Legal status of humankind in International law

I. Sources of International law where humankind is mentioned

There are numerous international treaties and decisions of the International Court which mention humankind, mankind, or humanity. We will consider these terms with identical meaning which will be further clarified.
In the Preamble of Antarctic treaty is used the formulation "interest of mankind", respectively the Outer Space Treaty (OST) mentions "common interest of all mankind" in its Preamble. The OST also postulates in article 4 that "States Parties to the Treaty shall regard astronauts as envoys of mankind". In the Moon agreement and the UN convention on the law of the sea we find the formulation "common heritage of mankind". The treaty of non-proliferation of nuclear weapons is created "considering the devastation that would be visited upon all mankind by a nuclear war". These are several prominent examples of international legal institutes which include mankind or humankind.
The use of the terms humankind, mankind and humanity is predominantly in the preambles of the treaties. The role of the preamble in an international treaty is thoroughly substantiated in Vienna at the conference of preparing the Vienna convention on the law of treaties and in Article 31(2) of the convention was included the text "The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes". We have to add that the terms which are used in the preamble of an international treaty indicate to the purpose of the treaty and the general aim of the contracting states.
It will not be unfair to conclude that international law acknowledges humankind at least as a group entity with its interest.

The repeatedly stated position of the International Court of Justice that the crime genocide "shocks the consciousness of mankind … and is of great loss of mankind", is another indicator that international law also acknowledges the fact that the deliberate attempt of destruction of ethnic, religious or racial groups of people reflects upon humankind.
This article will try to unveil in concise what is "humankind" and how it is perceived by international law.

II Legal theories of humankind as subject of international law

In the legal doctrine, there are authors that consider humankind as subject of international law. A.A.Cocca gives his interpretation of the norms in the Space treaty and says that "the international community from now on has recognized the existence of a new subject of international law namely Mankind itself, and has created a *jus commune humanitatis*[1]."

A.A.C.Trindade refers to humankind as a subject of international law and speaks about international law for humankind.[2]
However, the majority of the legal doctrine does not consider humankind as a subject of international law, arguing that "mankind is not institutionalized as subject of international

[1] See The Common Heritage of Mankind Doctrine and Principle of Space Law – an Overview. IISL Coll. Proceedings 1986 and 'Mankind as new legal subject: A new juridical dimension recognized by the United Nations 1970"

[2] International law for humankind: towards a new jus gentium (I) : general course on public international law; Part IV chapter XI Humankind as subject of international law.

law" and there is no authority or institution which represents humanity[3]. These authors do not refuse to consider humankind as an entity, as a group which comprise of all human-beings but is not acknowledged by international law as a subject.

The basic prerequisites of being a subject of law are the capacity of acquiring rights and duties and the ability to exercise them. Presently, this is not met for humankind, it doesn't have an authority that represents humanity and there is no institution which protects the interest of humankind as one whole.

There are authors, me among them, that consider the possibility of recognizing humankind as subject of international law in the future. In other words, humankind is in the process of acquiring the status of a subject of international law.

Speaking of the origin of human rights, N. Nenovsky made a point that

„ ...the common human interest and values have become of a paramount importance, with a priority over all else. Their subject – the humankind, is self-aware more and more as one whole. Through the activities of nations, of numerous different movements against the war, for protecting the environment, for economic, social and cultural cooperation ...humankind manifests itself not as an abstraction but as a vivid reality, which starts to think itself and to protect its interest[4]."

I agree with N.Nenovsky and share the view that humankind is a "vivid reality" which has its own interest.

M. I. Niciu stated his opinion that:

"At present we are at the beginning of the process of the assertion of mankind as a subject of public international law, nevertheless mankind does not yet meet all the requirements for becoming a subject of international law[5]."

In my opinion, presently the necessary requirements are met and it is a matter of political ingenuity and international coordination for this to happen.

III The egregor of humankind

In the present, there is no legal definition of mankind, humankind or humanity. For achieving a clearer vision of the object of research - humankind, we will "borrow" a term from philosophy which was introduced by Daniil Andreev and further developed by Avessalom Podvodny, for denotation of all kind of group entities. This term is "egregor"[6]. Every group whether it is created as a juridical body or not, is a manifestation of a particular group entity which is called egregor.

According to etymology humankind is the human genus or the human race (*humanus* – Latin). In respect of describing it as a group entity, more accurate will be the following definition:

Humankind is a primary egregor that comprises all human-beings that were, are or will be born.

