and how potential new Subjects (such as future generations) would fit in this landscape are thereby also made easier.

With the above in mind the remaining part of this chapter identifies three properties to the conceptual scheme underlying Subjects. The term properties shall be understood as equivalent to what Visa. A.J. Kurki calls incidents, components that together reflect a conceptual scheme. However, and due to the structural scope of a thesis, it is impossible to present neither a complete set of properties nor a complete conceptual scheme about Subjects. For that a vast number of further studies would have been required.

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[15] *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 179.

The three properties found in common for Subjects are definition, recognition, and independence. Below, all three properties will be covered in relation to each one of the Subjects states, international organisations, and individuals. The fulfilment of the properties varies and the way they are fulfilled is unique for each Subject. For example, the variables of the definition of a state are different from those of an international organisation. What they have in common is not the variables defining them but rather that they *can* be defined at all.

4.2   Definition

The first property found in common for Subjects is their ability to be defined by specific variables. Defining them makes them distinguishable from each other and increases other international actors' understanding of the entities they interact with.

4.2.1   States

While there is no official or universal treaty of statehood definition the Montevideo Convention on the Rights and Duties of States include the most accepted list of statehood criteria. And, though regarded as incomplete this list of criteria is said to reflect customary law. The criteria are a) a permanent population; b) a defined territory; c) a government; and d) the capacity to enter relations with other states.[16]

- Permanent population: there is no specific requirement of volume, ethnicity, culture, or nationality yet it is important that the population permanently occupy the state territory,
- a defined territory: the state must rightfully claim a certain physical portion of the earth and though there is no lower limit to its size, the state boundaries must be a part of this claim,
- a government: the third criteria regard an effective government. Meaning, there must be a responsible actor in charge of the population and the territory who can also represent the state before other states, and
- the capacity to enter relations with other states: in order to fulfil the last criteria, the capacity to enter into relations with other states, the state must, independently from

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[16] Article 1, The Montevideo convention on the Rights and Duties of States, 26 December 1934.

other states, be able to conclude agreements or enter into relations with other states.[17]

4.2.2   International organisations

The most obvious variables defining international organisations are the fact that they are unilaterally established cooperations and the aspect of being governed by international law. Here, "unilaterally established" could mean the involvement of two or more states but alternatively also states in combination with international organisations or, the involvement of only international organisations, two or more. The establishment itself, happens more often than not by treaties.[18] Being governed by international law as a defining variable is self-explanatory in the sense that organisations governed by domestic law(s) are not international.

4.2.3   Individuals

When talking about individuals as a Subject it is assumed we mean human beings. In doctrines, individual is often referred to as an indeterminate physical person.[19] It may seem obvious that human individuals are intended but with the modern debate on animal rights and AI counciousness theorizations are not completely out of place. However, the term individual or person is in legal regulations generally viewed from a technical perspective rather than abstract.[20] In consideration thereof, the definition of an individual has a biological nature and include all human beings.

4.3   Recognition

Another property that international subjects have in common is that they get recognition as Subjects within the international community. Meaning, they are viewed as someone or something that has capacity to possess rights, duties and/or competences under international law.

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[17] Rose, Cecily (2022), *An Introduction to Public International Law*, Cambridge University Press, p. 43-45.
[18] Ibid. p. 142.
[19] Roucounas, Emmanuel (2019), *A Landscape of contemporary theories of international law,* Koninklijke Brill NV, p. 511.
[20] Kurki, Visa A.J. et al (2017) *Legal Personhood: Animals, Artificial Intelligence, and the Unborn*, Springer International Publishing AG p. 8-10.

In other words, the way they are viewed match the general definition of a Subject.[21] As we shall see, different Subjects are meeting the criteria of recognition in different ways.

