New Approaches to the International Legal Personality of Multinational Corporations
Towards a Rebuttable Presumption of Normative Responsibilities

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1. Introduction

In the contemporary perspective of some multinational corporations being more economically powerful than many states,¹ it is virtually self-evident that these entities are commonly considered “a major, perhaps the major, phenomenon of the international economy today”.² Furthermore, this category of non-state actors is generally regarded as one of the “driving forces” of the various processes of globalization.³ However, multinational corporations are not only from an economic perspective influential participants in the current international system. Rather, they are also to a growing extent participating, albeit in most cases still indirectly, in the international law-making as well as the law-enforcement processes, thereby considerably contributing to the “inherent heterogeneity of modern partnerships in international law-making and international law adjudication”.⁴ Multinational corporations played a key role, inter alia, in the adoption of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).⁵ In addition, these

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entities are – to mention only one further example – often involved in the various phases of WTO dispute settlement proceedings\(^6\) – a development which has already been appropriately characterised as the evolution of “public-private partnerships in WTO litigation”.\(^7\)

The increasingly important role of multinational corporations as economic and political actors on the international scene results in chances for, but especially also risks to, the promotion of community interests,\(^8\) also known as global public goods,\(^9\) such as, for example, the protection of human rights and the environment, as well as the enforcement of core labour and social standards. On the one side, these non-state actors, because of their potential influence on the home as well as the host countries, could in the course of their economic and political activities effectively contribute to the enforcement of the above mentioned international community interests.\(^10\) On the other side, however, multinational corporations also have the potential to frustrate the universal promotion and protection of the environment, as well as human and labour

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rights either directly through their own conduct or indirectly by way of supporting state actors, predominantly in oppressive regimes, in their respective actions.\(^\text{11}\)

In view of this seemingly quite ambivalent potential of multinational corporations regarding the protection and promotion of global public goods,\(^\text{12}\) the question arises whether these non-state actors, in addition to their de facto influential position in the current international system, are also in a normative sense integrated in the international legal order, and thus under an obligation to contribute, *inter alia*, to the protection of human rights, core labour and social standards as well as the environment or whether the multinational corporation – as has recently been reiterated – “remains ‘outside the tent’ in terms of international law”.\(^\text{13}\) Considering the overwhelming importance of this issue for the future direction and consequences of the ongoing processes of globalization, it is hardly surprising that an intensive debate – as evidenced by the ever-growing literature on this topic\(^\text{14}\) – is currently taking place with regard to the need and possibilities for making multinational corporations responsible for the promotion of international community interests. By adding a number of new thoughts, this article is meant to be a small contribution to the ongoing discussion on this evolving issue.

2. An Overview: The Subjectivity of Multinational Corporations in Light of the Traditional Prerequisites of International Legal Personality


According to the currently still predominant view among international legal scholars, not all of the various different entities participating in contemporary international relations can be regarded as international legal persons, even if they may have some degree of influence on the international society. De facto participation is not equivalent to acting on the international scene in legally relevant ways, and thus does not convey the status of a subject of international law.\(^\text{15}\) Rather, international legal personality requires some form of community acceptance through the granting by states of rights and/or obligations under international law to the entity in question.\(^\text{16}\) There are in general no systematic reasons why non-state entities may not participate in the international legal system as legally recognized actors, and thus no \textit{numerus clausus} of subjects of international law exists.\(^\text{17}\) However, on the basis of these generally recognized prerequisites for achieving international legal personality,\(^\text{18}\) the currently still prevailing view among international legal scholars is that multinational corporations cannot be regarded as subjects of international law in the sense of being addressees of international legal obligations to promote the realization of the global public goods.\(^\text{19}\)


Although it has already for quite some time been argued in the legal literature that international human rights treaties may be interpreted as also being directly applicable to private actors such as multinational corporations, the majority of international legal scholars, by taking recourse to the drafting history of the respective conventions and the teleological method of treaty interpretation, has quite convincingly demonstrated that human rights treaties as well as, for example, the increasing number of international conventions aimed at combating bribery, do not impose direct obligations on any other entity than the states being parties to the particular convention. Furthermore, despite some notable recent developments, such as attempts to enforce alleged human rights obligations towards corporations before domestic courts in the international – Études offertes à Berthold Goldman (1982) 281, at 295; Arzt/Lukashuk, ‘Participants in International Legal Relations’, in L. Fisler Damrosch, G. M. Danilenko and R. Müllerson (eds), Beyond Confrontation (1995) 61, at 75; Baade, ‘The Legal Effects of Codes of Conduct for Multinational Enterprises’, in N. Horn (ed), Legal Problems of Codes of Conduct for Multinational Enterprises (1980) 3, at 8; S. Hobe/O. Kimminich, Einführung in das Völkerrecht, 8th ed. (2004) 158; Hailbronner, ‘Der Staat und der Einzelne als Völkerrechtssubjekte’, in W. Graf Vitzthum (ed), Völkerrecht, 3rd ed. (2004) 149, at 167; H. Booyse, Principles of International Trade Law as a Monistic System (2003) 55; for a recent overview on the respective opinions in the legal literature see also Dumberry, ‘L’Entreprise, Sujet de Droit International? Retour sur la Question a la Lumiere des Developpements Recents du Droit International des Investissements’, 108 RGDP (2004) 103, at 105 et seq.


United States,\textsuperscript{22} as well as in the realm of so-called “soft law” the adoption of the “Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” by the UN Sub-Commission on the Promotion and Protection of Human Rights on 13 August 2003\textsuperscript{23} (which, however, received a rather “cool” response by the Commission on Human Rights on 20 April 2004\textsuperscript{24}), one cannot but agree with the above mentioned predominant view that multinational corporations have neither under treaty law nor in the realm of customary international law\textsuperscript{25} – except for a small number of very specific regulations\textsuperscript{26} – received a

\textsuperscript{22} From the numerous literature on this issue see only S. Joseph, \textit{Corporations and Transnational Human Rights Litigation} (2004) 21 \textit{et seq.}; Jägers, \textit{supra} note 20, at 179 \textit{et seq.}; but see also the judgement of the United States Supreme Court in \textit{Sosa v. Alvarez-Machain et. al.}, 124 S. Ct. 2739 (2004), also reprinted in 43 \textit{I.L.M.} (2004) 1390, which, according to Shamir, ‘Between Self-Regulation and the Alien Tort Claims Act: On the Contested Concept of Corporate Social Responsibility’, 38 \textit{Law and Society Review} (2004) 635, at 642, is probably “significantly limiting the type of future claims that may be brought against MNCs”; for a related view see also, e.g., Carver, \textit{supra} note 13, at 433 (“Thus, the category of potential claim is not closed; but the threshold that will now have to be overcome in order to use the ATS is much higher than had been supposed in the wake of Filartiga.”) (italic emphasis in the original).


