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1 Introduction

1.1 Purpose

The purpose of this thesis is to examine the legal personality of international organisations under international law in order to determine its basis and extent in relation to both members and non-members. In relation to members the analysis will focus on the incidence of personality in international law. In relation to non-members the question will be if, and to what extent, non-members must respect this personality. The alternative to such an obligation would be a voluntary recognition by third States of the organisation in question.

1.2 The nature of the problem

The problem must be seen as a consequence of the very special characteristics of international law. This legal order was ‘created’ by sovereign States, and the basic governing principle of international law from its very beginning has been the principle of sovereignty. There are many sides to this principle. No State can be subjected to the will of another State. No State can impose obligations on other States, and it cannot be bound by a treaty it has not entered into. Although there is obviously general agreement on this principle, the international community has allowed several limitations to this freedom of the States, due to both the new challenges of modern times, and a development in the outlook on certain issues, such as war and international crimes.

The question of the incidence of legal personality thus arises because States are the primary subjects of international law. An organisation does not come into existence without participation by two or more States. When it has been created, however, the organisation often lives its own life, quite independently, it seems, of the founding States. The problem therefore concerns the basis of legal personality, and when an organisation is in possession of it.
The question of the relationship with third States has its background in the fact that a State cannot impose an obligation on another subject of law. As a consequence, an international organisation as a general rule cannot impose obligations on a State. Any exceptions would need a legal basis. Also, the constituent treaty of an international organisation, of which all the member States are parties, cannot be binding to a non-member State. The latter has never entered into the treaty, and the general rule is that no rights or duties for the non-member State can thus be derived from it. The 1969 Vienna Convention on the Law of Treaties has codified this in its art. 34. It states that “[a] treaty does not create either obligations or rights for a third State without [the consent of that State]”.

The treaty entered into by the States becoming members of an organisation, might be considered a special treaty insofar as its purpose is that of creating an organisation, and it could be looked upon as a type of constitution. Sometimes it is even called a constitution, but it can also bear totally different names. Whatever name it is given, in form it is just another treaty, governed by the 1969 Vienna Convention like other treaties. On the other hand, in substance it can differ greatly from other treaties. The 1969 Vienna Convention has taken this into account when stating in its article 5 that

[j]he present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

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2 For example are the treaties creating the International Labour Organisation and the World Health Organisation called constitutions.
3 Examples are Charter (United Nations), Covenant (League of Nations) and Statute (Council of Europe).
4 Blokker/Schermers 1995 p. 713.
The mentioned rules of the organisation have later been defined in the 1986 Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations\(^5\) in its article 2.1. (j) as meaning

in particular, the constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization.

These rules of the organisation will in general confirm that the constituent treaty is a living instrument. While the organisation develops and carries out the functions it has been given, new needs and situations will lead to interpretations of the treaty. This has been seen as a gradual disappearance of the **contractual** element of the treaty, and the gradual appearance of the **institutional** element.\(^6\) These differences between regular treaties and constituent treaties do not change the basic fact, however; that treaties in general do not create rights and duties for third States.

A question that might be asked at this point, concerns the possibility of making general rules for such a wide variety of entities as the international organisations. Some rules might only be applicable for organisations of a certain size or with certain powers, and rules that could possibly apply to all organisations are in danger of being so general that they do not give any guidance at all. However, international organisations do have several characteristics in common that justify trying to find some general rules. Small or large, they are all products of State co-operation, and thus face many of the same problems in relation to both members and non-members.

### 1.3 Background

Traditionally, States have been considered the only subjects of international law. The main principle governing this community of States was the sovereignty of each of them, thus contributing to a legal system based on a limited number of rules that were necessary to ensure peaceful relations between States. One could say it was a ‘law of

\(^5\) Adopted on 21 March 1986, has not yet entered into force. Hereafter the 1986 Vienna Convention.

co-existence’. However, the international community has been faced with new challenges, especially during the last century, arising from the increasing interaction between States. The answer was to be found in the international organisations through which States would co-operate to achieve certain goals. Through these organisations international law has been institutionalised. Lately, light has been drawn to new problems, such as environmental issues or population growth. These have added emphasis to the need for co-operation, and international law can therefore perhaps be considered to have developed into a ‘law of co-operation’.

1.3.1 The concept of international organisations

The term international organisation comprises a wide variety of entities. In a broad sense it encompasses also non-governmental organisations (NGOs), and multinational enterprises, which have their basis in the domestic legal system of a State. The scope of this thesis, however, will be confined to organisations often called intergovernmental organisations. These organisations have a membership essentially composed by States. ‘Essentially’ is included because other intergovernmental organisations might be members of some of these organisations. An example is the membership of the European Community in the World Trade Organisation. The main difference between the NGOs and the intergovernmental organisations is of course the members, but another difference is the fact that the intergovernmental organisations have been created by way of an act of international law as opposed to the act of domestic law creating the non-governmental organisation.

There is no need, and perhaps impossible, to find an exact definition for intergovernmental organisations. As part of the thesis will be devoted to the problem of the basis of international legal personality for this type of entity, this will entail a discussion of the relevant criteria for being an international organisation with a legal personality. To define an international organisation at the present stage would therefore be premature and impossible.

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7 Diez de Velasco p. 56.
8 Friedmann p. 460.
1.3.2 Historical outsets

The origins of the international organisations are to be found in the appearance of international conferences and congresses during the nineteenth century. These conferences and congresses were of a political, economic, diplomatic or technical nature, and often the meetings resulted in multilateral treaties being adopted. The conferences slowly developed into international organisations, following for example the creation of a secretariat that turned into a permanent organ. There were at this point two main groups of international organisations. The first were the river commissions. They were set up to administer the navigation of rivers, following the proclamation of the principle of free navigation at the Congress of Vienna in 1815. The other group of these early organisations include The Universal Telegraphic Union and The Universal Postal Union, which were established in 1865 and 1874, respectively. These organisations filled administrative purposes, but they were clear examples of how much could be achieved through the close co-operation of States.

This thought, and the awareness of the possible results of the opposite attitude, led to the creation of the League of Nations in 1919. This was an example of a political organisation. The twentieth century saw the fall of this organisation and the rise of another open and universal organisation; the United Nations. The century also brought about the creation of hundreds of other organisations, of a political, economic, technical, or religious nature. These organisations have all sprung out of the common interests of the international community. As these may change, so will the international organisations change. They are the incarnation of State co-operation, and as such they adapt to the challenges faced by States at any given time.

There are different estimates as to the exact number of international organisations, but to get an idea of the magnitude of the phenomenon “the proportion of organisations to

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9 For a survey of the history of international organisations, see Bowett pp. 1-13.
States is over three to one\textsuperscript{11}. They range from universal organisations such as the United Nations, to regional organisations with a complex structure and wide powers, such as the European Community, to small organisations such as the Nordic Council. This means that the international law ‘landscape’ has changed radically from the era of States as the only subjects.

International organisations play a vital role in the international community today. They co-ordinate co-operation in a large number of fields, such as humanitarian aid, human rights, protection of the environment etc. Without international organisations it would have been more difficult to meet some of these challenges, which are among the most important of humankind at the present time of history. Of course it is also possible for States to co-operate without the institutionalisation of an international organisation, but the permanent organs make the co-operation rise to another level.

Another large group of organisations still playing an important role are the technical ones. Examples are the International Telecommunications Satellite Organisation (INTELSAT), the International Postal Union, and the International Maritime Organisation. Another area where international organisations have proved their importance is in the attempt of decreasing the economic gap between the countries of the world. The International Bank for Reconstruction and Development and the International Monetary Fund, both springing out of the obvious needs after the Second World War, are the primary examples.

Big contributions of the international organisations are also the codification of an increasing number of areas of international law. Especially the United Nations on a universal scale, and the Council of Europe on a regional scale, have contributed to this development with a large number of treaties. Focusing on the UN, the most important aspect in this respect is the establishment of the International Law Commission. Some important examples of treaties are, when it comes to the UN, the 1969 Vienna

\textsuperscript{11} Amerasinghe p. 6.
Convention and the Convention on the Law of the Sea\(^{12}\), and, as far as the Council of Europe is concerned, the Convention for the Protection of Human Rights and Fundamental Freedoms\(^{13}\).

### 1.4 International legal personality

#### 1.4.1 The concept

‘International legal personality’ is a concept in lack of a fixed content. When an entity has international legal personality, the implications will differ from entity to entity. As a result of this, one must go beyond the mere definitions and instead look at the practical results of attributing international legal personality to an entity such as an international organisation.

Even though there is no fixed content, it can be said that international legal personality is possessed by an entity if it is capable of possessing international rights and duties and [has] the capacity to maintain its rights by bringing international claims.\(^{14}\)

It has been asserted, however, that this definition of the International Court of Justice (ICJ) is a circular one,\(^{15}\) because the question of what kind of entity is capable of possessing international rights and duties would be the next one to answer. The statement by the Court can nevertheless be seen as a basic definition of legal personality. As far as international organisations are concerned, the important aspect is of course that they possess international rights and duties in their own name, as opposed to in the name of the member States. When they are capable of this, they are said to possess international legal personality. Each legal order, including the international one,


\(^{13}\) Adopted 4 November 1950, entered into force 3 September 1953.


\(^{15}\) Brownlie p. 57.
determines its own legal persons and the extent of their legal personality. As these matters will be discussed in this thesis, it is difficult at the present stage to give a more precise definition of the concept.

Traditionally, States were seen as the only subjects of international law. As the Permanent Court of International Justice (PCIJ) affirmed in the Lotus case\(^\text{16}\) in 1927:

> international law governs the relations between independent States […] in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims.