This short definition gives the basic characteristics of humankind as an object of research. The egregor of humankind is primary because before a person to be a citizen of a state, classified by gender, race, ethnic identity, religious and political beliefs, he/she is a human-being. This means that in the hierarchy of all egregors that people are connected with, above all stands the egregor of humankind.

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[3] .*O'Connell*: International Law. London–Dobbs Ferry N.Y. 1965. Vol.I. p.89. *G. Schwarzenberger*: A Manual of International Law (VI.ed.) London 1976, p.42. *J. G. Starke*: Introduction to International Law (VIII.ed.) London 1977, p.66. etc)

[4] Human rights chapter II New realities of the world – new approaches towards human rights p.31

[5] Space Law and the Development of Public International Law. Revue Roumaine d'études international, XVIII. Année 6/74, p. 521. – Drept international public – Vol.I. Cluj-Napoca 1975, p. 89.)

[6] For more information on the meaning of egregor "Знаки на пути", Авессалом Подводни

Important conclusion of understanding humankind as a separate group entity is that the total sum of all nations *are not* humankind, *can not* protect interest of humankind and *does not* have the authority to represent humanity as a whole. Even more, the interests of other egregors should be in compliance with the interest of humankind. This opinion is shared by *K.* Tatsuzawa who has the position that

"State or group of states can't represent the will of all mankind. Mankind is not yet institutionalized as such. It remains only a philosophical concept in the actual stage of human progress." [7] In conformation of the last conclusion, is the fact that people without citizenship are part of humankind and there isn't any dependence between citizenship and the fact that a human-being is part of humanity.

In this respect the definition that humankind comprises all human-beings means that every human has a bond with the egregor of humankind through which this person is part of humanity. For theoretical precision we call this bond *humanship*. The humanship would be the basis for argumentation of the united humankind.

Characteristics of humanship

The humanship is a genetic bond between a human-being and the egregor of humankind. It exists in the moment of birth of a human-being as he/she is a biological part of the human family.

If humankind is constituted as a subject of law, then humanship would have legal connotation. Till this glorious moment, we can offer the basic philosophical characteristics of humanship.

Through the humanship a person is directly related to humankind and his/her human rights descend from the egregor of humankind. This view completely corresponds to the contemporary human rights law and complements it by describing the source of human rights – humankind and their foundation is the humanship, or simply the fact that a person is a human-being.

The humanship can not be given or taken by an authority, a state or any other organization. It exists for all the time a person is living. Even more, the individual can not renounce this bond. The humanship is manifested through the process of birth of a human-being. It can not be given on the grounds similar to naturalization as the citizenship.

Comparing humanship and citizenship, we can conclude that there are significant similarities and great differences. Among the first is that both represent bonds of an individual with group entities – citizenship with state; humanship with humankind; both provides with specific rights and duties.

The basic difference, in present, is that citizenship is acknowledged by law and it is a juridico-political bond between a person and a state which is subject of international law and humanship is a bond between a human-being and the humankind, a group entity which is not recognized as subject of international law yet.

Major distinction of the nature of these bonds is that humanship is genetic type of connection which can not be removed while citizenship is a secondary type of connection which is based on ethnicity, territorial principle or will of the state.

Precisely through the existence of the bond of humanship a person could influence humankind and indirectly other human-beings and visa versa. Once more, through the existence of humanship a human-being is aware of the fact that he/she is part of the human family and cares for people of other states, ethnic background, religious belief etc. In my opinion, the awareness of the personal humanship is the main phenomenon that causes humanization of international law in the second part of the XX century and fuelled principles like international

[7] *K.* Tatsuzawa: Political and Legal Meaning of the CHM, page 86

solidarity. The awareness of a person of his/her individual humanship bond with the humankind is the cause for the conscious effort to protect his/her human rights and the intention to serve humankind by promoting human rights to other human-beings.
The concept of humanship is complementary to the opinion of Trindade that

"…the universal juridical conscience has evolved towards a clear recognition of the relevance of cultural diversity for the universality of human rights, and vice-versa. Additionally it has evolved toward the humanization of International Law, and the creation, at this beginning of the XXI century, of a new jus gentium, a new International Law for humankind, - and the aforementioned triad of UNESCO Conventions (of 1972, 2003, and 2005) are in my view one of the many contemporary manifestations of the human conscience to this effect".[8]

