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SOME REMARKS ON THE LEGAL PERSONALITY OF INTERNATIONAL ORGANIZATIONS: WHAT IF A CREATION OUTLIVES ITS CREATOR?

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Abstract: Although it could be said that international law of the 21st century is a relatively well-regulated and comprehensive system of legal rules, many issues that are subject to controversy can still be identified today. The question of the legal personality, as the fundamental issue of international public law, is both current and classical. Determination of the status of an international organization depends on the identification of the compulsory elements of the notion of subjectivity, those elements that are generally accepted in legal theory and practice. The task is further compounded by the fact that no norm determines the notion of a subject in positive international law, so the major understanding is based on the jurisprudence according to which subjectivity is a relative phenomenon that changes in accordance with the needs of the community. It is beyond dispute that an international organization possesses a legal personality derived from the will of member states. After its establishment, the organization begins to live independently of the member states in the international community. It is not a mere tool in the hands of a state, serving a specific political goal. Once created, an international organization becomes a distinct subject of general international law and creates a specific public order within the field of its competencies.

Keywords: Legal personality, International organization, Reparations case, ILC.

INTRODUCTION

"Le sujet est au coeur du droit international" (Cosnard, 2005a, Cosnard, 2005b). Subjectivity is a concept inherent in all branches of law, whether we

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are talking about domestic or international, private or public law. To grasp its essence is a riddle that many theorists of domestic and international law have pondered. It is impressive that centuries of legal thought have been devoted to this very problem, without a solid foundation for its analysis to date. Numerous authors have dealt with the analysis of the subjects of international law, skillfully avoiding entering the unregulated field of subjectivity as a concept. The first trap a writer encounters when embarking on writing about international law and subjectivity is a tautological definition that is hard to escape. It is widely accepted that the basic characteristic of international law is its horizontal dimension. This means that international law is created by the subjects of the same law. Thus, the definition of a term is necessarily based on the notion of a subject. And that is where we have already fallen into the trap. *Obscurum per obscurius*. The initial question, therefore, must be related to the definition of the concept of the subjectivity (Krešťalica, 2019; 2020).

SUBJECTIVITY OR LEGAL PERSONALITY? TERMINOLOGICAL CONTROVERSY

It could not be reliably established who has introduced the concept of international legal personality into the theory for the first time, but it might be presumed that it was Leibniz in his famous work *Codex Juris Gentium diplomaticus* (Verzijl, 1969, p. 2). Translated into English, his words would read: "He possesses a personality in international law who represents the public liberty, such that he is not subject to the tutelage or the power of anyone else, but has in himself the power of war and of alliances; although he may perhaps be limited by the bonds of obligation towards a superior and owe him homage, fidelity and obedience. (...). Those are counted among sovereign powers, then, and are held to possess sovereignty, who can count on sufficient freedom and power to exercise some influence in international affairs, with armies or by treaties (...)" (Nijmann, 2004, p. 59).[1] Since the notion of subjectivity in international law is one of those issues on which consensus is difficult to reach, and as such is a prerequisite for all further

[1] Leibniz quotation is given in the translation of P. Riley, from 1989. While analyzing Leibniz's work, the author notes that the English term "personality in international law" stands instead the Latin term *persona jure gentium*, which might be unusual since Leibniz himself had used the linguistic construction *iuris inter gentes* or "law between nations".

considerations on the position of an entity in the international legal order, it is necessary to explore the core of the problem of determining the subject. Already at the first step, we encounter terminological inconsistency, which results in the conceptual divergence of very important theoretical issues. The problem of terminological inconsistency is inherent in international law as a specific legal order that does not yet have its own fully developed linguistic corpus. In practice, all the languages of the world contain terms that describe its most important terms, and translations are not always consistent since the chosen linguistic expressions by the nature of things derive from internal legal orders. Apparently, in the works of Francophone authors, the terms *subjecitivité internationale* and *personalité* were used as synonyms (Cosnard, 2005a, pp. 14-15, fn. 9). On the other hand, works written in the English language show divergence and a lack of uniformity in the understanding of these terms. In the works of classics, such as Oppenheim, the term "subjects" had a narrower meaning, referring only to full members of the international community, holders of rights and obligations, since not all states at the time of classical international law were accepted as such. The term "international persons", on the other hand, had been used to denote a wider range of entities whose rights in the international community could be significantly limited (Oppenheim, 1955, pp. 117-118; The American Law Institute, 1986, p. 70).[2] It would be safe to conclude that the dilemma about the notion of subjectivity was finally removed after the Second World War. The International Court of Justice (hereinafter: the ICJ, the Court) put an end to the discussion on the terminology acceptable for the designation of subjects in international law in the Advisory Opinion concerning the Reparations for Injuries Suffered in the Service of the United Nations *(Reparations case),* where it stated, *inter alia*, that the subjects of law do not necessarily possess the identical nature or characteristics". The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements

[2] In Oppenheim's understanding, the difference among "international person" and "subject" is conceptual rather than terminological. "Every state that belongs to the civilised States, and is therefore a member of the Family of Nations, is an International Person. (...) Full sovereign States are perfect, not-full sovereign States are imperfect, International Persons, for not-full sovereign States are only in some respect subjects of International Law". The same line of reasoning was followed in the official document (Restatement of the Law Third), of the Americal Law Institute.

of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States. This development culminated in the establishment in June 1945 of an international organization whose purposes and principles are specified in the Charter of the United Nations. But to achieve these ends the attribution of international personality is indispensable" (ICJ Reports 1949, p. 178). At first glance, we note that the Court has equated the terms denoting subjectivity. Therefore, the English terms *subject of law* and *international personality*, as well as the French *sujet de droit* and *personnalité internationale* have the same meaning and are synonymous. Then, the Court shed light on another controversy. In the Court's view, the answer to the question of who are the subjects of international law depends on the moment when the question was considered. The needs of the international community dictate changes in the understanding of this concept, and it is up to the theory to dress up the term in the appropriate attire. This is where we find confirmation for our position that international legal subjectivity is not a unique category, but a set of characteristics that could be represented in one way or another. For instance, Kunz resonates similarly, denying the state *a priori* possession of subjectivity. According to this author, it is up to each legal order to determine the circle of subjects. The traditional dogma of state subjectivity cannot be considered valid. Only an analysis of positive law can lead to the conclusion of who are the entities that possess subjectivity. "Every juridical order determines for itself the entities which are subjects of this order, so does international law. The question, which entities are subjects of international law, cannot be answered by the traditional dogmatic statement, states alone, but only by an analysis of the positive law" (Kunz, 1933, p. 405). Law is not constant, and the international legal order is not static. Therefore, the very concept of subjectivity in international law inevitably accompanies changes in the basic concept to which it is related. And any change in the understanding of subjectivity may mean a different understanding of the entities that aspire to be recognized as subjects of international law.

INTERNATIONAL ORGANIZATIONS AS SUBJECTS OF INTERNATIONAL LAW

Centuries of legal thought have been devoted to reflections on the notion of international legal personality, its constitutive elements, and extreme ranges in legal practice. The analysis of the rich theoretical basis of this topic

points to a fairly uniform systematization of the constituent elements of the notion of subjectivity. The only important difference is that these elements are, for some authors, a prerequisite and for others, the consequences of legal subjectivity. Based on the previously identified constituent elements of the notion of subjectivity, and their representation in each of the entities subject to scientific analysis, it is possible to find out whether an entity could be regarded as a subject of international law or not. In this way, it becomes obvious that all ideas of an exclusive state subjectivity are legally unsustainable today, although it is irrefutable that the deliberations on the constitutive elements of subjectivity arise, in fact, from the understanding of the state's position in international law. The question of the legal status of international organizations in international law has evolved with a change in the perception of the state and its role. Depending on how authors perceive subjectivity, as a static or dynamic category, a substantive preliminary question, or subsequent confirmation, one can evaluate their understanding of the issue at hand. For those authors who comprehend subjectivity as the basic category, conditioned by several elements that need to be represented cumulatively, the only subject is the state. For others, who take subjectivity as a dynamic category that is necessarily followed by the constant development of international law, subjectivity extends even to an individual. On the line between those two entities lies an international organization with all its particularities.