**States** are still the primary subjects of international law, but other subjects have joined them. **International organisations**, as will be discussed in this thesis, are now by most commentators considered subjects of international law. **Multinational enterprises** and **individuals** might be considered subjects under special circumstances.

The notion of legal personality is by some authors separated from the question of subjects of law.\(^\text{17}\) For example, the circle of subjects of international law is often considered larger than the number of entities possessing international legal personality. Others, however, are of the opinion that the two notions coincide in scope. For the purposes of the present study the important question is the one concerning legal personality, and there is no need to enter into the discussion mentioned. In the following, a subject of international law will therefore be considered an international legal person, and vice versa.

### 1.4.2 Domestic and international legal personality

It is the **international legal personality** of organisations that will be examined. The question of legal personality arises in different legal orders as a result of the fact that the “international organisations generally perform legal activities in various legal orders”\(^\text{18}\).

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\(^{16}\) PCIJ, Series A, No. 9, 1927, p. 18.

\(^{17}\) See Feldman p. 348 for references.

\(^{18}\) Bowett p. 470.
The international legal personality must therefore not be confused with the **domestic legal personality**. The latter is a personality effective in the domestic legal system of a specific State. Each State will therefore have its own rules and methods to determine which entities have legal personality in its domestic legal system. Although the methods may vary, most national courts will use their rules of conflict of laws. According to most legal systems, the legal status and capacities of an entity are determined by its ‘personal’ law. The ‘personal’ law of international organisations is international law, and recognition of the domestic legal personality of the organisation would therefore follow from the existence of legal personality on the international plane. In these cases, the domestic legal personality results directly from the international legal personality.

As mentioned above, each legal system determines for itself which entities are its subjects. Every State does this through its legislature or other organ with the necessary powers. International law is of course an independent legal system that determines its own subjects. The problem, however, lies in the special characteristics of this legal order. There is no legislative branch empowered to make such decisions, nor is there any general treaty dealing with the question. This leaves us with customary law and general principles as being the sources for an investigation into the subjects of international law. This does not mean that how domestic courts deal with international organisations is irrelevant. Their attitudes towards international organisations can be of great importance in the discussion of international legal personality. What the distinction does mean, however, is that the question of international legal personality as opposed to the domestic counterpart must be decided based on international law.

### 1.4.3 The importance of possessing international legal personality

It is legitimate to ask whether a separate international legal personality for international organisations is really necessary. The legal personality that the international organisations can possess makes them

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19 Amerasinghe pp. 71-72.

20 An example of this is the case before the courts of New York; *International Tin Council v. Amalgamet Inc.*, 524 NYS 2d [1988] p. 971. The case is discussed below in Chapter 4.3.2.
subjects of international law and thus capable of enforcing rights and duties upon the international plane as distinct from operating merely within the confines of separate municipal jurisdictions.\textsuperscript{21}

This states that international legal personality is necessary to operate on the international plane. However, all the member States of any given organisation would possess international legal personality. Why, then, is a separate legal personality for the organisation necessary? The reason is that if this concept was not accepted, the individual legal personalities of the members of the organisation would be the ones through which the organisation would operate on the international field. Such a solution could give rise to serious problems.

One example is the question of responsibility as far as an organisation is concerned. If the organisation did not have its own legal personality on the international plane, the potential responsibility would be a collective one shared by all the member States. This could result in practical problems and conflicts between member States. Also the opposite situation, namely that the organisation wished to bring an international claim against another international legal person claiming responsibility, could create problems because all the member States would have to agree. This could sometimes give rise to political problems within the separate member States, and also between particular member States and third States.

Another example is the possibility of an international organisation to appear in legal proceedings in its own right. Again conflicts between member States, perhaps relating to issues irrelevant to the functioning of the organisation, could impede the work of the organisation. Problems could also arise concerning conflicts between the organisation and a member State. It is much more practical that the organisation itself can handle these situations without all the other member States being obliged to both getting involved and also jeopardising their relations with the member State in question.

\textsuperscript{21} Shaw p. 909.
A separate legal personality of international organisations has therefore emerged as a practical concept giving the organisations the capacity to operate in their own right, both in legal proceedings and as entities possessing their own rights and obligations.

1.4.4 Objective legal personality

When the fact that international organisations can have a legal personality distinct from those of its member States is established, the questions concerning the extent of such a personality arise. One of those questions is that of the objectivity of the legal personality. When an organisation is said to possess international legal personality, this could encompass two distinct notions. It could mean that the organisation has independent powers in relation to its member States. This is important for example when there is a conflict between a member State and the organisation. It could also mean, however, that it has legal personality in relation to non-member States. This would be the so-called objective legal personality. The term is confined to the situations in which the legal personality of an international organisation is opposable to non-member States without their express recognition. Some commentators do not separate the notions and only speak of legal personality. Often they mean what I refer to as objective legal personality. Whether there is a legitimate reason for operating with two separate notions might be questioned. However, there are many situations where the separate legal personality of the organisation from those of its member States is of vital importance even though the organisation might not have the legal status as a separate subject of law in relation to third States.22

There is a danger of getting too theoretically entangled in these questions. The possession of objective legal personality means simply that non-member States must respect the organisation. The problem could prove practical in many circumstances. First of all, an organisation with objective legal personality could in general never be met by a State’s denial of its existence in international law. As international organisations get more and more involved in the life of the international community, they are also more frequently involved in conflicts and lawsuits. The denial of the

22 Above Chapter 1.4.3.
objective legal personality of an organisation could therefore prove to be an ‘easy way out’ for non-member States not wanting to get involved. The possibility of an organisation possessing this kind of personality was first expressed in the so-called Reparations case before the ICJ.23

The question of objectivity might lead the thought to doctrinal, theoretical discussions far from reality, but the fact is that the question is not a purely theoretical one. A good example is of course the already mentioned Reparations case, where the ICJ actually decided upon the capacity of the UN to bring a claim against a non-member State. The type of claim that the UN wanted to present, namely a claim for reparations for injuries suffered by agents of the organisation, could prove very important for international organisations due to the steadily increasing activity of their agents. All types of claims resulting from breaches of international legal obligations could prove practical, however. Another side of the relationship between international organisations and third States is of course the claims brought by third States. A practical question in that respect is the immunity of jurisdiction of the international organisation. The third State might not accept this as being within the powers of the organisation in relation to the third State. Other sides to the question are the treaty-making power of the organisation and potential conflicts concerning the privileges and immunities of the organisation.

1.5 Sources
To determine the origin and extent of the legal personality of international organisations, an investigation into all available sources will have to be made. Most important are State practice, general principles of international law, and the opinions of the ICJ in matters related to these. Especially the already mentioned Reparations case will be thoroughly analysed. The sources will of course have to be analysed with the dynamic character of international law in mind. The international legal order is constantly changing as a result of the changing interests of the international community, and of the members of this community.

23 1949 ICJ Reports, p. 174.
1.6 Approach

The first question to be analysed concerns the existence of international legal personality in relation to member States. To answer this, the origin of this personality, its incidence and the criteria that need to be satisfied in order to possess it, will be analysed. This will be looked at in Chapter 2. It is also necessary to determine what it means to possess this kind of personality, and whether or not the possession of legal personality entails certain inherent capacities. This will be discussed in Chapter 3. Chapter 4 will focus on the relationship with third States. Potential obstacles to granting organisations an objective legal personality will be analysed. Finally, some concluding remarks will be given in Chapter 5.
2  The criteria for international legal personality

2.1  Introduction

The question is how, and when, an international organisation can possess international legal personality. In this chapter, the question is put forward as a general one, and concerns directly only member States. Whether the answers are applicable to non-member States will be discussed in Chapter 4.

States are seen as possessors of legal personality just by meeting certain criteria and thereby existing as States. These criteria will not be dealt with here.24 This means that statehood entails international legal personality. Although there is not always agreement as to which entities fulfil the requirements for statehood, there is general agreement on the legal personality that results from it. The same issue concerning international organisations, on the other hand, is not that clear. The reason is that organisations are created by States. Their status in international law can therefore be seen as totally dependent on the intention of the States creating them. On the other hand, the increasing importance of international organisations can favour a view of them as being more independent of the founding States.

The creation of the League of Nations and the International Labour Organisation in 1919 made the question of legal personality of international organisations a matter of discussion.25 The focus, however, was mainly on the legal personality in domestic

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24 See the Montevideo Convention on Rights and Duties of States, signed 26 December, 1933. Article I of the convention provides four legal criteria from which statehood can be deduced: a permanent population, a defined territory, government, and the capacity to enter into relations with the other States. See also Brownlie pp. 70-77, Shaw pp. 139-144 for further discussions.
25 Amerasinghe p. 68.
law. The change came with the problems causing the advisory opinion of the ICJ in 1949, which turned the focus to international legal personality. This case must therefore be the outset for the discussion.

2.2 The Reparations case

This advisory opinion came as the reply to questions put forward by the General Assembly of the UN, as a result of powers attributed to it by article 96 of the UN Charter. The questions concerned the capacity of the UN to present an international claim for reparations for injuries suffered by agents of the organisation while in service. The incident leading to these questions were the murders by terrorists of the Swedish count Folke Bernadotte, the UN mediator in Palestine, and others accompanying him, in 1948. The questions asked in this case were new to the ICJ; never had the legal status of international organisations been discussed by the Court.