Humankind comprises of the people that were born on the Earth, those that are living in the present and also those that will be born in future.
Despite the fact that the Latin origin of the word *homo* is related to the word *humus* which means "earth" and "human-beings" literally means "earthly-beings", in future, people might be born not only on the Earth. Such a possibility to some extend exists nowadays, considering the fact that people are living in the International Space Station. In theoretical plain, there is no doubt that people that would be born outside the Earth are part of humankind. The criterion is that the person is born from another human-being, which means that there is no territorial principle of restricting humankind.
As pointed, humankind is not limited in space and it is also not limited in time. People of the past are part of the humankind, as well as our contemporaries and the future generations. An important note is that future generations are considered as part of humankind, because this broads the prospect of understanding what is the interest of mankind. It will create bridges between the past, the present and the future. The continuity for the future generations and reverence to the people from the past is a key principle in the development of fields like environmental protection, planetary resource management and preservation of cultural and natural heritage of the world.

IV The necessity of recognizing humankind as subject of international law

The complexity of issues that modern time brought requires searching for effective legal instruments which will at the same time meet the challenges, resolve the problems and ascend the whole human civilization.
There are at lot of reasons to substantiate the necessity of recognizing humankind as a subject of international law and constitute an authority which protects the interest of mankind. Here will be mentioned only three of them.

The first reason is the failure to properly regulate the **human cloning**. This subject brought tremendous contrariety between states, religious institutions and scientific communities. Science has been developing in many ways, including biotechnology and biomedicine.

In regards of the cloning of human-beings, in present, different states have their concerns and political positions. In March 2005 the General Assembly of UN presented the "declaration on human cloning", by which "Member States were called on to adopt all

[8] A.A.Cançado Trindade, "General Course on Public International Law - International Law for Humankind: Towards a New Jus Gentium", Recueil des Cours de l'Académie de Droit International de La Haye (2005),

measures necessary to prohibit all forms of human cloning inasmuch as they are incompatible with human dignity and the protection of human life." The declaration was approved only by 84 states. Even if this act was approved by all member states of the UN it will still be a non legally binding act, as it is a declaration and may only have political value.

This unsuccessful attempt to regulate the delicate sphere of human cloning and to achieve a universal legally binding act, has lead to an attempt by international organizations and states to legislate on regional and state level everywhere in the world. In April 1997 in Oviedo Spain, the Council of Europe have adopted the "Convention on Human Rights and Biomedicine" followed by the "Additional Protocol (Explanatory Report) to the Convention on Human Rights and Biomedicine". The convention was signed by 21 member states.

The U.S. Congress has considered the passage of legislation that could ban human cloning but this legislation is not a fact at present (July 2009). The failure of the United States to regulate human cloning on federal level resulted to partial regulation of several states in USA.

In South America initial legislation steps have been taken from Brazil in 1997, followed by Peru, Argentine and Columbia.

In the Africa continent only South Africa has legislation on human cloning and partially Tunisia.

Here we are not going to analyze the nature of human cloning with its positives and negatives for human life, nor commenting the positions of scientific community, states, international organization, or religious institutions. However, we have to stress that it is crucial to have an effective universal regulation of human cloning and it is entirely in the interest of humankind. Current sporadic, controversial legislation undertaken by states and international organizations leaves the door open for unethical experiments with embryos and all kinds of arbitrary actions.

The present legal situation displays that nations and current international organizations do not have the effective instruments of fully protecting the interest of humankind and there is a growing need of an authority that will represent humankind as one whole.

The consequences of refusing to adopt a common approach towards human cloning which will take into consideration human dignity and scientific development, both in the interest of humankind, would be disastrous. Even if there is just one state, which supports or allows reproductive human cloning without preconditions, in near future this will create the possibility of the state to support unethical attempts to "breed selected individuals" according to the desire of the government, companies or individuals. This would place humankind in the position of obeying the state and would have a disastrous effect on the whole humanity. The biotechnological possibility of "occurring" of humans that are cloned is open and the status of such people should undoubtedly be as part of the humankind.

Secondly, through acknowledging humankind as a subject of international law, the **promotion of human rights** would be elevated to a level where every human-being would receive protection from violation of his/her rights higher than the state could provide. This would be achieved if the authority uses common criteria for monitoring what is every state, which recognizes the authority, doing in implementing the laws regarding human rights. Protection of rights of human-beings is part of the interest of humankind and would guarantee that human rights will not be sacrificed to state interests of national security or ethnic-cultural peculiarities, for example.