\textsuperscript{25} Generally on the non-recognition of international legal obligations of multinational corporations under customary international law see, e.g., Tomuschat, \textit{supra} note 19, at 91; Hobe/Kimminich, \textit{supra} note 19, at 158; Zemanek, \textit{supra} note 19, at 47; Karl, ‘Aktuelle Entwicklungen im Internationalen Menschenrechtsschutz’, in W. Hummer (ed), \textit{Paradigmenwechsel im Völkerrecht zur Jahrtausendwende} (2002) 275, at 303; Schmalenbach, \textit{supra} note 21, at 65 \textit{et seq.}

\textsuperscript{26} See, e.g., Art. III of the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969, being replaced by its 1992 Protocol as amended in 2000; as well as Art. 137
sufficient degree of normative recognition by states and international organizations with regard to the imposition of obligations under international law.

3. Increasing Inadequateness of the Traditional Approach to International Legal Personality

However, it appears to be increasingly questionable whether these thus far almost generally recognized prerequisites for the achievement of international legal personality in itself – namely the explicit granting by states of rights or duties under international law to the entity in question – can in light of the changing structure of the international system still be regarded as an appropriate approach for the identification of normative responsibilities of influential non-state actors on the international scene.

The starting point of this criticism is the widely shared perception that the normatively binding force of international law is based on the necessity of this legal order for the “satisfaction of needs and the pacification of social life”. Thus it is the underlying purpose of the international legal order to pursue international stability and to avoid disputes and the arbitrary use of power. Based on the so-called notion of “positive peace”, this pacification of international relations also encompasses, inter alia, the protection of human rights and the environment as well as the creation of conditions of social justice. Therefore, by transforming into what has already been called a “comprehensive blueprint for social life”, international law of the United Nations Convention on the Law of the Sea of 10 December 1982, see thereto only Kamminga, supra note 20, at 424.


is more and more independent of the will and interests of individual states.\textsuperscript{31} Rather, its substantive norms are increasingly focusing on the realization of community interests, the promotion of global public goods\textsuperscript{32} – a process that for valid reasons has already been labelled the “constitutionalization of international law”.\textsuperscript{33} Thereby, the mechanisms for the enforcement of the values covered by this notion of “positive peace” have to be anchored in the international legal order itself, since “a system of peace which is not at the same time a system of law cannot exist”\textsuperscript{34}

In order to pursue these goals, being necessary for the continued existence of the international community,\textsuperscript{35} in an effective way – and it is inherent to every legal order to strive for effectivenes\textsuperscript{36} – the development of international law, being “a realistic legal system”,\textsuperscript{37} is already in general fundamentally dependent upon and because of the open character of this legal order\textsuperscript{38} also capable of a close conformity to the changing realities on the international scene.\textsuperscript{39}


\textsuperscript{38} On the open character of the international legal order see only Crawford, ‘International Law as an Open System’, in J. R. Crawford (ed), International Law as an Open System (2002) 17;
thereby trying to perpetuate itself as an international legal system. As a consequence, the recognition of international legal personality also has to orientate itself to the central aims pursued by the international legal order as well as to the changing sociological circumstances on the international scene. Since it is the primary function of international subjectivity to be a technical means of implementing the substantive values of the international legal order, international law is also with regard to its subjects doctrine not capable of keeping more than a marginal distance from reality. Therefore, on the one side, the international legal order needs to set the relations between all the de facto powerful entities in the international system on a legal basis, because international law’s ordering and pacification functions are only being preserved


On the argumentation that international law as an “auto-epoietic system” is constantly striving for self-perpetuation by, inter alia, “favouring claims that promote systematic order while coding as ‘illegal’ those claims that point toward anarchy and the death of the legal system” see recently D’Amato, ‘International Law as an Autoepoietic System’, in Wolfrum/Röben (eds), supra note 4, 335, at 341 et seq.


if the state-centric understanding is replaced by the perception of this legal regime as a *jus inter potestates*. On the other side, international law furthermore has to legally discipline the conduct of all influential entities also in their interactions with less powerful – and thus being in need of protection – actors, in order to effectively and comprehensively enforce the normative principles enshrined in its legal structure. To summarize, it is thus first and foremost “through subjects doctrine that the international allocation of values take place”.

In light of these findings, the traditional prerequisites for international legal personality can no longer be regarded as an adequate approach for the allocation of community interests through the identification of normative responsibilities of de facto powerful non-state actors in the international system. As mentioned above, in the apparent absence of a sufficient degree of recognition by the international community through the imposition of international legal obligations by states on multinational corporations, it is under the currently still predominant subjects doctrine not possible to regard these influential entities as being normatively integrated in the international legal order in the sense of being legally required to contribute to the promotion of global public goods. However, an approach to international legal personality that is incapable of making all of the important actors in the international system subject to the “international rule of law” creates intolerable gaps in the structure of the international normative

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45 See Wengler, *supra* note 41, at 129; for a related perception see also Cassese, *supra* note 37, at 217 (“international law […] is gradually heading towards a civitas maxima (a human commonwealth encompassing individuals, States, and other aggregates cutting across boundaries of States)” (italic emphasis in the original).


48 See also, but with regard to the non-recognition of powerful private terrorist organizations, recently for example the strong criticism by Klabbers, *supra* note 47, at 353 et seq. (“That main point seems to be the point that September 11 demonstrates just how outdated the system of international law has become, and has allowed itself to become. […] Many of our international legal concepts, so September 11 suggests, are no longer able to deal with present-day developments, and the main cause is that international law has failed to seriously incorporate non-state actors into its framework. […] Either way, what emerges is a picture of conceptual helplessness: confronted with nasty behaviour from entities that are not generally to be considered states, the law runs into problems.”).

49 See thereto Watts, *supra* note 28, at 15 et seq.
order and “imposes unnecessary risks on the inherently frail international legal system”. Thus, “if international law withholds legal status from effective [...] entities, the result is a legal vacuum undesirable both in practice and principle”.

