

“BREAKING SOVEREIGN BOUNDS: INDIVIDUALS AS AGENTS AND SUBJECTS IN INTERNATIONAL LAW”

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ABSTRACT

Individuals in International Law

International law has evolved over time. However, it is quite common to see this development through a state-centric prism. This is scarcely surprising, considering that states were traditionally treated as the sole subjects of international law. The authors argue that such an interpretation is now outdated. One hundred years ago, individuals were viewed as mere objects of international concern. They are now recognized as enjoying certain rights and obligations themselves. The authors begin by exploring this evolution and analyzing several important historical milestones, theoretical frameworks, and case examples to clarify the current place of individual agency in international law. The research addresses the question: to what extent will individuals be deemed legitimate actors of the legal order at the international level? The present study also extends into the practical and theoretical consequences of individual subjecthood, as well as the possibilities and problems with domesticating individual rights in the context of international law

1. Introduction

Law in early societies was imprecise and enforcement was patchy.⁴⁰ There was a system, which revolved around the judgment of elders/ chiefs/ or some other disputant introductions. There was no structure of rules in place as such but there were people with the power to make decisions. Today, however, the belief is that development goes hand in hand with establishing legal systems that can be applied in practice.

In the ancient societies, decisions made by the authorities appear to have had an evolving force which has come to be recognized as precedents. Today, in addition to being legal subjects and international legal persons with rights and obligations, states are also subjects

of world law with some international privileges. Nonetheless, states alone are not the only players within international law and governance. In most cases, the states are blamed for the monopoly of the system; however, the non-state actors are present and have a great influence over the globality of the public order. Indeed, international organizations, multinational corporations, and NGOs have the established abilities to deal with world issues and take part in the global governance sometimes even against or above the limits of the state control

The subjects of law within any legal system cannot be regarded as systematically identical, stated the International Court of Justice in 1949. There are legal subjects because there are needs in the community and those who make and organize structures that satisfy the needs. In this perspective, international legal personality is partially recognized for non-state

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<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1133&context=cilj>

actors, despite being a non-homogenous category. The "not-a-cat syndrome" described by Philip Alston highlights the perfect notion that non-state actors, as a category, are everything that is not a state.

In the past, the concept of international law has been viewed as being around the state or nation, with the state as the major player in all matters. The law has inhibited the focus on the states as being made up of individuals who act on their behalf, which should be the case because individual people are what make up nations. In this classical model, the emphasis in the international legal order is placed on the state as a whole rather than the private interests of its people, which are most times overshadowed altogether.⁴¹

2. Historical Context

2.1. Pre-1945: Ideas of Individuals in International Law

During the years leading up to World War II, respect for sovereignty was an unquestionable notion. Within such a context, individualism was barely recognized in relation to the law, as people were seen simply as citizens of a state – with rights and obligations strictly constituted internally by the law of that state. Global regulations were aimed at the maintenance of a world order, preventing wars and conflicts between nations and determining how diplomacy should be conducted. Thus, there was no room even for consideration of any participation or subjectivity of individuals within the so-called international legal order.⁴²

Pioneering global agreements such as the Hague Conventions for example included no explicit rights or protections for individuals, but rather defined rules of warfare for member states. The international legal system in its development, aimed to foster the principle of state protection. Hence, it was not very keen on even the most blatant abuse of human rights

within its confines, let alone issues of treating individuals in a given state. Thus, at this point, it was supposed that such individuals are part of the state, and there are no structures within the international system that advocate for them.

2.2. Post-1945 Developments: From Object to Subject

As a result of the horrifying effects of the second world war, especially the Holocaust and other mass murders, there was a call from the international community to reassess the status of individuals in international law. It was at the Nuremberg Trials (1945-1946) where a turning point was achieved more so regarding the claim of the prosecution that not only states, but the individuals regardless of their nationality or their official position, may be liable under international law for such crimes as the crimes against humanity, genocide and war crimes. This was the revolutionary change in political science as it was against the doctrine of sovereignty which stated that such individuals including state officials cannot be held accountable under the international criminal aspect.

In 1948, the United Nations passed the Universal Declaration of Human Rights (UDHR), which included a detailed account of rights for everyone regardless of their nationality. This Declaration in addition to other human rights treaties like the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) went further to articulate individual rights and built in their enforcement monitoring mechanisms. The United Nations Declaration of Human Rights and its natural subordinated treaties and legal acts represented a turn of events in international law as these recognized persons as right bearing entities elevating their status in the context of international law.⁴³

⁴¹ https://legal.un.org/avl/studymaterials/handbook/english/book_1.pdf

⁴² Higgins, R. (1978) 'Conceptual thinking about the individual in international law', *British Journal of International Studies*, 4(1), pp. 1-19. doi:10.1017/S0260210500114494.