In this way, an independent third part would be authorized for keeping responsible the states to abide the conditions they are obliged how to treat human-beings. This would avoid any state or international organization to absorb the moral duty to "spread human rights" in the world, the way they are seeing it should be. If humankind is acknowledged as subject of international law and an authority of humankind is created, this would place human rights on

the top of priorities for the international community higher than the interest of state or group of states, higher than the customs of ethnic groups.
Contemporary international human rights law includes regional international courts to enforce it – European Court on Human rights and Inter-American court on human rights, respectively the European Convention on Human rights and the American Convention on the human rights.
If authority of humankind is created, then a universal international court should be institutionalized too. These would be universal mechanisms for protection and enforcement of human rights law and a new pattern of all states to respect human dignity.

The third reason why it is important to recognize humankind as subject of international law is the need for **Earth and outer space resource management in the interest of humankind**.
The authority of humankind would provide a universal vision of a human in the world and of a world to the human. The resources of the planet are limited and those which are common heritage of mankind should be managed in the interest of all human-beings. Even though that International Seabed Authority was created to act on behalf of mankind as it is postulated in article 137 p.2 "All rights in the resources of the Area are vested in mankind as a whole on whose behalf the Authority shall act", in fact the purpose of this authority is to administrate these resources for the member states of the authority (the states that ratified the Sea convention). As was mentioned above humankind is different from union of states. The interest of humankind is different from the interests of all states in the world. For example, if a state receives a just part of the resources that are common heritage of mankind, this does not mean at all that these resources will be justly managed and shared from the government of that state to its citizens.
K. Baslar has concluded "*If strategic resources like oil, fresh water or food stocks are declared as common heritage of mankind, it will be a giant leap for mankind in the search of global, planetary, or intra-and intergenerational equity*" [9]
In the beginning of announcing the concept of common heritage of mankind, the protagonists of that idea like Schachter, Pardo and Cocca included five principles how to develop and implement the concept. These principles are (i) non-exclusive use or non-appropriation by any nation; (ii) equitable system of management where all users have the right to share (iii) active sharing of benefits and transfer of technology; (iv) peaceful uses of the area that is common heritage of mankind; (v) sustainable management for future generation.
In present, the developed nations interpret the concept of common heritage of mankind as regime *res communis* because this interpretation allows every state to have access, to explore and to exploit the territory that is common heritage of mankind, but in fact only technologically developed states are capable of doing that.
The institutionalization of an authority of humankind to protect the interest of humanity and not compulsory that of the nations would provide better implementation of the above principles. In the same stream of thought, Baslar suggests that "protection and if possible exploitation of global commons are controlled by planetary organization for the benefit of mankind. This equally means that states in whose territories common heritages are situated are accountable before the international community."[10]
The resources of our planet and outer space need to have functioning authorities but they should be governed in the interest of humankind. The basic principles of governing in the interest of humankind can be bring to: (i). equitable sharing between human-beings – This principle differs from equitable sharing between states because the benefits of managing the

[9] Kemal Baslar, " The concept of the common heritage of mankind" page 325
[10] Kemal Baslar, " The concept of the common heritage of mankind" page 91

resources should be provided directly to human-beings and the legal ground for such an action would be promotion of human rights. If benefits of common heritage of mankind are consigned to states this would create a possibility of disproportionate unequal sharing between its citizens and that is what this new international mechanism of managing and sharing of the common resources would try to avoid. Equitable sharing does not mean equitable access to these resources alone. Adoption of this principle would mark a new beginning towards international solidarity and will represent fully the oneness of humankind. If the planetary resources, which are common heritage of mankind, are managed by this authority in the interest of humankind, this would include establishing new principles of international solidarity which will share these resources justly not to every nation but to every human-being. (ii).The second principle is sustainable management of the resources for the future generations – This principle will guarantee that planetary resources will be used by human-beings as efficiently as possible with the awareness that these resources should be provided to the generations to come.

As far as outer space resource management, in the article 11(5) from the Moon agreement is stipulated that "Parties to this Agreement hereby undertake to establish an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the moon as such exploitation is about to become feasible". Thirty years later there is no such a regime. It will be fair to conclude that the significance of the agreement is diminished because it is not signed by the leading states in the field of space exploration and exploitation. I agree with the thesis of Wassenbergh who points out that without the existence of such an authority which could be able to apply the measures of common heritage of mankind, it is impossible to achieve equal opportunities for exploitation of the benefits of the outer space[11], but in order to protect interest of humankind such an authority should be supranational.

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[11] Wassenbergh, "Principles of outer space law in hindsight" page .80