4.3.1   States

A state fulfilling the Montevideo criteria of statehood has the capacity to enter relations with other states and therefore also to possess rights and duties under international law. But beyond fulfilling the Montevideo criteria it has been debated what importance other states' recognition of a new state plays in qualifying for statehood. One theory, the constitutive theory, view state recognition as an additional required criteria for statehood. Another, the declaratory theory suggest that state recognition is primarily playing a political role demonstrating acceptance of the new state. The former theory, the constitutive theory, is said to evoke problematic scenarios, such as the risk for a new state to have its existence denied due to the subjective and arbitrary attitude of other states. Another scenario is the one where the new state receives recognition from some states but not from others, leaving it with a doubtful status. To avoid such problematic scenarios, the constitutive theory has had to leave room for the declaratory theory which today generally is viewed as the dominant one. However, gaining recognition is yet affecting the prospects for a state's ability to function and operate in accordance with its own free will. A lack of recognition may hinder the state from entering treaties and engaging in diplomatic relations and therefore interfere with their capacity as Subjects.

As a conclusion, state recognition is not a decisive factor of statehood but is important for the new state's ability to freely operate like a state within the international community. It is therefore a decisive factor for the state's ability to function as a Subject.

4.3.2   International organisations

When international organizations began to emerge in the nineteenth century the international community (which at the time was made up of solely states) was reluctant to grant them status as Subjects. During the creation of preparatory and negotiating work of the UN charter it was feared such status would entail the creation of an overruling "superstate". However, and as mentioned in chapter 3, the general approach to international organisations began to change in the following century and now, their capacity of being parties to treaties could alone be

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[21] Rose, Cecily (2022), *An Introduction to Public International Law*, Cambridge University Press, p. 35.

viewed as a form of quite recognition from the international community. Every time a treaty is concluded, an explicit recognition is received. In the moment of treaty conclusion, the contracting parties are recognizing the international organisation to be an entity with capacity to possess rights, duties and/or competences under international law. Additionally, the fact that international organisations' capacity to conclude treaties is being taken for granted is a form of preexisting (before treaty conclusion) and indirect recognition. Furthermore, and while the Wienna Conventionen on the Law of Treaties applies to treaties between states[22], many of its provisions reflect customary law and the case of having these apply to a treaty that an international organisation is party to is an example of how indirect recognition of their status as a Subject could be given by the whole international community.

In summary of the above, international organisations receive recognition by the way other international actors accept them operating like Subjects, for example the concluding treaties.

4.3.3   Individuals

The recognition of individuals as Subjects was for most scholars out of the question upon until the mid and late twentieth century. While the UDHR did assist in moving the opinion towards an official recognition, regional human right declarations had an even more impactful effect on such a change. This, because the regional declarations provided options for individuals to go before international courts in case their rights were violated. Despite this change in opinion, recognition of individual as international subjects has continued to be a topic of debate. Some scholars have pointed out the differences in the legal capacity of individuals compared to states suggested categorizations, such as creators versus users (where individuals would qualify as users and states as creators, the "real" Subjects). However, when it comes to holding individuals responsible under international law for certain violations (for example acts of piracy, war crimes, genocide, terrorism, crimes against humanity, and other grave breaches of international humanitarian law) there seem to be consensus regarding individuals being Subjects.[23] One could find it rather odd though that individuals would obtain the status of Subjects only when it comes to their obligations and not rights. They are under the power of state regulations and for the most part lack any other option than accepting the obligations put on them. Only

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[22] Article 1, The Vienna Convention on the Law of Treaties, 22 May 1969.
[23] Roucounas, Emmanuel (2019), *A Landscape of contemporary theories of international law,* Koninklijke Brill NV, p. 511-515.

having obligations and no rights represent a totalitarian mindset. And, even if one would accept individuals being regarded as Subjects only in relation to their obligations, they would still fulfil the definition of Subjects (capacity to possess rights, duties and/**or** competences under international law)[24]. While lacking binding character, the article 6 in UDHR supports this notion stating that "everyone has the right to recognition everywhere as a person before the law". [25]

4.4   Independence

Another common property that Subjects seem to share is that their independence is protected under international law. As showed below, the type and degree of independence vary between the Subjects.