The prevailing view thereby not only contradicts the character of international law as “a realistic legal system” since “[n]ation states aside, TNCs are the most powerful actors in the world today and to not recognize that power would be unrealistic”. Rather, this traditional subjects doctrine also forestalls the realization of community interests being at the centre of the current international legal order, and – as a kind of still “living” but nevertheless not worth protecting “fossil” originating from the so-called “Westphalian system” – thus contravenes the above mentioned evolving perception of international law as a “comprehensive blueprint of social life”. “No accumulation of power should remain unchecked under a system of ‘rule of law’” – as has been rightly pointed out by Daniel Thürer – “[t]his is a requirement dictated by the raison du système international as opposed to the raison d’état dominating the traditional world of international law”.

The severe consequences of an international legal methodology that for the implementation of its underlying normative values does not adequately take into account the sociological realities in the international system have already been quite explicitly emphasized in 1924 by James L. Brierly: “To do that means that we are consenting to a divorce between the law and the ideas of justice prevailing in the society for which the law exists; and it is certain that as long as that divorce endures, it is the law which will be discredited.”

Therefore, the current predominant view concerning the prerequisites of international legal personality is neither compatible with the central aim of the current international legal order, nor is it reflective of the resulting necessity for international law to be in sufficient conformity with the changing realities in the international system. Rather, this traditional approach ignores to a disconcerting extent the vital connection between the above mentioned basis of the normatively binding force of international law and the granting of international legal personality that Chris N. Okeke concisely formulated more than thirty years ago: “[I]f
international law failed to influence and to regulate adequately the course of international relations, it would have lost its value.\textsuperscript{58}

4. The Need for a Partial Reconceptualization of International Legal Personality

If one rightly hesitates to draw the undesirable conclusion of calling into question the continued suitability of the international legal order to effectively implement its central aims, the increasing inadequateness of the traditional understanding of international legal personality inevitably leads to the need for an at least partial reconceptualization of subjects doctrine. Against this background, a new approach to the creation of normative responsibilities of powerful actors in the international system will be introduced in the following.\textsuperscript{59} Although it will probably first be met with scepticism,\textsuperscript{60} this new concept appears to be a far more appropriate doctrinal component of the current international legal order than the predominant view. Thereby, it is furthermore submitted that this reoriented subjects doctrine is not merely meant to be a suggestion \textit{de lege ferenda}. Rather, \textit{inter alia} because of this approach finding its normative foundation in the generally recognized legal concept of presumptions, it fits already \textit{de lege lata} in the normative structure of current international law. Furthermore, in realistic anticipation of opposition to this new subjects doctrine a number of possible objections will be discussed.

A. Rebuttable Presumption of Normative Responsibilities of De Facto Powerful Actors

As indicated, the reconceptualized subjects doctrine is based on the perception of the international legal order as a “system of normative presumptions”.\textsuperscript{61} The structure of international law, at least to the same extent as most domestic legal systems, is and has already for quite some time been shaped by rules of presumptions.\textsuperscript{62} From the numerous examples supporting this view, one only needs to mention the rules on the interpretation of multilingual treaties,\textsuperscript{63} the

\textsuperscript{58}Okeke, \textit{supra} note 44, at 217; for a similar assessment see also, e.g., Charney, \textit{supra} note 39, at 769; Bleckmann, \textit{supra} note 41, at 117.


\textsuperscript{60}On this usual reaction in response to the introduction of new approaches to international legal personality see only von der Heydte, ‘Rechtssubjekt und Rechtsperson im Völkerrecht’, in Constantinopoulos/Eustathiades/Fragistas (eds), \textit{supra} note 43, 237, at 246.


“presumption against conflict” with regard to treaties concluded between the same parties, the presumption that parties to a treaty act in conformity with the obligations arising from this agreement, the presumption that actions taken by organs of international organizations being appropriate for the fulfilment of the purposes of that organization are not ultra vires, as well as the famous – although hardly being compatible anymore with the structure of the current international legal order – negative presumption established by the PCIJ in the Lotus case with regard to restrictions upon states’ freedom of action.

Applying this concept of presumptions to subjects doctrine, it is argued that, in light of the above mentioned primary aims pursued by international law as well as the need for a close conformity of this legal order to the changing sociological circumstances on the international scene, a rebuttable presumption arises – already on the basis of a de facto influential position in the international system – in favour of the respective actor being subject to applicable international legal obligations with regard to the promotion of community interests such as the protection of human rights, the environment and core labour and social standards. This methodological approach ensures that – independently from an explicit imposition of obligations by states through treaty or customary international law – all interactions between the influential entities in the international system as well as their relations to less powerful actors are prima facie subject to the international rule of law, thereby ensuring that the international legal order is able to fulfil its central purpose of comprehensively civilizing international relations in an effective way. Only with regard to those actors whose limited participation in the interactions within the international system does not qualify them as being sufficiently influential, the existence of international legal obligations is still dependent upon an explicit imposition by states through treaty or customary international law. This last mentioned categorization currently applies especially to individuals.

The presumption can only be refuted by way of a contrary expression of the international community – states and international organizations – in a legally binding form stating that the respective influential category of actors is not obliged to observe, inter alia, human rights, as well as recognized environmental and labour standards. Thereby, the decision of rebutting the presumption is not left to individual states or international organizations. Such an approach

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65 See thereto WTO, European Communities – Measures Concerning Meat and Meat Products (Hormones), Original Complaint by the United States, Recourse to Arbitration by the European Communities under Article 22.6 of the DSU, Decision by the Arbitrators of 12 July 1999, WT/DS26/ARB, para. 9; Grossen, supra note 62, at 60 et seq.
would lead to a respective category of influential non-state actors being subject only to relative international legal obligations towards those states and international organizations that have not rebutted the presumption – a, from the point of view of legal certainty, undesirable consequence being for quite some time critically discussed especially in connection with the constitutive doctrine of the recognition of states.\(^{69}\) Rather, in order for the presumption to be rebutted, it is necessary to demonstrate the existence of a respective normative expression of the international community as a whole\(^{70}\) or at least a sufficiently uniform practice of states and international organizations. In so doing, this approach also corresponds to the normative structure of current international law by adequately taking into account the above mentioned perception – increasingly being emphasised in the legal literature – that the law-making processes in the international system, by focussing the practice of the international community as a whole, are more and more independent of the will and interests of individual states.\(^{71}\)