2.2.1 The reasoning of the Court

The Court begins the opinion by recognising the capacity of a State to present the type of claim in question. It asserts that

\[
\text{[s]uch a claim takes the form of a claim between two political entities, equal in law, similar in form and both the direct subjects of international law.}^{28}
\]

It then moves on to consider the potential capacity of the UN to bring such a claim. It rephrases this as a question of international personality. It uses the term ‘international personality’ to mean

\[
\text{that if the Organisation is recognised as having that personality, it is an entity capable of availing itself of obligations incumbent upon its Members.}^{29}
\]

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26 The difference between domestic and international legal personality of international organisations is described above in Chapter 1.4.2.
27 1949 ICJ Reports, p. 174.
28 1949 ICJ Reports, pp. 177-178. Emphasis added.
29 1949 ICJ Reports, p. 178.
The Court begins its examination with the UN Charter\(^30\), and finds no provision therein providing the organisation with international personality. The next step is therefore to “consider what characteristics it was intended thereby to give to the Organisation”\(^31\).

With this statement the Court goes beyond the words of the Charter to try to find the intentions of the founding States. The method used by the Court is therefore to start by looking for express provisions in the constituent document endowing the organisation with legal personality, and when there is no such provision, to go on to look for an implied ‘provision’.

After a brief explanation of how the subjects of a legal system do not all have to be of the same nature or enjoy the same rights, the Court states that “to achieve [the ends of the United Nations] the attribution of international personality is indispensable”\(^32\). The ends referred to are the purposes and principles of the UN as specified in the Charter.

Examples are given by the Court to prove the independence of the organisation, which, in the opinion of the Court, “occupies a position in certain respects in detachment from its Members”\(^33\). An example of this detachment is shown clearly when a member of the organisation is in breach of certain obligations towards the organisation, and the latter occupies the position of reminding the former of this breach and the consequences it might have. The examples given by the Court include the organs of the organisation, the fact that the organisation has special tasks, and the position of the member States in relation to the organisation. This position is defined in the Charter by a series of provisions such as one demanding the member States to give all assistance necessary to the organisation, another stating the capacity of the General Assembly to give recommendations to the members, and a third obliging the member States to accept and carry out the decisions of the Security Council. The organisation is also given domestic

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\(^31\) 1949 ICJ Reports, p. 178.

\(^32\) 1949 ICJ Reports, p. 178.

\(^33\) 1949 ICJ Reports, p. 179.
legal personality in all the member States, and enjoys privileges and immunities in their territories.

The Court goes on to mention the practice of the organisation, and specifically the practice of concluding treaties with other States. This subsequent practice to the founding of the organisation is seen as further proof of the independent character of the organisation. The Court also states that the organisation was intended to exercise and enjoy, and [was at the time of the opinion] in fact exercising and enjoying functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. 34

The Court here seems to make a summary of the entire opinion while also emphasising the intention behind the position of the UN as a separate legal person. The constitutional provisions and evidence of practice mentioned earlier in the opinion are examples of the functions and rights the Court is referring to.

The Court thus comes to the conclusion that the UN is an international person. And, in the words of the Court, that means

that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims. 35

2.2.2 Validity for other organisations

It is essential to the question that the Court was asked to give its opinion on whether or not the UN had the capacity to bring an international claim against a responsible state. The UN was and is a special international organisation as far as membership, purpose and range of activities are concerned. Today there is no State that is not a member of the UN. The purpose of the organisation is, among others, to maintain international peace

34 1949 ICJ Reports, p. 179.
35 1949 ICJ Reports, p. 179. Above Chapter 1.4.1.
and security, cf. art 1(1) of the Charter. Activities range from sending peacekeeping forces to areas in conflict to maintaining food programmes and administering a large number of specialised and subordinate agencies. Considering the factors that make the UN different from most other international organisations, one might think that the Reparations case is not a valid argument for giving other international organisations legal personality.

However, many of the arguments given by the Court in the opinion support the validity thereof for other organisations. The Court emphasises the possibility of different types of subjects within one legal order, and speaks of entities other than States acting upon the international plane. It stresses the importance of the needs of the international community. These needs have been expressed by the number of organisations created after the opinion, and their important place in the international community. To perform their functions, these organisations also need legal personality. The idea of the same reasoning being applied to other international organisations has become widely accepted.

2.2.3 Conclusions drawn from the opinion

The advisory opinion confirmed that the public international legal order did indeed consist of more than the original subjects; the States. The Court states that

\[ \text{[t]he subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community.} \]

The Court asserts that legal personality has to be ‘indispensable’, and this suggests that the interpretation of what is implied in the constituent document is closely intertwined with a principle of effectiveness. The main proof of this indispensability seems to be the

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36 1949 ICJ Reports, p. 178.
37 See for example Bowett p. 472, Blokker/Schermers p. 980 (§ 1568), the report of the Special Rapporteur of the ILC on Relations between States and International Organizations (second part of the topic), UN Document A/CN.4/391 and Add.1., p. 112.
38 1949 ICJ Reports, p. 178. Emphasis added.
character of independence or ‘detachment’ from the member States. The three main criteria proving this character, and thus the indispensability of legal personality, are a set of organs, special tasks, and a defined position of the member States in relation to the organisation. All international organisations will in general have a set of organs; this is what separates them from international conferences. They will also in general have special tasks; otherwise they would never have been created. There is a possibility that an organisation might be created by a group of States for the sole purpose of creating a different legal person in relation to themselves, for example with the view of avoiding responsibility. To demand the attribution of special tasks might therefore be seen as a guarantee against such attempts. The defined position of the member States is identified by the Court through several constitutional provisions, and it seems as though the emphasis is more on the result; the position of detachment, than on the exact provisions themselves. Other organisations would certainly not have the same ones, but the same concept of detachment could be found in other provisions or by implication.

The Court also mentions subsequent practice as proof. It seems contradictory, however, to require from an international organisation that it uses what is commonly acknowledged as a **result** of its legal personality, its treaty making capacity, in order to give evidence of a practice thus enabling **recognition** of its legal personality. The reason is obvious; the legal personality must already exist for the organisation to be able to conclude treaties. However, this subsequent practice of an organisation, or most importantly, of the States concluding treaties with the organisation, can be both a confirmation of the existence of a separate legal personality in relation to member States, as well as an indication of legal personality in relation to third States.

It is quite uncertain what has been most important, or necessary for the result, for the Court; making a mixture as it has of arguments of intentions, of practice, of constitutional provisions, of effectiveness, and of functional necessity. All this combined with the fact that the Court was probably being quite cautious as to what it expressed in the opinion, leaves a far from clear picture. What seems to have been considered necessary for ascertaining international legal personality, however, can be summed up as a character of independence, evidence of which can be given by the existence of organs, special tasks, and a defined position of the member States in
relation to the organisation. In addition, the exercise of functions and rights springing out of this character of independence must be intended by the founding States. Subsequent practice of the organisation can confirm the existence of such personality.

2.3 Approaches to the problem in legal doctrine

Today there are two main approaches to the question of international legal personality among commentators. The two theories try to explain how international organisations can have international legal personality.

2.3.1 Subjective theory

The first theory could be called the subjective theory, insofar as the will of the member States is considered the vital element; be it expressly present in the constitution or by implication. The supporters of this theory identify certain rights, duties and powers expressly conferred upon the organization and derive from these the international personality of the organization.

The will of the member States can be implied; one will have to seek the ‘intention’ behind the constituent treaty in every case to ascertain whether or not legal personality has been intended for the organisation. It could be asked if this implied will needs to be the actual will of the States, although not expressed in the constituent document, or if the so-called will could be a merely hypothetical concept attributed to the member States. An actual will might be hard to prove when there is no provision in the constituent document expressing it, but the concept of a ‘hypothetical will’ could perhaps more likely be named the result of certain objectively identifiable criteria, and in actual fact be more intertwined with the objective theory.

39 This view is supported in Bowett pp. 470-472 and Blokker/Schermers 1995 p. 979.
40 Amerasinghe p. 80.
2.3.2 Objective theory

The other theory might be called the objective theory. The will of the member States is here not considered a necessary element for the existence of legal personality. The entity in question must meet certain criteria. When met, these are considered sufficient proof of certain facts; facts that ‘create’ an international organisation with legal personality. The comparison can be drawn to statehood. When certain internationally recognised objective criteria are met, a state is considered to exist as a legal person in accordance with international law.

2.3.3 A comparison of the two approaches

The difference between the two theories is the explanation of legal personality. The supporters of the objective theory find the origin in general international law as a consequence of the existence of certain objectively recognisable facts, while the followers of the subjective theory link it to the will of the founding States either expressed or implied in the constituent document. However, the facts from which the international personality is deduced in the objective theory are usually found in the constituent document. This document, as any other international treaty, is the expression of the will of the States parties to it. When looked at it this way, the two theories are more closely intertwined. Such criteria have for example been a system of permanent organs, and distinct legal powers and purposes of the organisation in relation to member States. The outline of the organs of the organisation is usually a task for the constituent treaty. Also the description of the legal powers and purposes of the organisation is generally a part of the constituent document. Some powers might be implied in accordance with the doctrine of implied powers. These powers would

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41 ‘Create’ is obviously not the right word, insofar as the criteria are sufficient proof of the existence of an international organisation. A creation is therefore not necessary. However, compared to the subjective theory, the criteria are the creators of the organisation, as opposed to the States in the subjective theory.

42 This theory is supported in Seyersted I, p. 53. Brownlie pp. 679-680 lists certain objective criteria, but does not express a clear support for any theory.