4.4.1   States

State sovereignty imply that states are free to decide how they are going to act and function within the boundaries of their own territory and, doing so without the intervention of other states or international actors. This means they can freely choose the laws and regulations that are governing their population and territory. Additionally, they have an exclusive right to exercise authority over the population and territory. While there are limitations to this independence (such rules about jurisdiction, immunity, law on responsibility etc.) it is a necessary feature of states and crucial for the international community as a whole. In Article 2(1) of the UN charter, it is said that "The Organization is based on the principle of the sovereign equality of all its Members". By equal sovereignty, equal rights to freely exercise the above-mentioned rights without the interference of other states, no matter the size or economic power possessed by the state, is intended.[26] States' independence from each other is foundational for the entire structure of the international community and if it was not granted, the international community would look completely different and be of whole other character.

4.4.2   International organisations

The point of international organizations obtaining status as their own international legal Subject is, as we saw in chapter 3, to fulfil their function and independently conclude agreements. The

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[24] Rose, Cecily (2022), *An Introduction to Public International Law*, Cambridge University Press, p. 35.
[25] Ibid. p. 188.
[26] Ibid. p. 42.

independence from state involvement is in other words necessary for international organisations to fulfil the tasks they were created to do. Without independence, international organizations would have a hard time fulfilling their global tasks as they require a separation from the political interests of the states. Bureaucratic cooperation with member and host states is however continuously required for their practical operation to be lawful under the different domestic laws of each member state, which could be seen as a form of limitation to their independence. Furthermore, their activity is limited by the founders' intentions set out in the establishing treaties. However, within the realm of these limitations, independence is enjoyed. An example of how this independence is exercised is the freedom to decide their own internal rules and regulations. [27]

4.4.3   Individuals

Individuals are granted independence from state involvement under certain areas of international law, for example the right of self to determination, which include the right to freely determine their political status and freely pursue their economic, social, and cultural development. This represents intellectual freedoms and independence e.g., freedom of expression, thought, conscience, religion, association, peaceful assembly. Physical freedoms and independence can be found in the right to liberty, prohibition against arbitrary detention, freedom of movement. The rights above create a corresponding obligation for states to recognize their independence.[28] Furthermore, article 1 of the UDHR confirms that "all human beings are born free and equal in dignity and rights".

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[27] Ibid. p. 141-146.
[28] Ibid. p 51 & 190-192.

5   Discussion and conclusion

5.1   Discussion

Chapter 3 illuminated how the development of international law is influenced by many different factors. It is typically said that states can only be bound by free will and that states are the only real creators of international law.[29] This is true within a certain context. For example, conventions require states to conclude them, and their rules and regulations are typically only binding on the states who have undersigned the conventions. However, seen from a broader perspective, the free will of states is influenced and shaped by the whole international community and events happening within it. Wars, natural disasters, scientific and cultural progression etc. The will and needs of one state are also influenced and shaped by the will, needs of other states as well as of other actors. It is all interconnected and to say that states' free will is the only determining factor to the content of international law is in this sense wrong.

As it was said in section 4.1, we lack international regulation on who or what can obtain the status of a Subject. If such international regulation did exist, answering the research question of this thesis ("what are the determining factors to who or what is accepted as a Subjects withing the international community?") would have been a lot easier. However, while the choice to accept or not accept Subjects may be unregulated in international law, it is still a manifestation of the conceptual scheme about Subjects. It is a manifestation in the sense that our choices become actions which in turn become the physical reality of Subjects and the landscape they are in.

The conceptual scheme is developed by factors like events, experiences, needs, etc. (from now on "influential factors"). Our understanding of (and so the conceptual scheme of) Subjects is, at each specific point in time of history, for the most part limited to the influential factors known up until that point. When there are changes to the influential factors or when new influential factors appear, evolution of the conceptual scheme proceeds. As a result, the evolution of the conceptual scheme's manifestations also proceeds. Rules, regulations, theories, actions etc. are

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[29] Ibid. p. 5–6 & Roucounas, Emmanuel (2019), *A Landscape of contemporary theories of international law,* Koninklijke Brill NV, p. 511-515.