Indeed, it has been frequently pointed out in the legal literature that the processes of globalization have lead to an increasing loss by states of their previously held ability to control and channel these processes due to a growing lack of steering capacity.\(^{72}\) Nevertheless, the option of rebutting the presumption has to be regarded as a currently still necessary concession to the important position of states in the international system and the resulting potential of these actors to influence, to a certain extent, the granting of legal personality under international law. However, it should be emphasized that this option accorded to states is also merely based on their currently de facto powerful position in the international system of today, and is not an inalterable feature of the international legal order itself.\(^{73}\)

Yet, also this possibility of rebutting the presumption in favour of the existence of international legal obligations is, again in light of the purposes pursued by the international legal order, not in the absolute discretion of states and international organizations. They would subject

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\(^{69}\) See thereto, e.g., Jennings/Watts, supra note 16, at 133; Brownlie, supra note 16, at 88; Dahm/Delbrück/Wolfrum, supra note 15, at 193 et seq.

\(^{70}\) On the perception of the will of the international community as a possible normative source of international law see only recently Tsagourias, ‘The Will of the International Community as a Normative Source of International Law’, in I. F. Dekker and W. G. Werner (eds), supra note 55, at 97 with further references.


\(^{73}\) On the “false intellectual prison” caused by the assumption “that it is simply a matter of fact that the world consists of states” see already Lim, supra note 27, at 63; W. Wengler, Völkerrecht, Vol. I (1964) 163 et seq.; Higgins, supra note 27, at 49 et seq.; and as early as the beginning of the 1930th Scheuner, ‘Staat und Staatengemeinschaft’, 5 Blätter für Deutsche Philosophie (1931/32) 255, at 269.
themselves to the prohibitions of abuse of rights as well as of *venire contra factum proprium* if they would release a category of de facto powerful actors from the *prima facie* existing obligations to contribute to the promotion of community interests, even though such a discharge jeopardises the effective fulfilment of the central aims – as being recognized by the international community as a whole and necessary for its continued existence – of the international legal order. Therefore, states and international organizations only enjoy a limited discretion in their decision whether to rebut the presumption by being required to undertake a careful assessment of the possible adverse consequences for the promotion and protection of global public goods. 

**B. Distinction from Previous Criticism Towards the Traditional Understanding of International Legal Personality**

Taking into account the increasing inadequateness of the currently still predominant approach to international legal personality, it is hardly surprising that the traditional conception has already for quite some time met with substantial criticism in legal literature. For example, it has been suggested in this connection to set the term “international legal person” and the resulting distinction between subjects and objects aside and instead – thereby including non-state actors such as multinational corporations and NGOs – to refer to “participants” in the international system, to actors within a “constitutional approach to international law”, or to “constitutional

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74 Generally on these doctrines see, e.g., H. Lauterpacht, *The Function of Law in the International Community* (1933) 286 et seq.; Taylor, ‘The Content of the Rule Against Abuse of Rights in International Law’, 46 *BYIL* (1972/73) 323.


78 See especially Higgins, *supra* note 27, at 49 et seq. (“Finally, the whole notion of ‘subjects’ and objects has no credible reality, and, in my view, no functional purpose. We have erected an intellectual prison of our own choosing and then declared it to be an unalterable constraint. […] But I believe that there is room for another view: that it is not particular helpful, either intellectually or operationally, to rely on the subject-object dichotomy that runs through so much of the writings. […] Now, in this model, there are no ‘subjects’ and ‘objects’, but only participants. Individuals are participants, along with states, international organizations […], multinational corporations, and indeed private non-governmental groups.”) (italic emphasis in the original); as well as Arzt/Lukashuk, *supra* note 19, at 62 et seq.
subjects” of a variety of emerging “civil constitutions”. These approaches are motivated, *inter alia*, by “the necessity of an extension of constitutionalism beyond purely intergovernmental relations” because of “the massive human rights infringements by non-state actors”, or by the desire to “avoid the intensely debated but largely sterile question as to whether or not NGOs or transnational enterprises have emerged as new subjects within the international legal order”.

All of the just mentioned concepts have in common that they are striving for an almost complete renunciation of the concept of international legal personality. By contrast, the subjects doctrine argued for in this article – while retaining the established terminology and resulting only in a partial deviation from the traditional approach, namely with regard to the international legal obligations of influential actors in the international system – finds its normative basis in the concept of presumptions that is, as shown above, in general a well-recognized methodological component of the current international legal order.

**C. Discussion of Possible Objections to this New Subjects Doctrine**

In anticipation of possible objections, it first has to be emphasised that this new subjects doctrine does not run contrary to the – for convincing reasons generally held – perception of the necessity to base the methodology of international legal personality on a realistic approach not being influenced in any way by “wishful thinking”. Rather, it should be noted that the currently predominant view with regard to the prerequisites of international subjectivity itself – contrary to its assertion in theory that it solely takes into account the explicit recognition by states through the granting of specific rights and obligations under international law to the entity in question – in practice frequently does not go without precisely the same principled considerations about the central purposes of the international legal order and the importance of de facto influence in the international system that also constitute the basis of the new approach argued for in this article.

This discrepancy between theory and practice is for example reflected in the argumentation of the International Court of Justice and an increasing number of legal scholars on the issue of whether international organizations are bound by general rules of international law such as the protection of human rights. In the absence of a sufficient degree of normative recognition by the international community with regard to the imposition of respective obligations, recourse has frequently been taken to the purposes pursued by the international legal

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79 Thürer, *supra* note 44, at 51 *et seq.*


81 Thürer, *supra* note 80, at 7.

82 Thürer, *supra* note 44, at 53; see also, e.g., Herdegen, ‘Discussion’, in Hofmann (ed), *supra* note 44, 63, at 64 (“As to the multinational, transnational enterprises, I sympathize with Professor Thürer’s concept that we should approach these phenomena with a more flexible view of a legal community, that it is not always necessary to harp on legal personality under public international law.”); Wedgwood, ‘Discussion’, in Hofmann, *supra* note 44, at 93 (“First, in general, it is not clear that analytical purity about the nature of a ‘subject’ of international law will serve much point in describing the real evolution of the international system.”).