INTERNATIONAL ORGANIZATIONS BEFORE THE WWII

It is most likely that the first interstate organization was founded in 1804 by an agreement (*Administration general de l octroi de navigation du Rihn*), concluded between France and the Holy Roman Empire (Amerasinghe, 2010, p. 240). Although by its nature a closed organization, without the possibility of subsequent accession, the intention of the states concerned to entrust the resolution of a specific issue to an independent body is still worth mentioning. Later, at the end of the 19th century, states began the practice of establishing open interstate, today we would say international organizations. River commissions, such as those established by the Treaty of Paris in 1856, or various health committees, such as the Constantinople High Health Council in 1839, as well as commissions responsible for overseeing foreign loans and debts, such as the Egyptian Treaty of 1880, serve as an example of the extensive activities of states in that field (Barberis, 1983, pp. 215-216). Administrative unions (unions administratives), such as the Universal Postal Union, founded in 1874, or the International Bureau of

Weights and Measures from 1875, also prove the point. We find particularly interesting the case of the founding of an essentially unique organization, called the Cape Spartel Commission. It was founded in 1865 and closed almost a century later, in 1958. Apart from the fact that it was the first international organization to be joined by the United States, the Commission was, in fact, unique in that it exercised jurisdiction over a lone lighthouse in Morocco and had a "life separate from its raison d'être" (Bederman, 1996, pp. 275-378). However, although they played a more or less active role in the international community, the question of the subjectivity of the mentioned organizations was not explicitly raised. In that period, the traditional idea of the exclusive subjectivity of states continued to dominate. Only after the foundation of the League of Nations, the world met the first universal organization, which, even though politically failed to achieve its basic task of maintaining international peace and security, in a formal sense, has left an indelible mark. According to Oppenheim, the League of Nations, while not a state, was still a subject of international law *sui generis*. Side by side with several states, the League of Nations entered the closed circle of subjects of international law and achieved an international personality. "(...) not being a State and neither owning territory nor ruling over citizens, the League does not possess sovereignty in the sense of state sovereignty. However, being an international person sui generis, the League is the subject of many rights which, as a rule, can only be exercised by sovereign States" (Oppenheim, 1928, pp. 321-322). The question of the international legal personality of the mentioned organizations was not raised in practice until 1927, when the Permanent Court of International Justice *(the Permanent Court)* issued an Advisory Opinion concerning the jurisdiction of the already mentioned European Commission on the Danube. On that occasion, the Court found that the Commission does not have a general competence but a special purpose according to the provisions of the Paris Peace Treaty, which established it. The Court, *inter alia*, alleges: "(...), it only has the functions bestowed upon it by the Definitive Statute with a view to the fulfillment of that purpose, but it has power to exercise these functions to their full extent, in so far as the Statute does not impose restrictions upon it" (Permanent Court of International Justice, 1927, p. 64). It could not be reliably argued or disputed that the Court in this case had in mind the subjectivity of the Commission, which certainly does not fully correspond to the subjectivity of the state but at the same time implies the Commission's ability to act internationally on its behalf, independently of its Member States. If it could not act independently in its own capacity, the Commission would not be able to perform the function for which it was established.

Similar could be concluded from several other cases before the Permanent Court when it comes to the powers of the International Labor Organization (Amerasinghe, 2010, p. 243).

ESTABLISHMENT OF THE UN: ENTERING A NEW ERA

After the Second World War and the remarkable Advisory Opinion of the ICJ from 1949, a completely different light was shed on the question of the subjectivity of international organizations. Although the state remains at the heart of international law, international organizations have also earned a well-deserved place on the international stage. The Court, relying on a "teleological approach to the interpretation of the Charter", unequivocally concluded – international organizations are and can be subjects of international law (Bederman, 2002, p. 88). However, it is indisputable that the quality of their subjectivity differs greatly from the subjectivity of the state. After the 1949 Opinion, two more followed: *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt* from 1980 and *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* from 1996. In both cases, the Court found that international organizations are subjects of law within general international law. In the first case of 1980, the Court, *inter alia*, concluded: "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" (ICJ Reports 1980, pp. 89–90). In the latter case, the Court pointed out the difference between the subjectivity of the state and the subjectivity of the international organization, personified in the absence of general jurisdiction when it comes to organizations. "International organizations are subjects of international law which do not, unlike States, possess a general competence. International organizations are governed by the 'principle of specialty', that is to say, they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them" (ICJ Reports 1996, p. 78). As we pointed out in the previous lines, the state is a fact and it does not owe its existence to international law. On the other hand, an international organization is a creation of states, and its existence, but also its duration, depends exclusively on the will of the member states of that organization. Does this, however, mean that the legal personality of the international organization also depends on the will of its member states? Chinkin argues that: "Member