all manifestations of conceptual schemes (from now on "manifestations"). Depending on how rigid or rooted they are, the manifestations are, they create a certain level of resistance to the chain of change (influential factors → conceptual schemes → manifestations). The illustration below shows the interplay between change and resistance. The difference between in width between the two arrows demonstrates how change will always happen, regardless the amount of resistance put up against it.
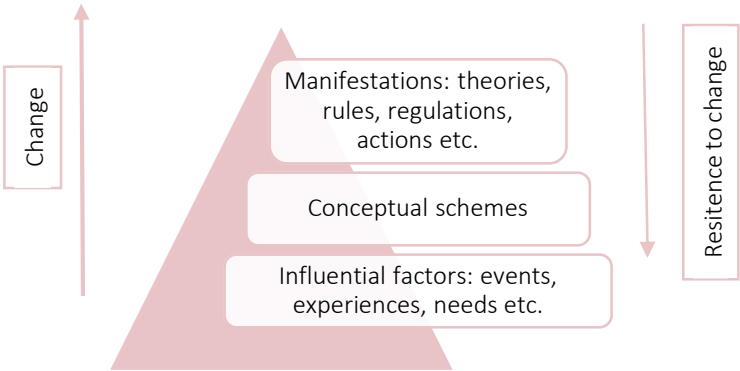
The physical manifestations will filter out changes to the conceptual scheme that are incongruent with them. Despite resistance, changes to the conceptual scheme are persistent or strong enough can break through. An example of *persistent change* to the conceptual scheme about Subjects is the fact that individuals' status as a Subject has developed gradually. The view of individuals' status as a Subject has developed gradually and is now fully manifested in the international community (see section 3.3). An example of a *strong enough* change to the conceptual scheme about Subjects is international organisations' status as a Subject. Although their status was discussed for some time, it was the ICJ's evaluation of UN's nature that officially changed the general opinion on accepting them as a Subject (see section 3.2). The ICJ's positioning was a change strong enough.

Another way of having change break through resistance is through reasoning. If we are aware and conscious of the conceptual scheme underlying who or what we accept as a Subject, we can also better assist and influence changes that are happening. We can make corrections to the conceptual scheme so that the manifestations and our physical reality can change in a desirable direction, without gambling with safety and community order.

The properties in common for Subjects that have been uncovered in chapter 4 are nonexclusive to the conceptual scheme. In fact, the conceptual scheme of Subjects seems to be far from settled. It is yet very dynamic and under influence of the influential factors. In chapter 3-4, we saw that Subjects may emerge in various ways and take different forms. For example, and in the case of international organisations, we accept Subjects when they have emerged explicitly as well as implicitly. We also accept Subjects that possess a range of different capacities. Furthermore, the way each Subject fulfil the properties varies. For example, states are defined by the variables of permanent population, defined territory, a government, and the capacity to enter relations. First, these are a number of four variables and their nature is of physical, social and institutional kind. Contrast this to the variables of international organisations' definition that have a number of two (unilaterally established and governed by law) and are of only social and institutional nature hence lacking a variable of physical nature.

Because the properties (the manifestations of the conceptual scheme about Subjects) can be fulfilled in so many ways and because our conceptual scheme seem to be so elusive, the resistance against change does not come from rigidity. However, there is also the possibility that such a vague structure of conceptual scheme and manifestations bring a lot of fear and uncertainty. Strong resistance may be a reaction to fear and uncertainty. Any resistance against the idea new Subjects (like future generations) is therefore understandable. In despite thereof, the emergence of new Subjects is not unlikely but in favour of such change, arguing for how the new Subjects fit the current dynamic landscape of Subjects is a challenge.

5.2   Conclusion

It is suggestable that where we are at in time of history, we have yet not had enough influential factors to settle the conceptual scheme about Subjects. Therefore, it is also impossible to identify the determining factors of who or what is accepted as a Subject within the international community. The properties shared by Subjects that have been discovered in this paper are suggested to be possible manifestations of the yet elusive conceptual scheme about Subjects.

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