order as well as the influential position of these actors in international relations, a certain relativization of the otherwise generally accepted separate character of these entities from their member states, or the increasingly popular argumentation that whoever has rights under international law and is thus at least a derivate legal subject must automatically also have duties as well. However, since at least on the basis of a consistent application of the predominant view

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84 See only Ginther, ‘International Organizations, Responsibility’, in Bernhardt (ed), supra note 35, 1336, at 1339 (“Faced with an increasing number of international organizations executing tasks with a highly injurious potential, the international legal order needs to define responsibilities clearly.”) (emphasis added); M. Schoiswohl, Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: The Case of ‘Somaliland’ (2004) 281 (“Thus to the extent these organizations are assuming and administrating functions which bear the capacity to eventually compromise fundamental rights of individuals, they appear to be constrained by international law and its general human rights (humanitarian) obligations.”); Reinisch, ‘Securing the Accountability of International Organizations’, 7 Global Governance (2001) 131, at 136 (“strong arguments in favor of an obligation to observe customary international law may be derived from more general reflections concerning the status of the UN as an organization enjoying legal personality under international law”) (emphasis added); Bleckmann, supra note 41, at 117; Schreuer, ‘Die Bindung Internationaler Organisationen an völkerrechtliche Verträge ihrer Mitgliedstaaten’, in K. Ginther et al. (eds), Völkerrecht zwischen normativem Anspruch und politischer Realität – Festschrift für Karl Zemanek zum 65. Geburtstag (1994) 223, at 243; M. Hirsch, The International Responsibility of International Organizations towards Third Parties – Some Basic Principles (1995) 8.

85 See, e.g., recently Tomuschat, supra note 21, at 574 (“In the case of intergovernmental organizations, it can be argued that such entities are no more than common agencies of States and that hence all the commitments of their members apply to them as well.”).

86 Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, ICJ Reports (1980) 73, at 89 et seq. (“International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law”); the Dissenting Opinion of Judge Fitzmaurice in Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), ICJ Reports (1971) 220, at 294 (“This is a principle of international law that is as well-established as any there can be, – and the Security Council is as much subject to it (for the United Nations is itself a subject of international law) as any of its individual member States are.”); Eagleton, ‘International Organization and the Law of Responsibility’, 76 RdC (1950), 319, at 385 (“But where there are rights, there are also duties;”); Reinisch, ‘Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions’, 95 AJIL (2001) 851, at 858 (“A related consideration that does not focus on the powers and obligations of organizations as state creatures but, rather, on the general perception that they enjoy international legal personality leads to the same result: the United Nations – whose personality under public international law has been beyond doubt since the Reparations case – is subject to public international law precisely because it partakes of personality under this legal system.”); Reinisch, supra note 12, at 281 et seq. (“The underlying theoretical issue also appears to be largely settled by accepting that the UN as a subject of international law is subject to general international law”) (emphasis added). It should be noted that the same argumentation can be occasionally found with regard to multinational
concerning the prerequisites of international legal personality it is far from obvious that such a converse conclusion from the status of a subject of international law to the existence of specific obligations can be regarded as permissible, it is hardly surprising that this argument has already met with considerable criticism.

A further example, this time in the realm of the so-called “original” subjects of international law, is the still predominantly accepted declaratory nature of the recognition of states. In the absence of a sufficiently consistent state practice, this doctrine is also primarily based on considerations with regard to international law’s ordering and pacification functions, the necessity of a close conformity to the realities in the international system, the undesirability of normative gaps in the structure of the international legal order as well as the greater practical feasibility of the declaratory theory. The same applies to recently expressed views in legal literature to make belligerents and insurgents – in addition to their generally accepted incorporation in the legal regime of international humanitarian law – also subject to the observance of international human rights which “according to traditional wisdom, cannot be asserted vis-à-vis insurgent groups”. This possible extension of the scope of application of

corporations, see e.g., Koh, ‘Separating Myth from Reality about Corporate Responsibility Litigation’, 7 JIEL (2004) 263, at 265 (“If corporations have rights under international law, by parity of reasoning, they must have duties as well.”); Malanczuk, ‘Discussion’, in Hofmann (ed), supra note 44, 155, at 157 (“One could argue that if non-state actors have rights under international law, they must also have duties.”).

See also the respective doubts expressed by Schreuer, supra note 84, at 241; Tomuschat, supra note 21, at 573 et seq.; Reinisch, supra note 86, at 854.

See only Mosler, supra note 42, at 19 et seq.; H.-H. Nöll, Die Völkerrechtssubjektivität der Europäischen Gemeinschaften und deren Bindung an das allgemeine Völkerrecht (1986) 136 et seq.; Schmalenbach, supra note 21, at 65; as well as Klabbers, supra note 47, at 367 (“subjectivity as such does not entail any automatic rights or obligations”); and the references given by Dine, supra note 1, at 189 (“The IMF strongly rejects any claim to be directly bound by international human rights norms. Mr. Gianviti, General Counsel to the IMF argues: ‘First, at the most general level, the Fund and the Bank saw themselves (and continue to see themselves) as international organizations separate from their members, governed by their respective charters.’”).

See thereto, e.g., Jennings/Watts, supra note 16, at 129 (“state practice is inconclusive and may be rationalised either way”).

See only Dahm/Delbrück/Wolfrum, supra note 15, at 191 et seq.; Cassese, supra note 37, at 74 (“This view [the constitutive theory] is, however, fallacious because it is in strident contradiction with the principle of effectiveness whereby ‘effective’ situations are fully legitimised by international law”).

Brownlie, supra note 16, at 88 (“Constitutivist doctrine creates a great many difficulties.”); Schoiswohl, supra note 84, at 35 (“logical and practical deficiencies involving the constitutive theory”).

See thereto as well as to the problematic distinction between belligerents and insurgents Dahm/Delbrück/Wolfrum, supra note 44, at 299 et seq.; Jennings/Watts, supra note 16, at 165 et seq.; B. R. Roth, Governmental Illegitimacy in International Law (1999) 173 et seq.

international human rights law is also for the most part grounded in considerations concerning the changing factual nature of international conflicts, the need for a protection of the affected civilian population, reasons of fairness, as well as – again – the already above mentioned converse conclusion. In addition, also the argumentation that non-state terrorist groups have to be regarded as at least partial subjects of international law, thereby subjecting them to the prohibition on the use of force and thus opening the scope of application of Article 51 UN Charter, is first and foremost founded on considerations concerning the fundamental pacification functions of international law and the resulting necessity of a close conformity of this legal order to changing realities in the international system.