States create an organization with defined and limited functions; they intend the organization to operate within these restraints, and their acceptance of the duties of membership rests upon this assumption (...) The corollary is that the organization has no existence except through the will of its members; member States can amend the treaty creating an organization and even terminate its existence" (Chinkin, 1993, pp. 95-96). Unlike most of the traditional views of the positivistic orientation, several authors understand the notion of the international legal personality of international organizations separately from the states will. Among others, Higgins' understanding of subjectivity as an objective category is firmly based on fact, namely, the elements that the entity possesses and which are recognized as relevant, regardless of the will of existing subjects. So, if the organization was created and exists on the international scene as a fact, according to this author, the question of its subjectivity is irrelevant. "If attributes are there, personality exists. It is not a matter of recognition. It is a matter of objective reality" (Higgins, 1994, p. 47). In addition, Seyersted also left a significant mark in the consideration of this topic. This author identifies the criteria based on which the entity possesses subjectivity, while the will of the state is *in concreto* irrelevant. Once they are created, an organization or a state, it is only relevant that they were created, not how. As long as they possess objective characteristics inherent in the state or international organization, they should be considered subjects of general international law (Seyersted, 1963, p. 46). For the organization, according to the mentioned author, in the first place, it is important to have bodies that are not subject to the will of any state individually, but only to the common will of states expressed through representatives of states in the bodies of the organization, namely, "authority of the participating States acting jointly through their representatives on such organs" (Seyersted, 1963, p. 47). Then, these bodies must exercise power and take action on their behalf. "Since intergovernmental organizations are, in respect of international personality and its basis, in essentially the same legal position as States, there is no prima facie legal reason to deny the objective international personality of intergovernmental organizations – i.e., to require recognition – if one does not do so in the case of States" (Seyersted, 1963, p. 100). For this author, therefore, the source of the subjectivity of an international organization does not derive from the will of states explicitly expressed in the founding act of the organization, but from the objective fact of the organization's existence in the capacity necessary to be a subject of international law. We are not entirely convinced that a parallel can be drawn between a state and an international organization in the sense that the aforementioned author does.

Namely, one cannot ignore the fact that the state does not owe its origin to international law, but its own law, while on the other hand, the international organization is created and operates exclusively within the framework set by international law. The subjectivity of the organization, unlike the state, is not original in its character. This fact does not affect the objectivity of the existence of an international organization, in terms of the interpretation of the Court in the Reparations case. However, if the subjectivity of an international organization is derived from the rules of general international law and based on the fact that essential elements of subjectivity are present in the being of that entity, and if it is not tied to the will of member states but an independent category, what would happen when member states decide to withdraw from the membership? Does the organization, after coming to life on the international scene, manage to get out of control of its creator, like Frankenstein's monster? (Wessel, 2011, p. 356). In other words, could the organization survive the complete withdrawal of member states, and if so, in which manner? Practically, there are almost no examples of this happening in recent history (Wessel, 2011, p. 344).[3] However, theoretically, this scenario is very possible. Not so long ago, it was unthinkable that any country would leave the European Union, and today we are witnessing Brexit and the mass flight of African countries from the Permanent International Criminal Court. For those who derive the subjectivity of the organization from the intentions of the member states expressed explicitly in the founding treaty or implicitly through their procedures, the answer to this question is clear. The organization would be deprived of a basic element and, as such, could not figure as a subject on the international stage. However, those authors who do not derive the subjectivity of organizations from the will of the member states but base it on general international law, leave us deprived of an argumentative answer. Especially because there is no specific norm in international law that regulates the issue of closing down an international organization. "The question of whether the emphasis on continuity leads to eternal life for some organizations is still difficult to answer, but it seems fair to conclude that they are increasingly in control of their own existence" (Wessel, 2011, p. 356). In fact, the answer to the question

[3] The examples given in the literature refer to the middle of the 20th century, when numerous organizations, having fulfilled the goals or purpose for which they were founded, ceased to exist. Some of the mentioned organizations are: the International Refugee Organization (IRO), the Intergovernmental Committee for European Migration, the Council for Mutual Economic Assistance (CMEA) and others.

