

Subjects of International Law: An Authority-based Analysis

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Abstract: *International law as we find today is the product of the experience of the civilized states of the world and the continuous growth of many countries. At present international law plays a very important role in universal level to control the conduct of states and to uphold the rights of individual. From the olden period to today there is a lot of controversy among the subjects of international law. When international law is developed, subjects of international law are also changed. International law is a body of rules and principles which regulate the relations among the members of international institutions. Subjects of law are those upon whom law bestows a capacity to act. Capacity implies personality. Alleged persons need not have similar capacity implies personality. Alleged persons need not have similar capacity. In municipal law, an individual is the principal subject of law and also gives capacity or legal personality to entities other than an individual. Companies, corporations, and institutions are also legal persons. They have the capacity to sue and to be sued or to hold or dispose of property. They have the capacity to sue and to be sued or to hold or dispose of property. All individuals do not have similar capacities. For instance, under the Indian law, a child is a legal person, but he has no capacity to enter into a contract. In international law, states remain the principal subject. The other subjects are international organizations and certain other entities such as the Vatican. Now individuals are also included in the realm of international law. The object of this article is to find out the subjects of international law and what is the place of individuals in international law.*

Keywords: State, Individuals, International organizations, certain non-entities, Court.

I. INTRODUCTION

The word international law was used for the first time by the eminent jurist Jeromy Bentham in 1780. According to him international law is a body of rules and principles which regulate the relations among the members of the international community. According to him states are only the subjects of international law and states are only the members of the international community. Bentham made two important assumptions about international law. First, he assumed that international law was exclusively about the rights and obligations of states *inter se* and not about rights and obligations of individuals. Second, he assumed that foreign transactions before municipal courts were always decided by internal and not international rules. According to the United Nations, International law defines the legal responsibilities of States in their conduct with each other, and their treatment of individuals within State boundaries. Its domain encompasses a wide range of issues of international concern, such as human rights, disarmament, international crime, refugees, migration, problems of nationality, the treatment of prisoners, the use of force, and the conduct of war, among others. It also regulates the global commons, such as the environment and sustainable development, international waters, outer space, global communications and world trade.

In 1905 Prof. Oppenheim define the term international law, according to him international law is a name for the body of customary and conventional rules which are legally binding by civilized states within their intercourse. But in 1992 his followers Robbert Jennings and Arthur Watts revised the definition of Prof. Oppenheim. According to them international law is a rule which is legally binding by states, states are not only the subjects of international law, even individuals, international institutions and certain non-state entities are also subjects of international law. International law is a set of rules that are made by countries and other actors in the international arena. These rules are designed to regulate the conduct of countries and other actors. It promotes cooperation and order in the international system.

Subjects of international law

Subjects of international law can be described as those persons or entities who possess international personality. Throughout the 19th century, only states qualified as subjects of public international law, but this scenario completely changed after the conclusion of the Second World War with more and more new actors joining the international legal arena. Intergovernmental organizations created by the states; non-governmental organizations (NGOs) created by individuals; and even natural persons like individuals emerged as new actors. A subject of international law is a body or entity recognized or accepted as being capable, or as in fact being capable, of possessing and exercising international law rights and duties. The possession of international legal personality means that an entity is a subject of international law, and can possess international rights and duties, and has the capacity to maintain its rights by bringing international claims¹. The subjects of international law can be categorized into:

States: - The moment an entity becomes a state, it becomes an international legal person and acquires an international legal personality. State as a subject of International Law is the original subject of international law, and the branch of international law was originally established to regulate relations between the states.

Non-State Actors: - There are certain non-state actors with international legal personalities that include, individuals, armed group involved in conflicts and international organizations like the EU, UN and African union who are deemed to be subjects of international law.

International organizations: - an international organization is also an important subject of international law, it is defined as an organization established by a treaty or other instrument governed by international law and possessing its own legal personality. The United Nations and World Trade Organizations are examples of international organizations. It can be said that states have original personality and non-state actors have derived personality. This is attributed to the fact that states are international personalities the moment they are identified as a sovereign state, on the other hand, non-state actors like international organizations derived their personality through other means. For example, the rights and duties and its extent maybe described in their constitutions, charters, and treaties that establish such organizations².