Finally, the existence of an international legal status of so-called “stabilized de facto regimes” is worth noticing in this context. Current legal literature on this subject almost generally recognises incorporation of these entities in the international legal order by, inter alia, extending the active and passive scope of application of the prohibition on the use of force to them. However, this argumentation is – in light of the inconsistent state practice in this

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94 Fleck, supra note 93, at 78 et seq.
95 See Fleck, supra note 93, at 78 et seq.; Tomuschat, supra note 21, at 575 et seq.
96 Tomuschat, supra note 21, at 576 (“Why should only the Government be charged with breaching human rights? Is it not a requirement of fairness to measure the behaviour of both sides by the same yardstick?”).
97 Fleck, supra note 93, at 79 (“If non-state actors have human rights, it appears logical that they also must have responsibilities, no different from the obligations insurgents have under international humanitarian law.”).
98 From the numerous literature on this issue see generally on this discussion only recently Stahn, “Nicaragua is dead, long live Nicaragua” – The Right to Self-Defence under Article 51 UN Charter and International Terrorism’, in C. Walter et al. (eds), Terrorism as a Challenge for National and International Law: Security versus Liberty? (2004) 827, at 848 et seq.; on the currently probably still predominant view that a terrorist act committed solely by non-state actors does not amount to an “armed attack” in the sense of Article 51 UN Charter see, e.g., Randelzhofer, ‘Article 51’, in Simma (ed), supra note 29, para. 34 with further references also with regard to the contrary view.
100 For a comprehensive analysis of this phenomenon see J. Abr. Frowein, Das de facto-Regime im Völkerrecht (1968); see also, e.g., Frowein, ‘De Facto Régime’, in R. Bernhardt (ed), E.P.I.L., Vol. I (1992), 966; as well as recently Schoiswohl, supra note 84, at 206 et seq.
regard\textsuperscript{102}—almost exclusively based on principled considerations concerning the pacification functions of international law,\textsuperscript{103} the need for the protection of the affected population,\textsuperscript{104} the ordering function of the international legal order,\textsuperscript{105} the “needs of international intercourse in the various stages of development”,\textsuperscript{106} logical reasoning,\textsuperscript{107} the principle of effectiveness,\textsuperscript{108} the “process of analogy”\textsuperscript{109} or “practical necessity and pragmatism”\textsuperscript{110} The same argumentation is taken recourse to with regard to the international responsibility of de facto regimes\textsuperscript{111} that is also based on considerations with regard to, \textit{inter alia}, the effective exercise of the ordering functions of the international legal order,\textsuperscript{112} “commonsense”,\textsuperscript{113} and the fact that international law does not explicitly exclude de facto regimes from international responsibility.\textsuperscript{114} Finally, quite similar

\textsuperscript{102} See thereto Frowein, \textit{supra} note 100, at 66; Hillgruber, \textit{Die Aufnahme neuer Staaten in die Völkerrechtsgemeinschaft} (1998) 754 \textit{et seq}.; Schoiswohl, \textit{supra} note 84, at 266.

\textsuperscript{103} Frowein, \textit{supra} note 100, at 66; Verdross/Simma, \textit{supra} note 15, at § 406; Dahm/Delbrück/Wolfrum, \textit{supra} note 44, at 304; Bothe, ‘Friedenssicherung und Kriegsrecht’, in Graf Vitzthum (ed), \textit{supra} note 19, 589, at 599.


\textsuperscript{105} Frowein, \textit{supra} note 100, at 21; H. Krieger, \textit{Das Effektivitätsprinzip im Völkerrecht} (2000) 94.


\textsuperscript{107} Schoiswohl, \textit{supra} note 84, at 210 (“On the one hand, there is no reason why \textit{de facto} regimes which effectively govern a territory without engaging in warfare against the ‘parent’ State should enjoy less rights than one in combat. The rules of international humanitarian law applicable to internal armed conflicts in this respect furnish \textit{de facto} regimes with (objective) international legal personality to the extent determined by their rights and obligations. It would appear somewhat paradox if this (limited) international legal personality should suddenly vanish once the bloodshed has given way to protracted political negotiations or even peaceful co-existence based on mutual sufferance.”) (italic emphasis in the original).


\textsuperscript{109} Crawford, \textit{supra} note 16, at 79 (“The process of analogy from legal rules applicable to States is quite capable of providing a body of rules applicable to non-State entities.”); see also Crawford, \textit{supra} note 52, at 145.

\textsuperscript{110} Schoiswohl, ‘\textit{De Facto} Regimes and Human Rights Obligations – The Twilight Zone of Public International Law?’, 6 \textit{Austrian Review of International and European Law} (2001) 45, at 52; Schoiswohl, \textit{supra} note 84, at 209.

\textsuperscript{111} See thereto only Frowein, \textit{supra} note 100, at 71 \textit{et seq}.; Balekjian, \textit{supra} note 36, at 150 \textit{et seq}.; Schoiswohl, \textit{supra} note 84, at 256 \textit{et seq}.

\textsuperscript{112} Frowein, \textit{supra} note 100, at 83; Balekjian, \textit{supra} note 36, at 151.

\textsuperscript{113} S. Pegg, \textit{International Society and the De Facto State} (1998) 192 (“Commonsense leads one to think that the best way to ensure compliance with such [international] standards is not to cast the \textit{de facto} state as far as possible into the juridical equivalent of outer darkness.”) (italic emphasis in the original).

\textsuperscript{114} Schoiswohl, \textit{supra} note 84, at 266 (“Notwithstanding international law’s reluctance to explicitly incorporate \textit{de facto} regimes into its framework, it is to the same extent reluctant,
considerations can be found concerning the recently articulated view that these entities are bound by international human rights, an argumentation that has been equally grounded on the ordering function of international law, logical reasoning as well as generally "the inexhaustible argumentative treasure of reason and practical necessity". However, also this line of reasoning with regard to the international legal personality of de facto regimes, which is hardly compatible with the traditional prerequisites of international subjectivity as constantly emphasised in theory, has on the basis of a consistent application of the predominant view understandably also received sporadically quite strong opposition.