⁴³ M. W. Janis, *Individuals as Subjects of International Law*, 17 CORNELL INT'L L.J. 61 (Winter 1984).

3. Theoretical Framework

For decades legal theorists have been quarreling over the issue of individual subjecthood in international law⁴⁴. Outline three main theoretical approaches regarding the individual's place in the international law system below:

3.1. Realist Theory

A proponent of the Realist Theory asserts that only states are the subjects of international law and nothing beyond that⁴⁵. Realists maintain that only those entities that are states have the appropriate legal personality necessary to engage in legally binding practices, make claims, or assert themselves within the international order. From this vantage point supranational individuals do not exist, and anyone who claims to be an individual, has rights or obligations only by the grace of the state. Realists argue that the idea of individual subjecthood is counterproductive to the core tenets of the international legal system which include sovereignty and non interference.

3.2. Fictional Theory

Conversely, Fictional Theory holds that the primary subjects of international law are people and it is only the legal states that have been created to advance the interests of people. Advocates of this view argue that the very order of the world and the international relations is built on and for the sake of the individual.⁴⁶ This is done to stress the fact that the numerous conventions and treaties dedicated to the protection of human rights are aimed at the elevation of the individual to the status of the protagonist of international law.

3.3. Functional Theory

Lastly, Functional Theory strikes a middle ground in that both individuals and states could be subjects of international law depending on the context and function of the legal norms in

question⁴⁷. This approach recognizes that even though states are the primary actors in relation to measures such as treaty making or implementation, individuals also have a limited degree of agency as actors, especially concerning issues such as human rights and international criminal justice. The Functional Theory contends that International law is in the process of developing into a multi-centered system in which states and individuals have rights and duties at particular situations.

4. International Human Rights Law

Although international law considers states as the principal actors, it does not mean that the fundamental rights and interests of the individual are disregarded. The international law system of human rights has grown and spread astonishingly. Many instruments including covenants and treaties have been adopted in its defense since to 1945. UNGA, in 1948, took the step of adopting the Universal Declaration of Human Rights (UDHR) which was an indirect boost. In a related development, the Assembly passed the Convention on the Prevention and Punishment of the Crime of Genocide on the same day, and this was the very first international legal instrument on human rights which attached obligatory status. This development was further continued and in a short span of time; numerous human rights treaties followed such as the International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights 1966, International Covenant on Economic Social and Cultural Rights 1966, Convention against Torture in 1984 and so on.

5. International Criminal Law

The post-war period also observed a significant evolution of international law, with a notable enhancement of individual accountability in international criminal law. The Nuremberg Trials established that international law is not only directed to the states but also imposes duties

⁴⁴ <https://online.norwich.edu/online/about/resource-library/key-theories-international-relations>

⁴⁵ <https://www.e-ir.info/2018/02/27/introducing-realism-in-international-relations-theory/>

⁴⁶ <https://www.britannica.com/topic/realism-political-and-social-science>

⁴⁷ <https://www.ebsco.com/research-starters/social-sciences-and-humanities/functionalism>

and liabilities on individuals. The trials proved that individuals, not abstract entities, commit violations of international laws. The desire to make it possible to hold individuals responsible and therefore enforce international law and the very basic principles of humanity which is very much needed in the world has already been ingrained in the idea. This was the time when there was a shift from the idea that international law is a principle which can only be breached by the states to the conception of the individual as a subject of international law in an entirely different aspect of international law.⁴⁸

6. Legal framework

In this section, an analysis of legal structures and their components is conducted, giving special attention to treaties, conventions, and regional organizations' directives that confer rights and duties on individuals. Most significant in this regime are the following:

6.1. International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was approved in 1966, which serves as one of the fundamental treaties on human rights. It contains provisions that must be present in domestic law in addition to a variety of individual human rights such as the right to life, protection from torture, and the freedom of speech. Moreover the ICCPR also provides for the establishment of the Human Rights Committee, which is an institutions that allows individuals to file their complaints against the states. It includes addressing issues brought before it by individual citizens against the member states. By ensuring that individuals have a right to seek redress, the ICCPR reiterates the point that individuals are considered as beneficiaries of rights under the international legal system.

6.2. Genocide Convention

The Convention on the Prevention and Punishment of the Crime of Genocide, adopted

in 1948⁴⁹, was one of the earliest treaties to invite direct obligations on individuals. In this regard, the Conventions accountability is extended to both state actors and private individuals with respect to all forms of genocide proving a beginning in individual responsibility principle in international law. Additionally⁵⁰, the Convention has turned out to be a stepping stone for establishment of other bodies that are concerned with punishing people for crimes of mass atrocities like international criminal tribunals and the International Criminal Court.⁵¹

6.3. Other Treaties Concerning Human Rights

Quite a number of other treaties bear evidence on the existence of such legal protection of the individuals. These are particularly the ⁵²Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention on the Rights of the Child (CRC) and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Each of these conventions confers upon individual persons 'enforceable' rights and in certain circumstances includes the incorporation of 'reporting' and 'monitoring' mechanisms for purposes of improvement of accountability. Also, they encourage international society to protect individual rights in all aspects and recognize the upward trend of the individual in understanding international law.