43 Rama-Montaldo p. 112.

44 Brownlie p. 679-680.

45 Below Chapter 3.4.
nevertheless have to be implied as powers necessary to achieve certain purposes set out for the organisation. The whole notion of implication demands a basis from which the implication can begin. And this basis, the constituent document, is a result of the will of the member States. On the other hand, the supporters of the subjective theory will often have to rely on the implication of a hypothetical will. The basis for the implication will thus have to be criteria that are objectively recognisable.

2.3.4 Conclusions drawn from legal doctrine

As seen, it is hard to keep the two theories separate. That is no surprise, as they are both theories developed by commentators with the Reparations case as the most important element from which arguments are drawn. They are therefore examples of the possible interpretations of that opinion. Instead of ‘labelling’ the Reparations case as a foundation for either the subjective or objective approach, one can draw the following conclusions from present legal doctrine. Commentators in general use the Reparations case as a basis for their analyses of international legal personality. Even though fifty years have passed, its validity has only become stronger with the increasing influence of international organisations.

2.4 Determination of the decisive criteria

After a review of the fundamental advisory opinion and the legal doctrine on the matter, an attempt will be made to list the criteria that seem necessary for the existence of international legal personality. First, a line must be drawn between those organisations that have provisions in their constituent documents giving them international legal personality,46 and those that do not. Such a provision was not considered necessary for giving the UN international legal personality, and it is submitted that this is valid for all organisations. If such an express provision exists, however, this is sufficient to give the organisation personality in relation to the members. They will all have agreed to the

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46 Examples are art. 6 of the ECSC Treaty, art. 176 of the 1982 UN Convention on the Law of the Sea (giving international legal personality to the International Sea-Bed Authority), and art. 4, 1 of the 1998 Statute of the International Criminal Court.
provision, and as long as no third States are involved, the principle of sovereignty is not threatened.

The next scenario is the international organisation with a silent constituent document as far as international legal personality is concerned, and this is by far the most common situation. The UN, as seen, is such an organisation, and so are most other open international organisations. The European Union is an example of an entity lacking such a provision, thus giving rise to debates concerning its legal status on the international plane. This is of course much due to the very complex structure of the Union, with three pillars, one of which is composed by three international organisations endowed with international legal personality, and fine lines between areas of wide attributed powers and others of more careful co-operation. No matter how complex the organisation, however; the same reasoning should be applied in the analysis of its legal status.

Following the reasoning of the ICJ in the Reparations case, the constituent document plays an important role as the source from which the characteristics intended to give the organisation in question can be drawn in most cases. The examples used by the Court from the Charter and the practice of the UN, can be seen as very concrete and not valid for other organisations. However, when the result and reasoning of the Court in this case nevertheless are considered applicable to other organisations, this refers to the main elements of the opinion. The two fundamental criteria one can deduce from the opinion and apply to other organisations, are the indispensability of legal personality and the intention of the position as a new subject of international law. The indispensability of legal personality naturally leads to a new question, that of the reason why such personality is indispensable. The answer lies in the character of independence, as asserted by the Court. The determination of whether or not an international organisation can be said to possess international legal personality must therefore centre around these two elements; a character of independence and an intention behind this status. It is clear that the analysis will have to be very concrete for each organisation.

47 Articles 104 and 105 concerning the legal capacity and privileges and immunities of the UN, only apply to such capacity and privileges within the territory of member States, and therefore take into account only domestic legal personality.
2.4.1 The character of independence

The existence of this element with regard to the UN is shown with references to organs, special tasks, and a defined position of the member States. These examples need not be the same for all organisations. However, it would be difficult to maintain the independence of an organisation without more or less permanent organs. Even harder would it be to prove this character if the organisation did not have special tasks and purposes. The important aspect of this, however, is that the legal powers the organisation is given are distinct from the legal powers of the member States, thus contributing to a distinction of potential rights, duties and liabilities.

The examples given by the Court concerning the position of the member States in relation to the organisation can be seen as neither exhaustive nor necessary. What is essential is the result; that the organisation has a will of its own in relation to the member States. This is, after all, the reason why a separate legal personality of the organisation is important. The most important aspect of this will is of course that it is not subordinated any other authority. The organisation has its own voice separate from the member States. Proof of this autonomy might be found in provisions granting the organisation immunity, giving it the capacity to conclude treaties, giving the member States obligations in relation to the organisation thus giving the organisation the right to enforce those obligations etc. An example is the much debated European Union, which has been given treaty making capacity in the areas covered by the so-called second and third pillars. Such a capacity gives evidence of an autonomous will, and the

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48 Above Chapter 1.4.3.
49 This concept of ‘autonomous will’ is meant to include what Seyersted refers to when he requires that the organs of the organisation “are not all subject to the authority of any other organized community except that of participating communities acting jointly through their representatives on such organs”, cf. Seyersted I p. 53. Amerasinghe p. 83 uses a similar definition to describe the fact that the organisation is not under the authority of any other entity.
50 This capacity was accorded by the Treaty of Amsterdam, adopted on 2 October, 1997, entered into force on 1 May, 1999. The treaty making capacity was introduced by the introduction of a new article 24 in the Treaty of the European Union, adopted in Maastricht on 7 February, 1992, entered into force on 1 November, 1993.
2.4.2 The intention of the founding States

The intention behind the legal personality of the UN is found by the Court in the elements mentioned as proof of its independent character. It seems as though the Court means that because the founders of the UN have given it such a character, this character is no coincidence; it is intended. And for this independent entity to be able to carry out its functions and stay independent, legal personality is needed; it is, in fact, indispensable. The intention is therefore perhaps more a name put on the fact that the entity is created with powers, functions and organs of its own, than a reference to the subjective will of the founding States. As such, an organisation seen as having the independent character necessary for possessing legal personality would necessarily fulfil this requirement. The only intention really mattering must therefore be the original decision of the founding States to co-operate in an institutionalised form. It is the result of this co-operation that must be analysed, however. States co-operate in many forms, but only some entities are endowed with legal personality. This original intention to co-operate does not create a legal person in itself.

2.5 Concluding remarks

As already discussed, the two approaches normally taken towards this question are neither as different as they might seem at first sight nor sufficient for an analysis of the question. However, the fundamental principle making a difference is the question of the incidence of personality. What can be concluded from the criteria listed above is that in general cases where the constituent document contains an express provision, this would be enough to create a legal person in relation to the member States. Where no such provision exists, other criteria must prove the existence of a legal person. It might be asked why this is the case when only members of the organisation is influenced. There is, however, a big difference between an express provision that all members obviously

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51 Mangas Martín p. 21.
have agreed to, and no provision. In the latter case there might not be general agreement between the members as to what entity they have created. Objective criteria must prove that the entity is indeed an organisation with legal personality. The conclusion is in these cases that the will of the founding States is not what gives the organisation legal personality on the international plane. What can do, however, is the existence of a character of independence, proof of which can be given through a structure of organs, special tasks, and a distinction between member States and organisation. For each organisation these elements might take different forms, and it is the overall result of independence that is the decisive criterion. When the existence thereof has been proved, the **international legal order** endows organisations with international legal personality.
3 Legal consequences of international legal personality

3.1 Introduction

The next question concerns the content of legal personality. More specifically, it will be analysed if the possession of legal personality in itself entails certain consequences for the organisation. It is important to determine in each case the legal basis for the specific activities of the organisation, be it a capacity derived from possessing international personality or a result of the special powers of the organisation. The two situations would give rise to two different sets of questions; the former the question of the incidence of international legal personality,52 and the latter a question of the powers of the particular organisation.53

Organisations differ from States at this point. States are the primary and original subjects of international law. Their legal powers are inherent and the same no matter the size, government, population, or other factor differentiating the States. A ‘super-power’ has exactly the same powers deriving from statehood itself as a small, practically unknown state. These powers are a consequence of being a State, and include territorial sovereignty, the right to exercise jurisdiction over its nationals, treaty making capacity, the capacity to institute judicial proceedings, the right to engage in diplomatic and consular relations etc.

As far as international organisations go, the legal personality they might possess is a functional54 one, that is, a personality ‘suitable’ to their individual needs and limited to fulfilling the purposes of the organisation in question through certain functions. The

52 Above Chapter 2.
53 Rama-Montaldo p. 123.
54 For a discussion on the notion of functionality, see Bekker, Part Two, Chapter 2.
founding States have given the organisation purposes, and have thereby delimited its scope of action. The purposes limit the legal capacities of the organisation; it does not have the legal capacity to perform acts outside of the scope that its purposes define. There is therefore no doubt that the legal personality of organisations is more limited than that of States. The international legal personality of States is based upon certain criteria from which statehood is deduced, and one of those is the existence of a territory. Thus, one of the most important and fundamental principles of international law is the principle of territorial sovereignty. The other side to the principle is the element of non-intervention in the internal affairs of another State. These principles obviously could not apply to international organisations. Although an organisation could be in a situation involving the administration of a territory,\(^{55}\) this is neither a criterion nor a reason for the existence of the organisation.

The Court in the Reparations case stated that the UN possessed a “large measure of international personality”\(^{56}\). The statement implies that personality is a notion with different contents for every organisation. The functions and purposes must be analysed in order to determine the extent of the personality in each case. The question of international legal personality has been seen by some, however, as a question with a ‘yes’ or ‘no’ answer.\(^{57}\) After answering ‘yes’ or ‘no’, one can go on to determine the powers of the organisation. A clear distinction is therefore made between the personality and the powers. According to this opinion, having legal personality only means possessing the capability of bearing rights and duties.