To summarize, these more or less randomly chosen examples illustrate the considerable discrepancy between "Rome" and "Home" in the currently still dominant approach to international legal personality. In addition to the need for a new subjects doctrine arising from this growing incongruity between theory and practice, this overview shows that the new approach argued for in this article cannot simply be dismissed as being merely "wishful thinking". Rather, it should be regarded as an attempt to overcome the dogmatic problems that

particularly in an area of such major concern to human beings, to explicitly exclude them from any 'responsibility' for the harm inflicted.”) (italic emphasis in the original).

115 See thereto Schoiswohl, supra note 84, at 214 et seq.; Schoiswohl, supra note 110, at 45 et seq.
116 Schoiswohl, supra note 84, at 282 et seq. (“it is necessary to take recourse to the somewhat vague construction of ‘implied mandate’ to determine the functions of de facto regimes – and thus the extent of limited personality ‘opposable’ to international legal obligations. However, if one is willing to accept that de facto regimes come into legal ‘being’ as a matter of fact and that they fulfill specific functions to accommodate the needs of the international community, consisting of the necessity to maintain some kind of structure responsibility for day-to-day order as well as the capacity of meeting the interest of the international society (other States), it appears inevitable to simultaneously acknowledge their limited international legal personality and thus their legal capacity to be correspondingly bound to international law.”) (italic emphasis in the original).

117 See the judgment of the United States Court of Appeals (Second Circuit) in Kadic v. Karadzic; Doe I and Doe II v. Karadzic of 13 October 1995, reprinted in: 104 I.L.R. (1997) 149, at 158 (“It would be anomalous indeed if non-recognition by the United States, which typically reflects disfavor with a foreign regime – sometimes due to human rights abuses – had the perverse effect of shielding officials from liability for those violations of international law norms that apply only to state actors.”); the same line of reasoning is occasionally applied with regard to multinational corporations, see Kamminga, supra note 20, at 425 et seq. (“It would be an anomaly if it continued to be accepted that companies, unlike other non-state actors, should have only minimal obligations under international law. Why should individuals and armed opposition groups have fundamental international legal obligations while companies that may be much more powerful have practically none?”).

118 Schoiswohl, supra note 84, at 283.
the traditional understanding is apparently confronted with, thereby taking – however, on the basis of a consistent theoretical framework – recourse to precisely the same principled considerations about the central purposes of the international legal order and the importance of de facto influence in the international system upon which also the predominant doctrine in practice frequently at least implicitly relies in determining the circle of subjects of international law and their respective obligations. In other words, the present author is far from being opposed to, inter alia, subjecting international organizations, belligerents and insurgents, de facto regimes – and, of course, multinational corporations – to international legal obligations with regard to the promotion and protection of human rights. However, it is submitted that this undertaking requires bidding, at least a partial, farewell to the traditional state-centric approach to international legal personality and consequently relying on a reconceptualization of subjects doctrine in the form as outlined above.

With regard to further possible objections to this new subjects doctrine, it has to be pointed out that this approach is not confronted with the problem of being based on an insufficiently determinable, because not objectively identifiable, prerequisite for the presumption by taking recourse to the terms “de facto influential or de facto powerful position” in the international system. Admittedly, the determination of a sufficient degree of influence of a respective actor to give rise to the presumption cannot simply be based on the famous benchmark “I know it when I see it” originally coined in a totally different context. Such an approach is already prohibited because of the legitimate interests of the possibly affected entities in question with regard to an appropriate level of legal certainty concerning their normative obligations under international law. However, it is submitted that the degree of influence that a specific category of actors is able to exercise in international relations can to a considerable extent be measured on the basis of objective criteria such as the extent of direct or indirect participation in the international law-making and law-enforcement processes, economic power, the de facto ability to positively contribute to the realization of community interests as well as the possible negative effects of the actor’s activities on the promotion and protection of global public goods. The remaining amount of textual indeterminacy then follows – however, taking also into account the possibility of a subsequent concretization of the terms though practice and legal literature only for a transitional period – directly from the limited linguistic and regulatory capacity of general and abstract rules inherent to every legal system and thus also a well-known phenomenon in international law. Furthermore, it has to be recalled that also the traditional approach to international legal personality is in many situations confronted with a certain amount of textual indeterminacy. One only needs to mention the difficulties connected with the ascertainment – on the basis of the

121 For a considerably stronger characterization of these dogmatic difficulties see recently Klabbers, supra note 47, at 354 (“Either way, what emerges is a picture of conceptual helplessness: […].”).
122 See the Concurring Opinion of Justice Potter Stewart in the judgement of the U.S. Supreme Court in Jacobellis v. Ohio, 378 U.S. 184, 197 (1964).
declarative theory of recognition – of whether an entity fulfils the prerequisites of statehood.\textsuperscript{125} In addition, the same problems arise when determining the existence of “stabilized de facto regimes”\textsuperscript{126} or insurgents.\textsuperscript{127}

Finally, it should be emphasised that the new approach argued for in this article is neither merely a specification of the, for valid reasons disputed, principle of \textit{ex facto ius oritur},\textsuperscript{128} nor is it relinquishing the important differentiation between the levels of the “being” and the “ought to be”.\textsuperscript{129} Admittedly, this subjects doctrine is – due to its emphasis on the importance of de facto power in international relations and the need for a close conformity to the changing realities in the international system – governed by a considerable closeness to the sociological school of international law.\textsuperscript{130} This characterization, however, finds itself in full conformity with the prevailing perception in legal literature – contrary to the concept of “pure normatism” prominently being represented by Hans Kelsen\textsuperscript{131} – with regard to the generally increasingly important role of an interdisciplinary approach to international legal methodology.\textsuperscript{132} Based on