Rights and Duties of Subjects of International Law

The rights, powers, and duties of different subjects change according to their status and functions. For example, an individual has the right of freedom from torture under international law. States have a duty under international law not to torture individuals or to send them to a country where there is a likelihood of that person being tortured. This right exists under treaty law, for example, under the International Covenant on Civil and Political Rights and under customary international law. The Convention against Torture and Cruel, Inhuman and Degrading Treatment places obligations on States not to torture and to extradite or prosecute those who commit torture.

Legal personality also includes the capacity to enforce one's own rights and to compel other subjects to perform their duties under international law. For example, this means that a subject of international law may be able to:

- Bring claims before international and national courts and tribunals to enforce their rights.
- Have the ability or power to come into agreements that are binding under international law (for example, treaties).
- Enjoy immunity from the jurisdiction of foreign courts (for example, diplomatic immunity).
- Be subject to obligations under international law (for example, obligations under international humanitarian law).

Theories regarding the subjects of International Law

There are 3 theories of subjects of public international law. They are:

- Realist Theory of International Law
- Fictional Theory of International Law
- Functional Theory of International Law

¹Barry E. Carter, International Law, Little Brown Company, 1st ed, 1991, p.35-36

²K.C. Joshi, International Law Human Rights, Eastern Book Company, 4th ed, 2019, p. 61-65.

Realist Theory of International Law:

The Realistic theory reflects the traditions views of international law that were propounded by the likes of Bentham in the 18th century. This theory suggests that only nation states are exclusively to be considered as subjects of public international law. According to this theory, international law regulates the conduct of states and hence states alone can be given the status of a subject. The nation states, irrespective of the individuals that they consist of, are separate entities having rights, duties and obligations and possess the capacity to maintain their right under international law, therefore nation states are the ultimate subjects of international law.

According to the Article 1 of the Montevideo Convention on the Rights and Duties of States, a state as a person of international law should possess the following qualifications.

- a permanent population;
- a defined territory
- a sovereignty
- a government; and
- capacity to enter relations with other states

The state as a subject is endowed with rights and duties like; the right to equality, right to coexistence and self-determination, right to independence, right to respect, dignity etc,. Similarly under the ILC draft declaration on Rights and Duties of states,1949 lays down rights that states are entitled to like; the right to independence, right to jurisdiction, duty of non-intervention, right to equality, duty to protect Human rights and fundamental freedoms, duty to maintain peace and security, etc.

According to Prof Oppenheim, “a state is and becomes an international person through recognition only and exclusively. Constitutive theory gives utmost importance to process of recognition. According to this theory recognition is the most essential element. When one entity possesses elements of statehood, it cannot become a state in international level. It means if any entity wants to become a state in international level it should possess essentials of statehood and it should be recognized as a state by already existing state. A political entity becomes a state only after obtaining recognition. Even though it has essentials of statehood, that entity could not become a state in international law, without recognition.

According to Declaratory Theory, Declaration means a document formalizing matters to be made known publicly. While constitutive theory utmost importance for process of Recognition. The declaratory theory does not give any importance to the process of recognition. According to this theory recognition of a state is formal one. It has no legal effect as the existence of a state is a mere question of fact. It means when one political entity possess essential elements of statehood, voluntarily declared itself in international level that I have possessed all the elements of statehood therefore today onwards I am a state. Its shows that recognized by another state is not necessary.

Fictional Theory of International Law:

There are certain jurists who ascertain that in the ultimate analysis of international law it will be evident that only individuals are the subjects of international law. Professor kelson is the chief proponent of this theory, he states that an individual alone is entitled to be the subject of international law. The duties and rights of the states are in reality the duties and rights of the men who compose them. Many modern treaties do bestow rights and impose duties upon individuals. From time to time certain treaties have been entered into which have conferred certain rights upon individuals. Although the statute of the ICJ adheres to the traditional view that only states can be parties to international proceedings, a number of other international instruments have recognized the procedural capacity of the individual. Various international treaties, judicial tribunals and courts have recognized individual personality under international law³.