Which approach to take does not seem important; whether it is the ‘legal personality’ or the ‘powers’ of the organisation that will have to be analysed specifically for each organisation would give the same result. It seems useful, however, first to focus on the possession of legal personality in itself, to ascertain whether it entails certain powers

\(^{55}\) For examples of such territorial jurisdiction by international organisations; see Seyersted I pp. 10-12, and for a more thorough review; see Wilde, Ralph: From Danzig to East Timor and Beyond: The Role of International Territorial Administration, American Journal of International Law, Vol. 95, No. 3 (July, 2001), pp. 583-606.

\(^{56}\) 1949 ICJ Reports p. 179.

\(^{57}\) See for example Blokker/Schermers I, p. 981.
common to all international organisations. The next question will be how to delimit the individual powers of each organisation.

3.2 Aspects of the problem

Before analysing if there are powers deriving from legal personality, there are two aspects that need to be kept separate in this matter. One aspect concerns the legal functions of the organisation. The functions are the types of acts the organisation is entitled to perform. The other aspect concerns the purposes of the organisation. Even though an organisation was to be seen as having the capacity to perform all types of acts, it would still be limited by its purposes. This can be more easily explained with an example. In the Reparations case, the Court equated the possession of legal personality with the capacity to present claims. This is hardly a surprise, the possession of rights and duties being at the core of the general notion of being a subject of law in any legal order, and the possibility to maintain these rights almost a necessary consequence. The claim-presenting capacity is thus one of the legal functions of the UN. The next question, however, concerns which rights the organisation has the capacity to maintain. This is where the purposes of the organisation are significant. The claims presented by the organisation have to be limited to the ones springing out of the exercise of powers lying within the confines of the purposes. Even though the Court in the Reparations case did not discuss the functions of the UN at great length, that is the claim-presenting capacity in general, and instead stressed the importance of the purposes, other cases will give rise to problems concerning the interpretation of the functions of the organisation in question. The difficulties in the subject-matter concern the exact delimitation of both functions and purposes.

3.3 The question of ‘inherent’ capacities

The first question is whether or not there exist legal capacities as a direct consequence of international legal personality. Such capacities are often called inherent. In legal doctrine, there are various opinions on the matter. Some commentators state that although some capacities might be inherent to organisations, the subject-matter
providing the basis for these capacities is not. Another opinion is that the possession of legal personality entails all the capacities of States, only limited by acts precluded by their constituent document or acts that cannot be performed because of factual limitations. A third opinion leaves no room for inherent capacities and bases the entire determination of the powers of an organisation on the doctrines of delegated and implied powers. It has for example been stated that

[p]articular care should be taken to avoid an automatic implication, from the very fact of legal personality, of particular powers, such as power to make treaties with third States or the power to delegate powers.

As mentioned above, the ICJ in the Reparations case asserted that the right to bring claims is intrinsic to legal personality. It also stated that the possession of legal personality does not equalise an international organisation and a State when it comes to rights and duties. To give organisations the same powers as States is therefore hardly compatible with the view of the ICJ. Also, the fact that organisations are created by States to co-operate in a specific field, favours a more restrictive approach. To demand an express preclusion in the constituent document for acts outside of this scope seems to lead too far.

It has been noted that the organisation must have an autonomous will in order to have legal personality. To give this any meaning, this will must be able to be expressed or manifested by the organisation. Even though organisations might not have the same rights and duties as a State, it seems as though legal personality would be a useless concept if it did not mean more than the ability to have rights or duties. On the other hand, to give organisations all capacities necessary to fulfil their purposes could lead to

59 This is in general the view of Seyersted I p. 55.
60 See Rama-Montaldo p. 113 for references.
61 Brownlie p. 689.
62 1949 ICJ Reports p. 179.
63 Rama-Montaldo p. 143.
difficult problems of interpretation. It is hard to draw the line between a new act performed to achieve an established purpose, and an ‘expansion’ of the purposes.\(^{64}\)

The potential functions of organisations include treaty making capacity, privileges and immunities of the organisation and its agents, the capacity to present claims etc. Only these functions, or acts, of the organisation could possibly be seen as direct consequences of the possession of legal personality, given their general nature. A certain act of an organisation, however, be it an inherent capacity or attributed expressly or implied, will always be limited by the purposes. It has been stated that

\[\ldots\] there may be considered ‘inherent’ in the personality of an international organisation a capacity to manifest its will \textit{vis-à-vis} other subjects of international law, by means of a treaty, or a recognition or a claim; but the application of that will, for example to the creation of armed forces, or the administration of a territory, or the acquisition of territory by occupation, or the use of the high seas by a fleet, or the participation in activities of other international organisations, is not ‘inherent’ in its personality but pertains to the scope of its expressed or implied functions or powers.\(^{65}\)

This means that even if organisations are able to call certain capacities ‘inherent’, be it the capacity to conclude treaties or to present claims, the reason behind the use of the capacity must be analysed in each case to determine if it falls within the purposes of the organisation. The latter seems to be supported both by the ICJ and most commentators. The purposes are more or less the basis for the organisation, and as such should always play an important role even though the interpretation of what falls within their scope might change.

The question of inherent capacities has an uncertain answer. It seems right to endow organisations with the capacity to present claims in order to maintain their rights. Other capacities are less clear. The most important factor seems nevertheless to be the delimitation of powers according to the purposes. These will always be the foundation for the acts of the organisation.

\(^{64}\) Rama-Montaldo p. 117.

\(^{65}\) Rama-Montaldo p. 143.
3.4 The question of the delimitation of powers

The next question concerns how to delimit the powers in accordance with the purposes. It has been the common view for some time that the organisations can have powers exceeding the ones expressed in their constituent documents. Because of this the delimitation of powers has come to be a problem.

The ICJ in the Reparations case states that

whereas a State possesses the totality of international rights and duties recognized by international law, the rights and duties of an entity such as the Organization must depend upon its purposes and functions as specified or implied in its constituent document and developed in practice.\(^66\)

Specified powers are the same as what is often referred to as delegated powers, that is powers expressly attributed in the constituent document. The Court here also introduces\(^67\) the concept of implied powers. The concept is here used to mean powers the organisation has not been attributed specifically, but can perform because they have been conferred upon it by means of implication. This leads to the question of how a specific power can be implied. The ICJ has been confronted with this problem several times.

In the Reparations case the Court had to determine whether there are implied powers in the Charter giving the UN the capacity to bring the type of claim discussed in the opinion. This power has not been specifically given to the UN in the Charter. The Court asserts that

under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.\(^68\)


\(^{67}\) The ICJ did not invent this concept, however. It seems to have its origins in the Supreme Court of the United States, in a celebrated opinion by Chief Justice Marshall, *Mac Cullock v. Maryland*.

\(^{68}\) 1949 ICJ Reports, p. 182. Emphasis added.
In the particular case, after an analysis of the character of the functions of the UN, the capacity to exercise the power questioned is said by the Court, to “[arise] by necessary intendment out of the Charter”\(^69\). The criteria thus applied by the Court for considering that powers are implied is that those powers are essential or that they arise by necessary intendment out of the constituent document. The Court also makes a statement relating to bringing claims in general. Although the Court does equate the possession of international legal personality with the capacity to bring claims, as already mentioned, not all claims may be presented. The general statement by the Court asserts that the organisation has “[the] capacity to bring international claims when necessitated by the discharge of its functions”\(^70\). The notion of implied powers is therefore connected to a principle of effectiveness. It has been pointed out that what matters is the nature and needs of the organisation at any given time, and not a static interpretation of the constituent document.\(^71\) The needs of the community, as pointed out in the Reparations case, are under a constant development, and this would influence the needs of the organisation.

The criteria set forward in the Reparations case are not easy to apply. The Court has also made statements on the topic later. The question of international claims was not treated, but the powers of international organisations in general.

In a later advisory opinion\(^72\) the Court reiterates the importance of the purposes of the organisation when interpreting whether or not certain expenditure could be considered an expense of the organisation within art.17 of the Charter. It states that

> if an expenditure were made for a purpose which is not one of the purposes of the United Nations, it could not be considered an “expense of the Organization”\(^73\).

\(^{69}\) 1949 ICJ Reports, p. 184. Emphasis added.
\(^{71}\) Bekker p. 69.
\(^{73}\) 1962 ICJ Reports, p. 167.
[...]when the Organization takes action which warrants the assertion that it was appropriate for the fulfilment of one of the stated purposes of the United Nations, the presumption is that such action is not ultra vires the Organization.\textsuperscript{74}

The Court did not repeat the requirements from the Reparations case, expressed in the terms ‘essential’ or ‘necessary intendment’, but the importance of the purposes is stressed. It is pointed out in theory that the statement concerning the presumption of an action not being ultra vires the organisation was used as the basis of the opinion, insofar as the Court did not quote either articles from the Charter, expressed or implied intentions of the founding States, or subsequent practice.\textsuperscript{75} The statement indicates a much broader view of implied powers; the presumption is to be that an act is performed in accordance with the purposes of the organisation.

In another advisory opinion,\textsuperscript{76} the Court did not make a statement as to the legal basis of the powers of the organisation. However, one judge\textsuperscript{77} gave a separate opinion, though not disagreeing with the result of the Court. He states that the powers of the organisation are

strictly limited to whatever is necessary to perform the functions which its constitutive charter has defined.

It seems as though this judge wanted to give a reminder of the requirements stated by the Court in the Reparations case, but the majority did not feel that this was necessary.

All the statements by the Court in the different cases are indications of alternative criteria the Court means should be satisfied to ascertain that an organisation has a specific capacity. They all refer to different ways of implying the existence of a power.