posed earlier could be simpler than one might think. Possession of subjectivity as an objective fact should not be seen as an essential opposition to the will of states. After all, it is the state that not only creates but also changes the rules of international law. For Jenks, there would be no room for this controversy if states adopted the practice of defining the subjectivity of international organizations in the founding treaties of international organizations *expressis verbis* (Jenks, 2010, p. 230). However, the practice of states shows that this is not necessary. In the founding treaties of most international organizations, such as UNESCO, the FAO, and the IMF, there is no reference to the subjectivity of these organizations, but it is still easy to conclude that these organizations are *ipso facto* subjects of law. Otherwise, the goals and tasks entrusted to them would be meaningless (Amerasinghe, 2010, p. 248). Ultimately, we are inclined to conclude that the answer is best sought in the case law of the ICJ, in the first place in the Opinion concerning the Reparations case. The reasoning of the Court in this case is closer to those authors who derive the subjectivity of international organizations from the will of the member states, respectively from the founding treaties of the organizations. Although founding agreements do not usually contain explicit provisions on the subjectivity of the organization, the conclusion could still be drawn from the text of the agreement. The states may have failed, mostly with the intention, to decide on the personality of the organization, but the very fact that they granted it certain functions and tasks by the founding agreement, actually speaks of the need to ascertain (not recognize - sic!) their subjectivity. It would be pointless to talk about the functions of the organization if it could not act internationally. And this is, as we have seen, one of the essential attributes of subjectivity. The ICJ, in its *Reparations case*, concluded with regard to the United Nations goals stipulated in the Charter that an attribute of international subjectivity is necessary to achieve those goals (ICJ Reports 1949, p. 178). It is indisputable that after the establishment of the organization, it will begin to live independently of the member states in the international community. It will become a subject of general international law. Possession of a will independent of the will of the member states *(volonté distincte),* "is an essential element of the international legal subjectivity of an international organization" (Papić, 2011, p. 91). In that context, the Court notes, *inter alia*, that*:* "Fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely a personality recognized by them alone, together with the capacity to bring international cla*ims*" (ICJ Reports 1949,

p. 185). The essence of the above quote is reflected in the fact that the Court confirmed the understanding of the objective personality of an international organization (in this case, the UN). The size of an organization, in terms of the number of its members, on the other hand, is not one of the essential elements for possessing subjectivity. An excellent example of this is the case of an organization that no longer exists but which, despite its small membership, possessed subjectivity in international law (Amerasinghe, 2010, p. 248 fn. 24).[4] The issue of the relationship between the international organization and non-member states is still controversial, since the theory in that matter is deeply divided, and the practice is not clear and uniform enough. As an illustration, one should mention a case where a non-member state of an organization failed to take advantage of this fact before the court as an argument against the organization's subjectivity. The United States government's attitude toward ITC (ITC v. Amalgamet, Inc.) shows that it could be assumed that for the state in question, membership in an international organization did not figure as a decisive fact for the "objective" subjectivity of that precise organization. On the other hand, there are cases in the case law of Great Britain that point to the opposite practice, where due to the rules of internal law it is necessary either to be a member of the organization or to explicitly recognize its existence as a subject (Amerasinghe, 2010, p. 258). In this regard, the practice of states within their legal systems could be relevant only as proof of the intention of states since the issue of the subjectivity of international organizations is resolved exclusively at the international level. In the Reparations case, as we have seen, the Court supported the idea of an objective personality of the United Nations and confirmed the possibility of making claims against non-member countries of that organization. This view, however, has been sharply criticized by some theorists who insist on recognizing the state as an essential element of the legal personality. In Schwarzenberg's view, recognition or acquisance is a necessary condition of the notion of subjectivity. According to the abovementioned author, the subjectivity of the organization would have effects only on the states that have explicitly recognized the existence of that organization, first through accession to its membership or in some other way. "Even if the existence of the United Nations could be regarded at least as an objective fact – a term which, philosophically, is somewhat controversial and, in law, relevant at most for

[4] One of the examples is an organization called International Tin Council (ITC), whose subjectivity was recognized before New York and Swiss courts.

purposes of evidence – such an international institution can acquire international personality in relation to non-members in one of four ways only: recognition, consent, acquiescence or estoppel. Any other view runs counter not only to the rules underlying the principles of recognition and consent, but also to those governing the principles of sovereignty and equality of States" (Schwarzenberger, 1947, p. 129). Further consequences of this understanding, which we could not adhere to, would lead to the relativization of subjectivity and the reduction of this fundamental concept to individual relations between states based on political decisions and personal motives. At this point, it should be emphasized that the Court based its position solely on the characteristics of the United Nations and not of international organizations in general. However, although the decisions of the Court are limited to both *rationae materie* and *rationae persone*, it is an indisputable fact that, due to the authority of the Court and judges as professional decision-makers, their effect is much wider. Therefore, they are taken as an auxiliary source of rights.