\section*{Footnotes}
\begin{itemize}
\item[\textsuperscript{125}] See, e.g., Frowein, \textit{supra} note 100, at 966 (“no possibility exists of clarifying whether entities have the quality of States although they are not recognized as such”); Jennings/Watts, \textit{supra} note 16, at 132 (“There is often no sharp line to be drawn between statehood and its absence.”); Cassese, \textit{supra} note 37, at 73 (“It is, therefore, difficult to ascertain in practice whether a State fulfils the requisite conditions.”); Klabbers, \textit{supra} note 47, at 352 (“While most will agree that states are subjects of international law, it is not entirely clear what exactly a state is“); Schoiswohl, \textit{supra} note 84, at 11 (“One could thus question whether there existed a legal concept of statehood at all, \textit{i.e.}, whether statehood is determined by law and does not vary according to the context of each individual case.“).
\item[\textsuperscript{126}] On these problems see especially Frowein, \textit{supra} note 100, at 67 \textit{et seq.}; Schoiswohl, \textit{supra} note 84, at 208 \textit{et seq.}
\item[\textsuperscript{127}] See thereto only Dahm/Delbrück/Wolfrum, \textit{supra} note 44, at 301 \textit{et seq.} with further references.
\item[\textsuperscript{128}] On the controversy over the applicability of this principle in international law see, e.g., Balekjian, \textit{supra} note 36, at 8 \textit{et seq.}
\item[\textsuperscript{129}] With regard to the importance of this distinction in the perception of the international legal order see only Simma, \textit{supra} note 46, at 339; Delbrück, ‘Völkerrecht und Weltfriedenssicherung’, in D. Grimm (ed), \textit{Rechtswissenschaft und Nachbarwissenschaften}, Vol. II (1976) 179, at 191.
\item[\textsuperscript{131}] See, e.g., H. Kelsen, \textit{Reine Rechtslehre}, 2nd ed. (1960) 1 \textit{et seq.}; H. Kelsen, Hauptprobleme der Staatsrechtslehre entwickelt aus der Lehre vom Rechtssatze (1911) 42 \textit{et seq.}
\item[\textsuperscript{132}] See only Verdross/Simma, \textit{supra} note 15, at § 22; Simma, ‘Völkerrechtswissenschaft und Lehre von den internationalen Beziehungen: Erste Überlegungen zur Interdependenz zweier Disziplinen’, 23 \textit{Österreichische Zeitschrift für öffentliches Recht} (1972) 293, at 300 \textit{et seq.};
\end{itemize}
these considerations, it has furthermore already been pointed out more than forty years ago by, for example, Hermann Mosler that such an approach of “methodological pluralism” is also essential when dealing specifically with subjects doctrine in international law.\(^\text{133}\)

Nevertheless, the subjects doctrine suggested in this article differs considerably from the frequently criticised pure sociological approach to international legal personality that exclusively relies on the factual power or functions exercised by the respective actor in international relations.\(^\text{134}\) It is based on a normatively more differentiated conception than the sociological approach by constituting only a presumption in favour of international legal personality that can be rebutted in accordance with the above mentioned prerequisites. The international subjectivity of the respective actor thus not merely arises from its de facto powerful position or function in the international system. Rather, what is equally necessary for the continued existence of the entity’s subjectivity is – as a normative prerequisite – the legally relevant inactivity of states and international organizations with regard to the rebuttal of this presumption. Only this additional normative element, the legally relevant omission of states and international organizations, combined with the factually influential position in the international system, constitute the basis of the respective actor’s continued international legal subjectivity in the sense of being obliged to contribute to the promotion of community interests. Therefore, as mentioned above, it is far from being merely the well-known “normative force of the facts”\(^\text{135}\) that forms the underlying perception of this new theoretical framework for the identification of international legal obligations of influential actors in the international system.

To summarize, it is submitted that this new concept concerning the establishment of international legal personality – which would in the realm of non-state actors currently apply especially to multinational organizations, but also to a number of NGOs – is clearly more in conformity with the evolving image of an international legal community which has as its central aim the civilization of international relations and the promotion of global public goods to the benefit of all.


\(^{133}\) Mosler, \textit{supra} note 42, at 16 et seq.


\(^{135}\) See thereto especially G. Jellinek, \textit{Allgemeine Staatslehre}, 3rd ed. (1914) 337 et seq.
5. Conclusion

In concluding, the question raised in the introduction with regard to the normative integration of multinational corporations into the international legal order can – taking recourse to this new subjects doctrine – be answered in the affirmative. In an economic as well as political sense, these non-state actors are among the most influential participants in the current international system, thereby being endowed with a considerable potential to positively contribute to, but also to frustrate the promotion and protection of global public goods. Thus, in light of the central aims pursued by the international legal order and because of the need of a close conformity of international law to the changing realities in the international system, a presumption – until today not rebutted by states and international organizations – arises in favour of multinational corporations being subject to international legal obligations to contribute to, inter alia, the promotion and protection of human rights, core labour and social standards as well as the environment.

While reaching this conclusion, it is of course not possible to completely close one’s eyes to the fact that the existence of such a rebuttable presumption has, at least so far, not been articulated in the practice of the dominant state and non-state actors on the international scene, a not so minor detail that raises suspicion as to whether the approach suggested here has to be merely considered as belonging to the realm of so-called “book law”. In response to this apparently at first sight quite proximate accusation, three points should be made: Firstly, the new subjects doctrine is based on the primary purposes pursued by international law, the necessity of a close conformity of this normative system to the realities in international relations, and the concept of presumptions, all of them being frequently articulated as important components of the current international legal order. The approach argued for in this article is thus in principle firmly grounded in the framework of international law. Secondly, it is generally accepted that international legal scholarship has – in addition to analyzing and conceptualizing the actual practice as well as making suggestions with regard to the future development of international law – also the function, with regard to the realm of lege lata, of carrying over the normative ideas enshrined in positive rules of international law to other areas within this legal system. And finally, especially when taking into account that this new subjects doctrine is in conformity with the central aims of the international legal order, it seems to be not too impudent to recall the statement made by Immanuel Kant in his 1793 essay “On the Common Saying: ‘This May Be True in Theory, but It Does Not Apply in Practice” specifically with regard to “the relationship of theory to practice in international law”:

136 On the term “book law” see especially Oppenheim, ‘Die Zukunft des Völkerrechts’, in Festschrift für Karl Binding zum 4. Juni 1911, Vol. I (1911) 141, at 147 and 191; note however, that quite to the contrary this term has recently also been taken recourse to for the characterization of the view that non-state actors are not normatively incorporated in the current international legal order, see Spiermann, ‘The LaGrand Case and the Individual as a Subject of International Law’, 58 Zeitschrift für öffentliches Recht (2003) 197, at 198 (“The spell of the Buchrecht […] in which, therefore, the core building blocks are books citing books – has been surprisingly difficult to break, and nowhere more enduring than in respect of non-state actors in international law.”) (italic emphasis in the original).

I therefore cannot and will not see it [human nature] as so deeply immersed in evil that practical moral reason will not triumph in the end, after many unsuccessful attempts, thereby showing that it is worthy of admiration after all. On the cosmopolitan level too, it thus remains true to say that whatever reason shows to be valid in theory, is also valid in practice.  

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