\textsuperscript{74} 1962 ICJ Reports, p. 168.
\textsuperscript{75} Seyersted p. 54.
\textsuperscript{76} Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, 1980 ICJ Reports, p. 73.
\textsuperscript{77} Judge Gros, 1980 ICJ Reports, p. 103.
It has been stated that they refer to alternative tests, one of which must be satisfied for the organisation to have a particular power.\textsuperscript{78}

3.5 Concluding remarks

To use these criteria is obviously difficult. There are clearly no powers common to all organisations insofar as their purposes are all different, and the powers that are attributed to them expressly or through implication will therefore never be the same. The determination will have to depend on the circumstances in each case. If a certain power is interpreted as being outside the purposes of the organisation, for example the capacity to conclude treaties for a commercial purpose, it does not help that the treaty-making power is seen by many as an inherent capacity when an organisation has legal personality. The latter is restricted by the former. It is hard to imagine a situation in which an act performed by the organisation has its sole basis in the possession of legal personality; the purposes will always restrict them.

\textsuperscript{78} Amerasinghe pp. 97-98.
4 The objectivity of international legal personality

4.1 Introduction

The question now is whether or not a non-member State is obliged to respect an international organisation without having recognised it. Now that the basis and content of international legal personality of international organisations have been discussed, an attempt will be made to analyse the general possibilities of such a personality being opposable to non-member States.

When analysing the basis of the international legal personality of organisations, a distinction was made between organisations with express provisions granting legal personality in their constituent documents, and organisations without such a provision. It was said that such a provision would give legal personality in relation to member States. There are in general no obstacles for granting legal personality in these cases. It would not influence anyone else, and the subjective will of all the members could thus be seen as the only necessary criterion. However, when there is no such provision, and thus no clear evidence of the subjective will of the member States, other criteria were seen as necessary to prove the status of the organisation as a legal person. If the organisation was also to influence another subject of law, that is that a new legal person in relation to third States was to be created, it is even clearer that something other than the subjective will must be demanded. If not, the conflict with the principle of sovereignty and thus the principle of treaty law not giving treaties effect in relation to third States would prove hard to solve. This principle is based on the fact that the will of a group of States cannot be imposed on others.
It might be that even in relation to third States an express provision in the constituent document could have some effect. It could serve as an indication of the satisfaction of the necessary criteria, and relieve the organisation of the burden of proof.

One could thus in the event of the existence of such an express provision in the constituent document of an organisation imagine two different ‘creations’ of the organisation as an international legal person; one in relation to member States, another in relation to third States. When no such provision exists, the organisation could possibly be ‘created’ as a legal person in relation to all States at once. However, there are potential obstacles to granting organisations legal personality in relation to third States in general. These will be discussed in the following.

4.2 The Reparations case

The advisory opinion in the Reparations case was also important concerning this question, because it was necessary for the Court to consider the capacity of the UN to bring an international claim when the defendant State was not a member of the organisation. In this respect, the Court asserted 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 personality recognized by them alone, together with capacity to bring international claims.

The conclusion of the Court at this point is clear and states that the UN possesses objective international personality. It is not clear, however, if one looks for guidance to answer the same question in relation to other organisations. The statement by the Court leaves many interpretations possible. One is that an organisation must have members that collectively represent a vast majority of the international community in order to be able to have an objective personality. Such organisations are usually called universal

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79 Amerasinghe p. 85.
80 1949 ICJ Reports, p. 185.
81 Blokker/Schermers 1995 support this view, p. 980.
organisations. Examples in the international community today, are The International Monetary Fund, the World Bank and the International Seabed Authority. The Court does emphasise both the number of members as well as stressing the fact that they represented the “vast majority of the members of the international community” at the time. The Court does not use other criteria for endowing the UN with objective personality and the ability to present claims against non-member States. Looking at this one criterion it does use, however, it is a rather interesting one. It might seem at first sight that an organisation with such a membership should more easily be allowed to ‘demand’ respect from third States. The majority would decide over the minority. That is how modern democracies work, but the international community is not a democracy. The principle of sovereignty impedes the functions and rules of a democracy. The question is therefore if it makes a difference to a non-member State if the organisation claiming objective legal personality is composed of three States, fifty States, or indeed a ‘vast majority of the members of the international community’, that number being a lot higher today than in 1949. The argument that a third State is not bound by a treaty entered into by other States, is just as valid no matter how many States have entered into the treaty in question. If the principle of sovereignty was to mean anything in this respect, a majority of States could not be able to overrule it. However, the Court has decided that in at least this one case, there is an exception to the principle of sovereignty. Then we are faced with the problem just described. If there is an exception in this case, and the Court is clear that there is, and if it does not make a difference for third States how many States have decided to impose their will on them, then all international organisations would have objective legal personality. The problem is more complicated, though. There might be other reasons why an organisation with many members could possibly ‘demand’ respect from other States. One must, for example, recognise that some States have more power in the international community than others. If many of the most powerful States were members of an organisation, this could perhaps more or less ‘force’ others to respect the organisation. However, the basic principle stays the same; that the number of members an organisation has does not make a difference to third States.

82 Created as a result of the 1982 UN Convention on the Law of the Sea, art. 156.
Another possible interpretation puts more emphasis on what the Court does not say; it only states that a vast majority of the international community could be able to create such an organisation. It does not, however, exclude the possibility of factors other than membership numbers bringing about the same result. Other factors differentiating the organisations are often used to try to make a classification of the international organisations. One is the factor of different powers of the organisation, such as powers in general fields as opposed to in merely technical fields. Another could be the aims of the organisation, such as an aim of integration as opposed to an aim of merely cooperation. These factors might also be used to decide the question of objectivity, by for example more readily equipping organisations with general powers or an aim of integration with this kind of personality. On the other hand, the number of members would not necessarily be totally irrelevant.

It is also uncertain whether or not the Court meant to reserve the possibility of objective legal personality to exceptional cases, or if the notion of objectivity pertained to the idea of personality. This last interpretation would lead to the result that the criteria for legal personality, as described above, would be sufficient in relation to third States. It does seem as though the Court was of the opinion that only some organisations would have such a personality, however. Otherwise it would not have been necessary to mention the membership of the UN as a reason.

The Court was in this case answering questions in a field in which it had not given any opinions before, and it is probably not wrong to think that the Court did not say a word more than what it thought necessary to answer the questions. Although the Court found the membership of the UN sufficient to grant the organisation objective legal personality, this means exactly that and nothing more. This does seem to suggest that the statement should be understood as a solution for this particular case. It is probable that the Court meant that a vast majority of States comprising the membership of other international organisations would also enjoy this kind of personality. The important

83 Amerasinghe supports this interpretation, p. 86.
84 Above Chapter 2.4.
point to make, though, is that it did not exclude other possible factors, and that the Court in at least one case admitted an exception to the principle of sovereignty. Moreover, the principle of effectiveness and the pragmatic approach applied by the Court in the entire opinion should be kept in mind as an indication of the necessity of viewing the question with the present international situation and the requirements of the international community today in mind.

4.3 State practice

4.3.1 The practice of recognition

There has been no practice of recognising specifically international organisations,\(^85\) as has been the case with States. However, international organisations have been, and are, enjoying relations with third States. A good example is the European Community. The organisation has concluded trade agreements with around 70 developing countries, all non-member States.\(^86\) Such practice indicates that States tend to respect international organisations as legal persons.

One example, however, of an express recognition is the one on behalf of Switzerland before it was a member of the UN. Switzerland was a host State in relation to the UN, and as such, signed a treaty regulating the privileges and immunities of the organisation.\(^87\) Article I of the treaty states that “[t]he Swiss Federal Council recognises the international personality and legal capacity of the United Nations…” Such an express recognition does not automatically mean, however, that it is necessary.

There have also been examples of States refusing to recognise international organisations by refusing to enter into legal relations with them. Such was the situation with the USSR and some Eastern European countries in relation to the European

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\(^85\) Amerasinghe p. 87.

\(^86\) The Lome Conventions of 1975 and 1979, which were the successors of the Yaoundé Convention (1963) and the Arusha Agreement (1969).

Community for some time. This view was the result of the Soviet doctrine on international organisations, a doctrine that for a long time denied international legal personality to many international organisations.

Even though what has been called the Soviet doctrine cannot be considered irrelevant in the international community today, the frequent relations between States and international organisations indicate that the latter are accepted by the former as international legal persons.

4.3.2 Judicial practice

The question of objective international personality without recognition will obviously present itself when an international organisation is involved in court cases in third States. It is important to bear in mind that the domestic personality is not here the issue; the issue is the legal personality of the organisation in the international legal order. The interesting question is therefore whether or not courts of third States have recognised this international personality. Two examples can show the differences between States in their approach to this question.

The first case was brought before the courts of the state of New York; *International Tin Council v. Amalgamet Inc.* The case concerned a petition by the International Tin Council (ITC) to gain immunity from process or suit. The United States was not a

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88 Bowett p. 476 (note 36).
89 For an overview of the Soviet doctrine and the quite distinct opinions of some of its authors, see Osakwe.
90 This act of recognition is obviously a completely different one from the recognition by one State of another State or organisation. If the court system of a State recognises the international legal personality of an organisation, this does not necessarily mean that the government of that State has also recognised the organisation. If there is an obligation in international law for States to accept the international legal personality of international organisations in their legal systems, the failure to do so by national courts might result in a breach of international legal obligations by that State (see Amerasinghe p. 77).
member of the ITC and had not expressly recognised it. The Court recognised the international legal personality of the ITC automatically, and it did not even make it a matter of discussion.