THE ESSENCE OF THE CONCEPT

Whereas humanity today knows various forms of organizing states into international organizations, it is still not possible to find a generally accepted definition of these organizations. Generally, definitions are given subsequently, based on an empirical analysis of existing organizations and their features and characteristics (Tomuschat, 1999, p. 125). The reason for this lies in the fact that organizations differ greatly from each other and are, without exception, founded to achieve certain goals. This makes it more difficult to provide a single definition that would cover all the important characteristics of international organizations. Anzilloti was probably one of the first theorists to try to shed light on the subjectivity of international organizations in his work, in a rudimentary way, from today's point of view (Amerasinghe, p. 240). The most frequently cited, comprehensive definition of an international organization was proposed by Fitzmaurice, according to which: "The term 'international organisation' means a collectivity of States established by treaty, with a constitution and common organs, having a personality distinct from that of its member-States, and being a subject of international law with treatymaking capacity" (Fitzmaurice, 1956, p. 104, as quoted in: Tomuschat, 1999, p. 125). Having in mind the timeframe in which the abovementioned definition has been developed, it is no surprise that the membership was reduced exclusively to states. Namely, in that period, in the works of the Commission for International Law, the terms

"intergovernmental" and "international" organizations were used simultaneously. It is this fine terminological diversity that indicates the circle of entities that could be part of an organization. Furthermore, it seems that Fitzmaurice did not consider the legal capacity to be a constitutive element of subjectivity, because then it would be superfluous to single out the element that is already contained in the concept itself. If the law-making ability were inherent in subjectivity, Fitzmaurice's definition would suffer from repetition and be meaningless. For decades, the United Nations Commission on International Law has adhered to concise, circular definitions of the term international organization, defining it in draft treaties as an intergovernmental organization. True, in each of the above cases, a reservation was made regarding the scope of application of the offered definition exclusively for the needs of the act of which it is a part. However, the fact is that due to the undisputed authority and influence of the Commission on the development of international law and the formation of theoretical understandings, the Commission's interpretations are often taken over in theory and practice. Finally, in 2000, at its fifty-second session, it was decided to include the notion of the responsibility of international organizations in the long-term work plan of the Commission on International Law. Two years later, at its fifty-fourth session, the Special Reporter Gaja was appointed, whose task was to draft the members' articles on the responsibilities of international organizations and present them to the Commission (Papić, 2011, pp. 80-113). Finally, in the Draft Articles on the International Responsibility of International Organizations adopted at its sixty-third session in 2011, the Commission on International Law offered a definition of an international organization much more substantial than had previously been the case. Finally, for the sake of legal certainty, it is necessary to identify as precisely as possible when or what the offered rules refer to. In Article 2 of the Draft, the Commission, emphasizing that the proposed definition aims to define an international organization in the context of the application of liability rules and not in the field of international law in general, proposes the following solution: "International organization' means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities (...)" (Report of the International Law Commission, 2022). The idea behind the above definition, as stated in the comments of the proposed members, was to provide a comprehensive definition that would include diverse organizations that already exist or may emerge internationally in the future. Interestingly, the Commission has chosen to define the

international organization in relation to its legal personality. The Austrian Government has, for example, proposed that this part of the definition should be removed since, in their view, "international organizations have international subjectivity as a result of being such organizations" (Report of the International Law Commission, 2022). On the other hand, Special Reporter Gaja maintained that subjectivity is not inherent in all international organizations and that "it seems preferable to leave the question open whether all the international organizations possess legal personality" (Report of the International Law Commission, 2022). International organizations that have subjectivity in international law may be held liable for illegal acts at the international level. Subjectivity is, in the Commission's view, a precondition for accountability. If we further apply the reasoning of the Commission, we would conclude that responsibility is not necessarily a constitutive element of the concept of subjectivity, as argued in one part of the theory, but that responsibility depends on the possession of subjectivity. Here, however, we see the reverse order. The Commission itself states that this problem can be approached from different sides, and does not go deeper into the issue (Report of the International Law Commission, 2022).

CONCLUSIONS

The main question posed in this paper tackles the quality of the legal personality of international organizations. It is beyond dispute that an international organization possesses a legal personality derived from the will of member states. After its establishment, the organization begins to live independently of the member states in the international community. It is not a mere tool in the hands of a state, serving a specific political goal. Once created, an international organization becomes a distinct subject of general international law and created a specific public order within the field of its competencies. Therefore, as pointed out earlier in this paper, possession of a will independently of the will of the member states serves as an essential element of the international legal personality of an international organization. However, this does not mean that the international organization could live contrary to the will of its member states. Even though it is still difficult to answer what would happen with the specific legal order created by the organization, after its dissolution, one might conclude that the possibility of outliving its creator for the organization in the international community nowadays is more a matter of fantasy than reality.

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