



UNIT 5. INTERNATIONAL PERSONALITY AND SUBJECTS OF INTERNATIONAL LAW

1. Significance and acquisition of international personality
2. Subjects and actors in International law
 - 2.1. Established subjects: States and international organizations
 - 2.2. Other international actors: multinational companies and non-governmental organizations
 - 2.3. The condition of the individual in international law

SIGNIFICANCE AND ACQUISITION OF INTERNATIONAL PERSONALITY

A. General aspects: the alleged rule of attribution of international personality

A. GENERAL ASPECTS: THE ALLEGED RULE OF ATTRIBUTION OF INTERNATIONAL PERSONALITY

- **Concept of personality or subjectivity:** various perspectives (linguistic, philosophical, and legal).
 - From the legal perspective: entity with the capacity to act within a given legal framework, capable of being an addressee of the rules and establishing legal relations, becoming a holder of rights and obligations.
 - Concept of **international personality** (initially) capacity to act in international relations, to establish legal relations with other international subjects, to be the creator and addressee of rules, and to be the holder of rights and obligations governed by international law.
 - ❖ Classic doctrine of international law: excessively influenced by its civil law background - it is the international legal system itself which determines, by means of a rule, which are the subjects legitimized to act within it.
 - rule to attribute international personality.
 - ❖ Modern doctrine of international law: more realistic, empirical, and inductive conception of international personality.
 - AGO, REUTER and DUPUY: international personality did not belong to the world of legal-formal or "legal" categories, but would derive from the realities ascertainable on the sociological and legal levels of international relations.

- ❖ The synthesis between these two currents : MIAJA DE LA MUELA
 - the only rule of attribution of international personality is that which is embodied in the so-called principle of effectiveness: the entities effectively acting in the international order (which de facto carry out activities that are the object of a certain recognition) are considered as persons or subjects of the legal order in question.
 - ✓ It is not a single personality modality, but various degrees of personality development. When can it be said that an entity acting in international relations has acquired a sufficient projection to be considered a subject of the legal system? Professor Reuter: for an entity acting in international relations to be considered as having international personality, it must engage in a range of activities that fall into at least the following three fronts:
 - i. Exercise of the power of legation (*ius communicationis-legationis*), i.e., effective maintenance of official relations with other states or international organizations.
 - ii. Exercise of the capacity to enter treaties (*ius tractandi*) and, in general, capacity to participate in the process of creating rules of international law.

- iii. Capacity to answer for wrongful acts eventually committed and to challenge the responsibility of other subjects of international law (*ius standi*): i.e., capacity to be an active (claimant) and passive (respondent) subject of international responsibility.

SUBJECTS AND ACTORS IN INTERNATIONAL LAW

- A. Established subjects: States and International Organizations
- B. Other international actors: multinational corporations and non-governmental organizations
 - B.1. Multinational corporations*
 - B.2. Non-governmental organizations*
- C. The individual in International Law
 - C.1. General considerations*
 - C.2. Rights of individuals: international protection*
 - C.3. Obligations of individuals: international sanction*

A. ESTABLISHED SUBJECTS IN INTERNATIONAL LAW: STATES AND INTERNATIONAL ORGANIZATIONS

- The state is a complex reality that can be examined from various perspectives: sociological, political, and legal.
 - Form of political organization arose with the European monarchies of the 15th and 16th centuries and its emergence is historically linked to the birth of international law.
 - Since Treaty of Westphalia, the sovereign state is the fundamental element of international society and the quintessential subject of international law
- Doctrine definition: the state is "an entity endowed with a territory, a population and a government, which is sovereign and independent, in the sense that it is not subordinate to any other state or entity, depending directly on international law".
- Matter of fact not of law: principle of effectiveness important role. The birth of states is a relatively constant process that continues to occur in a variety of ways in today's world: because of a resolution of an international organization; by virtue of an international agreement; because of the dismemberment or dissolution of a state, or because of a series of armed conflicts through the exercise of the right of self-determination of the peoples; or through unilateral declaration of independence supported by the major powers.

- Diversity of states but they have the same legal status under international law as entities endowed with sovereignty and defined by the principle of sovereign equality. Contemporary world: characteristic phenomenon of the capitalist model of production.
- Primary subject of international law and occupies a central place in this order, since it is the pivot of most international law.
 - Primitive conception: only subject. Excessively dogmatic and narrow.
 - Today's reality: the state is not the only subject of international law. In today's world, alongside states, the primary subjects of international law, there coexist other established subjects, international organizations, which we might call "secondary" (created by the states themselves). These have specific problems.
- Second half of the 19th century-onwards: institutionalization of international community. To achieve their purposes, certain powers were exercised de facto, and certain obligations assumed in international relations.
Jurists who professed a formalistic view of personality: assimilation to state.
Evolution of international relations: international organizations, which exercised de facto functions and powers in the international order, constituted a new category of subjects of international law.

- Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. 1949:
 - Facts of the opinion: assassination of Count Folke Bernadotte, who had been sent by the United Nations as mediator to Palestine following the Arab-Israeli conflict of 1947-48. In response to this assassination of a UN agent, the General Assembly consulted the ICJ on the possibility of the organization to bring an international claim against the government responsible for the death of the said agent.
 - ICJ: the question (the possibility of bringing an international claim) raised by extension the question whether the United Nations Organization ultimately possesses what the doctrine calls international personality.
 - ICJ Opinion: line of thought inspired by the theory of the “implied powers”.
- The UN does indeed possess an international personality which entitles to bring an international claim for damage suffered in the person of its agent both vis-à-vis any state member of the Organization and even vis-à-vis States which were not members of it.
- Application of the same rationale, mutatis mutandi, to other international organizations: international organizations constituted a subject (secondary, if you will, but a subject nonetheless) of international law.

- The determination of the personality: case-by-case basis, having regard to the provisions of the constituent treaty and the functions, powers, and responsibilities exercised by the organization concerned. Recalling the triptych proposed by Professor Reuter, it is significant to note that international organizations largely meet the required requirements:
- communication capacity: convention on the representation of states in their relations with international organizations, adopted in Vienna on 14 March 1975.
 - capacity to conclude treaties: convention on treaties concluded between states and international organizations or between two or more organizations.
 - responsibility of international organizations: progressively moving in the affirmative direction.

B. OTHER INTERNATIONAL ACTORS: MULTINATIONAL CORPORATIONS AND NON-GOVERNAMENTAL ORGANIZATIONS

B.1. MULTINATIONAL CORPORATIONS

- Contemporary world: characteristic phenomenon of the capitalist model of production.
 - UN definition (broadest sense): all those that control assets, factories, mines, sales offices, etc., in two or more countries.
 - Many political, economic and legal issues. Beyond their purely economic dimension, multinational enterprises also carry out certain activities that are characteristic of entities endowed with international personality.
 - Some multinational enterprises enter into agreements with states which have been called "quasi-international agreements" that pose difficulties in their qualification (public sector and private sector).
 - ❖ In many cases, such agreements expressly exclude their submission to the national law of the country in which the company is to operate, by providing for either international law or the provisions of the agreement itself (lawless contract).
 - Any disputes that may arise from the activities of multinational companies are sometimes submitted to an international means of settlement: international arbitration (thus escaping the jurisdiction of the state in which the multinational operates).

- However, multinational companies do not seem to possess a real capacity for communication with states at the same level, nor do they seem to have the capacity for active or passive international responsibility (on this point they are subject to the regime of diplomatic protection like any other private individual).
- Therefore, it does not seem possible to maintain that multinational companies can be subjects of international law, without ignoring the role they play in the international order as lobbies.

B. 2. INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS (NGOs)

- Private entities that carry out activities in the international framework:
 - ECOSOC Resolution of 27 February 1950: "Any international organization which has not been established by way of an intergovernmental agreement shall be considered as a non-governmental organization"
- They have a private character, since they are not formed by states and are not governed by international agreements.
 - Legal status is determined by the domestic law of the country in which they are constituted.

- They are not subject to international law, but their influence on contemporary international relations is undoubtedly decisive in many spheres and their contribution to the progress of these relations is particularly noteworthy.
- However, a growing number of NGOs carry out activities within the framework of international society:
 - Among the oldest NGOs are the International Chamber of Commerce, the Inter-Parliamentary Union, the International Olympic Committee, and the International Red Cross.
 - International Red Cross: special relevance. Some authors have pointed out the possibility of considering, by way of exception, a certain personality for the Red Cross and, more specifically, of its International Committee (ICRC).
 - Created in 1863 as a private institution. Today it is composed of the national Red Cross societies, the league of Red Cross societies and the International Committee of the Red Cross (ICRC), which in a way constitutes the executive body of the Red Cross.
 - The ICRC (association subject to Swiss law) has concluded several headquarters agreements concerning its delegations, other agreements with numerous states to assist refugees, and with some international organizations.

- Apart from this special case, the international status of NGOs, is generally limited to the consultative dimension, i.e., to the status of "observer" (with the right to speak but not to vote) UN-Art. 71 Charter.
- International practice has widely recognized the importance of NGO participation in all spheres related to their fields of activity, increasingly granting them consultative or observer status in international forums: international humanitarian law (ICRC); human rights (Amnesty International, Human Rights International, Human Rights Watch, etc.); humanitarian assistance and aid (Doctors without Borders); and environmental protection (Greenpeace International, Friends of the Earth International, International Union for the Conservation of Nature).