The second case was brought before the UK courts, and concerned the Arab Monetary Fund, Arab Monetary Fund v. Hashim and Others. The ruling confirmed that the UK courts do not acknowledge the creation of subjects of law merely within the international legal order. The UK court system will only recognise entities ‘created’ by a specific statutory provision, by an Order in Council, or by the law of a sovereign State recognised by the United Kingdom. The House of Lords states that

There is no uniform practice with regard to international organisations in this country. […] [In] cases where the United Kingdom is not a party to the treaty, no legislative steps are taken in the United Kingdom […] this does not debar Her Majesty’s government from recognising the international organisation and does not debar the courts of the United Kingdom from recognising the international organisation as a separate entity by comity provided that the separate entity is created not by the treaty but by one or more of the member states.

This means that an organisation failing to satisfy one of these alternative criteria does not exist in the UK court system as an entity with a separate international legal personality. The recognition of an objective legal personality in this system therefore

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92 It is described in the ruling (p. 974) that the ITC does not fall within the scope of the International Organizations Immunities Act because the United States is not a member of the organisation, nor has the President provided for the application of the law by executive order.

93 The UK courts have also experienced some lengthy litigation concerning the fate of the International Tin Council. However, the UK being a member of the organisation, these cases are not very interesting here.


95 The AMF case came after the ITC litigation in the English courts, and the court also referred to the ITC decision on this point.

96 Marston p. 108.

97 [1991] 1 All ER p. 879.
seems difficult; the whole idea of an objective international legal personality being based on recognition by the executive not being necessary.\textsuperscript{98}

These examples show how two different court systems have dealt with the issue of international legal personality in a few cases. These descriptions only explain the differences in legal systems and approaches to international law. However, they are two of the most important members of the international community, and their opinions on the subject are therefore noteworthy. The difficulty of recognising international legal personality in certain instances in the UK courts, for example, is an important contribution to the discussion.

The fundamental principle, however, is that the question of international personality of international organisations and the objectivity thereof must be decided upon by international law, and international law alone. The fact that the UK courts do not recognise the legal personality of international organisations when this is only recognised by the international legal order, can be taken as an indication that at least this State does not believe international organisations to have objective personality. However, it is also an indication of a complicated relationship between UK domestic law and international law. If the organisation has been recognised by another State, the UK courts will recognise it, even if it is not a member of the organisation. Their attitude can therefore not be seen as a clear obstacle for granting organisations objective personality. If there is a rule in international law stating that all international organisations have objective legal personality, the non-compliance with this rule by a State is equal to a breach on its part of its legal obligations under international law, with whatever circumstances that may have for the State in question.

4.4 The work of the International Law Commission

The International Law Commission (ILC), created by a resolution\textsuperscript{99} of the General Assembly of the UN on 21 November 1947, has as its tasks “the progressive

\textsuperscript{98} Amerasinghe p. 87.

\textsuperscript{99} In accordance with article 13 (1) of the UN Charter.
development of international law and its codification”, cf. art 13 of the UN Charter. The ILC has dedicated part of its time between 1962 and 1992 to working on the topic of relations between States and international organisations. The work of the ILC was eventually divided in two parts; the first one concentrating on the status, privileges and immunities of representatives of States to international organisations, and the second focusing on the status, privileges and immunities of the actual organisations and their agents etc.

The ILC’s consideration of the first part of the topic led to the adoption of a final set of draft articles in 1971. The General Assembly convened an international codification conference in 1975, resulting in the adoption of the Vienna Convention on the Representation of States in Their Relations with International Organisations of a Universal Character. The provisions of this convention is of no significant interest to the present study, but its fate, specifically the fact that it has not yet entered into force, has been of great influence to the work on the second part of the topic.

The work on the second part of the topic resulted in many reports from the Special Rapporteur appointed by the ILC. During the years of work, the scope of the topic and its field of application were discussed on several occasions, the members not being able to agree on whether or not only universal organisations should be considered, or also regional organisations. At the session in 1987, several members had given support to the idea of confining the study to universal organisations, even though the Commission had agreed in 1983 that the scope of the study should be broad, and that any restrictions should be decided upon only after the study was completed. It was eventually decided, however, that a final decision would be taken upon completion of the study, but that the study would until completion be confined to organisations of a universal character.

100 For a detailed description of the work and the progress thereof, see Bekker pp. 9-35.  
102 Bekker pp. 23-30.
The second report\textsuperscript{103}, from 1985, included a draft article in two alternatives on the issue of legal personality. It was discussed at the session of the ILC that same year. As follows from what is mentioned above, the draft article was prepared while the Special Rapporteur was still working with the broad scope in mind, and they were therefore meant for all international organisations. The article had the following wording:

1. International organizations shall enjoy legal personality under international law and under the internal law of their member States. They shall have the capacity, to the extent compatible with the instrument establishing them, to:

(a) contract;
(b) acquire and dispose of movable and immovable property; and
(c) institute legal proceedings.

2. The capacity of an international organization to conclude treaties is governed by the relevant rules of that organization.

The other alternative only differed from the first one in that it was separated into two articles. The Special Rapporteur noted that

the precise extent of the legal capacity of international organizations, and in particular their capacity to conclude treaties, is still a matter of controversy in theory and in legal thinking.\textsuperscript{104}

Although the draft article was in general supported, some of the members had comments as to the wording of the article. It was asserted by one member that the article would place a burden upon third States, due to the word ‘shall’ in the opening sentence.\textsuperscript{105} He stated that the opinion of the Special Rapporteur; that all international organisations had legal personality, was perhaps not consistent with the principle of the law of treaties; that an obligation cannot be imposed on third States. The member put emphasis on the fact that

\textsuperscript{103} Relations between States and International Organizations (second part of the topic), by Mr. Leonardo Diaz Gonzalez, Special Rapporteur. UN Document A/CN.4/391 and Add.1.

\textsuperscript{104} Relations between States and International Organizations (second part of the topic), UN Document A/CN.4/391 and Add.1, p. 109.

the majority of present-day writers held that the legal personality of international organisations *vis-à-vis* non-member States depended on recognition.\(^\text{106}\)

The suggestion was therefore to replace the word ‘shall’ with ‘may’. It appears from this, that the member understood by the wording of the article that if there were ever to become a convention of the draft articles, such a wording would oblige all States to accept the legal personality that the international organisations ‘should’ have, in other words that the international organisations would enjoy objective legal personality. This member therefore quite clearly was not of the opinion that an objective legal personality was in general enjoyed by all international organisations at that time.

Another member\(^\text{107}\) pointed out that the first sentence, expressly stating that the organisations shall enjoy legal personality under the internal law of their member States, could give rise to doubt as to their relationship with third States. He points out that the question of the personality of international organisations in the internal law of non-member States if it chooses not to recognise the organisation expressly, is a matter of private international law, not public international law. He must here mean to refer to the method that most national courts use to give international organisations legal personality in their domestic systems, that is the use of rules of conflict of laws.

However, how domestic legal systems treat international organisations in their dealings with them is not vital to the question of whether or not they have objective legal personality. The latter is a question that must be decided upon by international law alone, because as has been pointed out, each legal system decides upon its own subjects. This member therefore appears to have the same opinions of the state of international law at the time as the previous member mentioned; he does not, with his discussion on internal law when recognition is not given, seem to give room for a general rule of objectivity.

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The comments of yet another member\textsuperscript{108} show that what the Special Rapporteur mentioned about the controversial nature of the matter at hand, was most certainly right, at least in 1985. He doubts whether organisations other than the UN and the specialised agencies possess legal personality under international law. He was of the opinion that personality under international law had its origin in custom, or rather in the unwritten law deriving from the practice and deep-seated convictions of States.\textsuperscript{109}

He did not agree with the reasoning of the ICJ in the Reparations case, although he did agree with the conclusion. He was of the opinion that legal personality under international law should be saved for organisations which, by achieving some degree of independence and, more importantly, some degree of universality, had contributed to a custom or an unwritten rule. This reasoning seems to convey a view of legal personality as a concept with an intrinsic opposability towards third States. If this is the case, his view on the matter of objectivity is quite the same as the previous members; that this is a characteristic only applicable to certain international organisations.

Another member\textsuperscript{110} also seemed to think that some organisations might lack legal personality, and the meaning must be the same; legal personality is seen as equivalent to objective legal personality. He suggested the replacement of the word ‘shall’ with ‘may’. Yet another member\textsuperscript{111} pointed out that the UN and the specialised agencies, as opposed to other organisations, might enjoy legal personality to the fullest extent. This is again in accordance with the other members of the ILC referred to above. He supported the suggestion of changing ‘shall’ with ‘may’.

Another member\textsuperscript{112} stated quite clearly that all international organisations had legal personality. It is difficult, however, to know if the member spoke of the same notion of objectivity that some of the previous members had clearly spoken of, or if he had a more restricted view of the concept, that is that legal personality is not the same concept as objective legal personality. This is of course the view maintained in the present study. It must be pointed out, that even though there might seem to have been a lot of opposition in the ILC for the draft article, there are many members not commented upon here that did not make any comments regarding the wording or the content of the article.