³K.C. Joshi, International Law Human Rights, Eastern Book Company, 4t ed, 2019, p. 70-72

Functional Theory of International Law:

Both the Realist and Fictional theories adopted the extreme course of opinions. But Functional theory tends to meet both the extremist theories at a road of new approach. According to this theory neither states nor individuals are the only subjects; both are an inseparable part of international law and therefore, both are considered to be subjects of international law. States being primary and active subject of international law have recognized rights, duties and obligations under international law and are capable to maintain the same by bringing international claim. At the same time in modern international law individuals have also been granted certain rights, duties and obligations under international law and can maintain the same by bringing international claims. The increasingly inclusive approach of international law has widened the ambit and scope of the field, with international organizations and non-state entities also finding a place and acquiring the status of subjects. In Danzing Railway official case Poland state acquired the Danzing Railway Company from another state under a treaty. According to that treaty Poland government should provide special amenities (Facilities) to officials of Danzing railway. After acquiring that company Poland did not provide any amenities to them. They filed case before PCIJ against Poland. Poland government argued that Danzing Railway officials were not parties to the treaty, which was an international treaty, and they are not subjects of international law. PCIJ (Permanent Court of International Justice) gives the decision in favour of Danzing Railway officials held when Poland state accepted the conditions then it should provide special amenities because individual is also subjects of international law. In Nuremberg Trial Case 20 German Nazi leaders (individuals) and six organizations (international institutions) committed genocides (Killing) during the Second World War. They were prosecuted as war criminals. The evidence proved that they committed with common planning and conspiracy. The Nuremberg tribunal was established after the Second World War to try the war criminals of Germany. The trial was started on 20-11-1945. Facts of the case show that individuals and international institutions are also subjects of international law.

The place of individuals in international law:

In recent times several treaties have been entered into wherein certain rights have been conferred and duties have been imposed upon the individuals. In this connection following may be noted.

- Pirates
- Harmful acts of individuals
- Foreigners
- War criminals
- Espionage
- Foreign Troops
- State Officials

The traditional positivist doctrine of international law is that States are the sole subjects of international law and that the individual is the object. The contemporary approach is that the individual is an original subject of international law and the owner of international individual rights⁴.

- **Pirates:** pirates are frozen as a rival of mankind under international law. Every state can arrest and penalize them.
- **Piracy** is an act of robbery or criminal violence by ship or boat-borne attackers upon another ship or a coastal area, typically with the goal of stealing. A pirate is a robber who travels by water. Though most pirates targeted ships, some also launched attacks on coastal towns.
- **Harmful acts of individuals:** under certain circumstances states are accountable for the injurious acts of individuals. If a person causes injury to personnel estate of diplomats of another state, under international law the state is responsible for his acts.
- **Foreigners:** duty of the state to guard the stranger within its territory. If a person who came from the foreign is called aliens. If anything has happened for aliens, the state is held liable.

⁴K.C. Joshi, International Law Human Rights, Eastern Book Company, 4th ed, 2019, p. 65-68

- **War criminals:** war crimes are devoted by individuals and grueling them according to the international law. To guard the war prisoners or war convicts United Nation conducted International Conference. At present the state as the right to punish the war criminals.
- **Foreign Troops:** The legal position of the crowds operating on antagonistic territory is then based on universal benevolent law, in particular the law of aggressive profession. This specific field of law does not apply between associated states rebellious a common opponent.
- **State bureaucrats:** State bureaucrats are the officers of the government. How sovereign can be protected for the territorial jurisdiction of other state, they can also excused from the authority. How a sovereign can exempt from foreign State as like even State officials can exempted from the territorial jurisdiction of another state.
- **Foreign Sovereign:** He is the highest authority of the state and international law provide lot of immunity forhead of the state.

II. CONCLUSION

No longer is international law associated with only one subject or personality; evolving since the times of Bentham, it has been able to incorporate different views and aspects to accommodate the ever-growing field of international law. Though states ultimately play the most important role in international law, the increasing prominence of individuals, international organizations and non-state entities cannot be overlooked. The modern international law as we know today has played a herculean role in the amicable settlement of issues that have affected the global stage. Intergovernmental organizations like the UN, EU, IMF, WHO, etc. Have played an economic, cultural, social and political role in managing international affairs, and have helped in the development of international law. Staying true to its name, international law has played an instrumental role in regulating the conduct of all the subjects that it encompasses and the entire international arena