C. THE INDIVIDUAL IN INTERNATIONAL LAW

C.1. GENERAL CONSIDERATIONS

- The situation of the individual at the international level is basically characterized by what has been called "mediatization of man by the state", although the progressive humanization of this order increasingly recognizes individuals as having a certain projection as addressees of some of its norms.
 - In classical international law: states monopolized all capacity to act in international relations with the result that the individual was completely diluted and only through the state could he or she receive any consideration (diplomatic protection, extradition, etc.).
 - With passage of time: many international norms and institutions have taken individuals into consideration, whose specific interests have been the object of a certain protection. However, at this initial stage, individuals appeared as "object" of the rule of international law, and it was only states that were bound by the rules in question and that could claim compliance with them in the event of a violation.
 - regime of minorities established in the 1919 peace treaties;
 - international protection of human rights, the Universal Declaration of 1948; humanitarian law of war.

- Recent times: individual as a possible holder of rights and obligations directly emanating from the international legal order and eventually sanctioned by international jurisdiction.

C.2. RIGHTS OF INDIVIDUALS: INTERNATIONAL PROTECTION

- Progressive advance towards the establishment of certain rights that correspond directly to the individual and there has been a progressive advance towards the establishment of mechanisms for the protection of these rights directly before an international body (framework of international organizations).
- Evolution:
 - Precedent of the mixed arbitral tribunals (MAT) set up after the First World War.
 - League of Nations established a petition-claim procedure for the inhabitants of mandated territories.
 - UN:
 - established a right of petition for the inhabitants of territories under trusteeship (Art. 87 charter).
 - International Covenant on Civil and Political Rights of 1966 contains an optional protocol establishing human rights to which "communications" may be submitted by individuals who are victims of a violation of the rights set forth in the covenant in question (Protocol, Art. 1).

- A similar possibility of individual recourse has been established by the United Nations Convention on the Elimination of all Forms of Racial Discrimination of 21 December 1965 (in force since 4 January 1969).
- A particular case is that of "international civil servants" working in the service of international organizations: legal protection is provided by the rules of international law and by administrative tribunals of an international character.
- The most advanced levels of attribution to the individual of certain rights that may be claimed before an international jurisdiction have occurred at the regional level, especially in Europe.
 - within the Council of Europe: possibility of bringing an individual action before the European Court of Human Rights.
 - European Union has established a system of "supranational" law, the most salient features of which include the direct effect of some of its provisions on the citizens of the member states, and the possibility for these individuals to claim the protection of their rights not only before national jurisdictions but also, in certain cases, before the Court of Justice of the European Union.

C.3. OBLIGATIONS OF THE INDIVIDUALS: INTERNATIONAL SANCTION

- Individuals also appear in certain cases as addressees of international norms which impose obligations on them and whose violation calls for a repressive sanction to be imposed by national courts or, in exceptional cases, by an international criminal court.
- Development:
 - Delictum iuris gentium, such as piracy, the practice of slavery, trafficking in persons, counterfeiting currency, drug trafficking, trafficking in protected species, hijacking of aircraft, etc., the criminalization of which is initially established by international treaty, but the punishment of which is attributed to states through their own courts (universal criminal jurisdiction).
 - International instruments to prosecute those responsible for war crimes, crimes against peace, and crimes against humanity:
 - After WW2: new categories of crimes were defined in an international instrument (the London Statute of 8 August 1945) and their sanction was implemented through an international jurisdictional instance created for this purpose: the International Military Tribunals of Nuremberg and Tokyo.
 - The International Law Commission drew up a Draft Code of Crimes against the Peace and Security of Mankind (1996).

- For its part, the UNSC established an International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and an International Criminal Tribunal for Rwanda (ICTR) in 1994, to prosecute individuals considered most responsible for the commission of international crimes in those terrible conflicts.
 - Other mixed (international/national) criminal tribunals have since been established for East Timor (1999), Sierra Leone (2002), Cambodia (2003), Iraq (2003), and Lebanon (2007).
 - In addition, on 17 July 1998, an intergovernmental conference in Rome adopted the Statute of the International Criminal Court (ICC), that entered into force on 1 July 2002 and constitutes the first instance of its kind with universal jurisdiction and scope.
- Individual appears as the addressee of norms of international law that criminalize certain categories of particularly serious crimes and whose repression can be carried out by international criminal tribunals.



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