The fourth report, submitted in 1989, included draft articles on several issues, among them the issue of legal personality. Due to lack of time, the ILC was first able to consider the report at its session in 1990.\textsuperscript{113} Part II of the draft articles was called “Legal Personality”, and contained the same wording of the 1985 article, although this time it had been separated into two articles. The report received the general support of the ILC, although some members again had comments on the wording. It also appeared that some of the members had lost interest in the topic altogether.\textsuperscript{114} It was agreed that the Special Rapporteur refer the draft articles to the Drafting Committee. The work never evolved past this stage, however. Due to a general consideration of all the topics worked on by the ILC,\textsuperscript{115} the work on this topic was abandoned altogether. One reason seemed to be the slowness of ratification of the 1975 Vienna Convention, and there were worries that a convention on the second part of the topic would run into the same problems.\textsuperscript{116}

\textsuperscript{114} See, for example, Mr. McCaffrey’s comments on p. 217 of the Yearbook of the International Law Commission 1990 Volume I, UN Doc. A/CN.4/SER.A/1990.
\textsuperscript{115} This was done after a resolution to this effect adopted by the General Assembly 9 December 1991 (Resolution 46/54).
\textsuperscript{116} Bekker p. 31-32.
The question of the relevance of these comments arises because the draft articles never evolved to become the subject of an international conference or a treaty. However, the opinions of the members of the ILC, expressed through these draft articles, the members being the most prominent international commentators, writers and lawyers in the world, are a good indication of the status of these questions in international law. The draft articles are the result of a thorough analysis done by the ILC, and they therefore represent a good source when studying this topic. The comments made while considering the articles, however, must be looked at with the final result in mind. Although some members made comments suggesting that they disagreed with the articles, the general support of the ILC was in the end given. It is also advisable to maintain a cautious approach to these comments as expressions of what the international law at the present stage is. As pointed out several times, the international legal order is a dynamic one; it must respond to the needs of the international community at every stage of history, and these might change in the course of twenty years. On the other hand, commentators are still discussing the correct interpretation of the Reparations case, and the members of the ILC had had plenty of time to analyse and reach a conclusion on that topic before discussing the draft article. However, the overall conclusion must be that most members did not comment upon the wording, and that general support for the draft article was given.

4.5 The question of recognition

The supporters of the theory of a legal personality of international organisations require an act of recognition from the latter to accept the former as legal persons in international law. The question of recognition will now be analysed to determine if such a requirement is at all applicable to international organisations. It is natural to compare it with the same issue as applied to States. As mentioned there has been no practice of recognising other international organisations, but States have normally been subject to recognition by other States.

This leads to the discussion of whether recognition should be considered a constitutive or declaratory act. This debate has concentrated on the recognition of States. The difference is what effect the recognition of a State is considered to have. The
constitutive theory maintains that recognition is necessary for bringing the State into being, while the declaratory theory sees the act of recognition as merely a political, not a legal act.\textsuperscript{117} The latter therefore sees the State as existing once the criteria for statehood as developed in general international law are satisfied. The increasingly common view is the declaratory view.\textsuperscript{118} Thus a State does not owe its existence to the recognition given by other States. A third State cannot decide with a political decision of its own whether or not another State exists. Another side of the same issue is that a third State cannot pretend that a State satisfying the criteria required does not exist,\textsuperscript{119} only because it does not wish to recognise it. If the existence of a State in relation to another depended on the political sentiments of the latter, these could impede the rules of general international law being applicable between them. An example could be the general rule of international law of the non-intervention in the internal affairs of another State. This rule must be respected even though the State intervening has not formally recognised the other State.

If these thoughts were applied to the field of international organisations, one could argue that an international organisation comes into existence as a subject of law in relation to third States when the criteria listed above are satisfied,\textsuperscript{120} and not as a result of recognition by the particular State.\textsuperscript{121} However, recognition of States can also have an important effect. One example is the proof it can give of the relevant objective criteria being satisfied; recognition by other States can mean that the demands for proof of the criteria are weaker.\textsuperscript{122} If the uncertainty of the objective criteria is strong enough, it would seem as though recognition could create a constitutive effect. Applied to international organisations, it has been stated earlier that the practice of an organisation subsequent to its founding can confirm the existence of legal personality. In my opinion, however, such a subsequent practice cannot in general create the organisation as a legal person. If strong uncertainty exists, however, recognition could have that effect.

\begin{itemize}
\item \textsuperscript{117} Shaw p. 146-147.
\item \textsuperscript{118} Brownlie p. 86-89, Amerasinghe p. 90.
\item \textsuperscript{119} Amerasinghe p. 90.
\item \textsuperscript{120} Chapter 2.4.
\item \textsuperscript{121} Amerasinghe p. 90.
\item \textsuperscript{122} Shaw p. 146-147.
\end{itemize}
There are of course big differences between States and organisations, and one must ask if this view is at all applicable to organisations. States are still the original and primary subjects of international law. They can, through the principle of sovereignty, give capacities to other entities, but these entities will always be derived subjects of law. As such, recognition could perhaps take a different role when organisations are concerned. This is certainly true if one adopts a view of the legal personality of international organisations as a product of State creation. The principle of sovereignty ensures that this personality does not give other States obligations. If one sees the creation of personality in international law as a result when certain criteria exist, however, that leaves the basic same issue for both States and organisations; the issue of the significance of recognition when the criteria of international law endowing them with international legal personality have been satisfied. This suggests that

the fact that in both cases what is at stake is the legal status of an entity warrants the disregard of the need for recognition in the one (international organizations), because it has come to be de-emphasized in the other (States).

As far as States are concerned, recognition is seen as playing an important role politically, but not legally. It is submitted that the same is applicable to international organisations.

4.6 The possibilities of objective legal personality

The main arguments involved in the discussion of objective legal personality have been looked at. The ICJ has asserted that in at least one case there exists an organisation possessing objective international legal personality. It seems as though the Court meant to reserve this type of personality for organisations in possession of special qualities, but it did not exclude the possibility of other factors than universality playing a role. It seems certain, though, that universality can be seen as enough proof of an objective legal personality. The opinion has in addition left behind a view of the international community based on changing needs and requirements.

123 Amerasinghe p. 90-91.
The ILC supported the draft articles presented by the Special Rapporteur, although some members revealed the view that objective legal personality was not a general trait of international organisations through their comments. One can draw from this the conclusion that the question is a controversial one, at least in theory. Most importantly, however; the draft articles were supported even though the comments had been made and the entire Commission had had time to analyse the problem thoroughly. In practice, on the other hand, the question does not seem so controversial. Relations between States and organisations are frequent, and problems seldom arise. The example from the UK courts does not express a general opposition to objective legal personality; as explained it is more an expression of complications in the relationship between domestic and international law.

The concept of universality has been discussed in relation to the principle of sovereignty, and it has been questioned if the number of members of an international organisation makes a difference to third States. It is submitted, however, that as far as the principle of sovereignty is concerned, that is a principle related to the non-creation of rights and duties for a third State by other States in a treaty. It has been argued that the existence of an international organisation as a legal person, both in relation to member States when the constituent document is silent, and in relation to non-member States in general, must depend upon the criteria listed; it does not depend upon the subjective will of the members expressed in the constituent document. The organisation is created as a result of factual circumstances and by the international legal order.

There have been commentators arguing that even though the subjective will of the founding States implied from the constituent treaty might not mean anything for the existence of legal personality in relation to third States, it still has relevance because the existence of the organisation itself depends on it.\textsuperscript{124} An analogy with States is possible. No matter how States are created, be it by way of an agreement between inhabitants of a territory or by imposition and assumption of power, this has no relevance for third States. At the same time States are generally considered to be subjects of international

\textsuperscript{124} Seyersted p. 239-240.
law without recognition.\textsuperscript{125} There is no doubt that most international organisations come into existence by way of a multilateral treaty, but in relation to third States the organisation comes into ‘legal existence’ only when it has shown the independent character described above. In some cases subsequent practice of the organisation might prove in relation to third States that the necessary character of independence does exist.

It is also important to bear in mind the emphasis given to the principle of effectiveness and changing needs by the Court in the Reparations case. The ever-increasing importance of international organisations has been explained, and this, in addition to the conclusions drawn above, seems to favour the development from the one organisation granted objective legal personality by the ICJ to a general objective legal personality enjoyed by all organisations.

\textsuperscript{125} Seyersted p. 239-240. About recognition, see above Chapter 4.5.
5 Concluding remarks

The arguments put forward in this thesis seem to favour the following. International organisations play an extremely important role in the international community today, and all States belong to at least one of them; the UN. It has been shown that legal personality is an important tool, both in relation to members as well as non-members. An independent character, normally expressed through organs, special tasks and provisions ensuring the autonomous will of the member States, is considered a necessary criterion to conclude that an international organisation has international legal personality when the constituent document is silent on the issue. Legal personality in relation to member States can also be granted when the constituent document expressly states so. This follows from the fact that the organisation in such cases would neither impose rights nor duties on anyone else.

In relation to non-member States the endowment of objective legal personality has been found to have given rise to some controversy. Although some members of the ILC did express some uncertainty, they accepted the draft article. The non-existent practice of recognition and the analogy as drawn to States also seem to favour endowing international organisations with objective legal personality.\textsuperscript{126} The extent of this personality, as has been shown, differs immensely from organisation to organisation. However, there seems to be no reason for lengthy discussions about potential ‘inherent’ capacities. Such capacities, if they exist, will always be delimited in their subject-matter by the purposes of each organisation according to the doctrine of implied powers.

Exceptions to this general conclusion of endowing objective legal personality might be thought of if the organisation in question clearly has just been created for the purposes of, for example, avoiding responsibility towards third States. Organisations of this kind, however, will lack one or more of the criteria listed as necessary for the existence of

\textsuperscript{126} This view is supported by Seyersted p. 261, Amerasinghe pp. 85-91.
international legal personality. This might be the case with an organisation endowing itself with legal personality in its constituent document, although lacking one of the necessary requirements.\textsuperscript{127} In such cases, third States may ignore the international organisation. This is not surprising, as the organisation in question would lack legal personality by failing to satisfy one or more of the criteria.

\textsuperscript{127} Amerasinghe p. 85.
6 Bibliography


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