7. Case Studies

Landmark rulings have had an enormous impact on every stage of the recognition of people as subjects of international law according to the principles of individual responsibility towards its norms. These cases transformed into a great narrative, rather showing the advancement that every individual is not just a passive recipient of international law but as an active participant who has both rights and obligations. Here is a scrutiny of the

⁴⁸ Odermatt, J. (2021) *International law and the European Union*. Cambridge University Press.

⁴⁹ <https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>

⁵⁰ <https://ihl-databases.icrc.org/en/ihl-treaties/genocide-conv-1948>

⁵¹ <https://www.ungeneva.org/en/news-media/news/2024/01/89297/explainer-what-genocide-convention>

⁵² <https://legal.un.org/avl/ha/cerd/cerd.html>

key cases and legal decisions that supported and advanced this legal doctrine:

Key Cases Influencing Subject Status of Individuals in International Law

7.1. Nuremberg Trials (1945–1946)

The Nuremberg Trials are, in fact, referred to as the beginning of the establishment of individual liability in international law. After the end of the second world war, the predominant powers established an International Tribunal to bring to justice the key figures of the Nazi regime who were embroiled in crimes against humanity, war crimes, and genocide. The tribunal asserted the principle that especially “crimes under international law are those committed not by abstractions but by flesh-and-blood individuals,” hence suggesting that responsibility under international law is incurred by individuals and not merely by the states.

The Nuremberg Trials broke ground in making responsible individuals, rather than the states only which the officials served, thereby destroying the age-old principle of state or sovereign immunity. This landmark case also developed the notion that serious crimes cannot shelter behind the cloak of sovereignty of a state. Moreover, the magnitude of the trials is that they initiated the evolution of international human rights and criminal law making it a norm that individuals can be bearers of rights and obligations under international law.⁵³

7.2. Tokyo Trials (1946–1948)

In addition to serving justice on Japanese officials responsible for war crimes and crimes against humanity, the International Military Tribunal for the Far East (Tokyo Trials) bore some resemblance to the Nuremberg Trials. Following the same doctrine that was enshrined in the Nuremberg Trials, the Tokyo Trials developed the idea of individual legal personality under international law further. The tribunal did not recognize the defense of

following orders for the sake of accountability, instead declaring that every person is responsible for international crimes irrespective of the state’s system or an individual’s position in it.⁵⁴

The Tokyo Trials provided more evidence to the growing global trend in quenching impunity of war criminals where it became clear that war crimes and crimes against humanity do not only concern domestic jurisdictions but the international community as a whole.⁵⁵

7.3. Pinochet Case (1998)

The year 1998 was when the Chilean dictator Augusto Pinochet was arrested in London on the grounds of human rights abuses in his native country which was a key event in the evolution of the idea of the concept of universal jurisdiction. Here, a request was made by Spanish authorities who sought assistance in arresting Pinochet who was wanted for alleged torture, murder and atrocities during his dictatorship in Chile. The House of Lords of the British Legal system ruled out the possibility that torture in this case was protected under the principle of sovereign immunity.

The Pinochet case illustrates the principle that any person anywhere and regardless of any other consideration can be held liable for international crimes based on international responsibility. This case also demonstrated although torture is a serious crime consideration gives it attention that it can be covered under universal jurisdiction. This case considered the concept of individual responsibility in international law.⁵⁶

7.4. The Danzig Case (1928)

While the cases that followed received more attention and consequently dealt with complex issues, the Danzig Case decided by the Permanent Court of International Justice (PCIJ) has its significance in the evolution of individual

⁵³ <https://www.britannica.com/event/Nurnberg-trials>

⁵⁴ <https://www.britannica.com/topic/International-Military-Tribunal-for-the-Far-East>

⁵⁵ <https://www.britannica.com/topic/Tokyo-Trials>

⁵⁶ <https://www.icj.org/resource/crimes-against-humanity-pinochet-faces-justice/>

legal personality. The court did treat some rights of individuals under International law even if they were not considered as nationals of any state. The dispute arises from the position of individuals in the free city of Danzig located within the League of Nations and an autonomous city state whereby the court ruled that international treaties afforded individuals the right to bring claims.

The Danzig Case advanced the concept of individual legal personhood creeping into the realm of international law by state cooperation towards protection of human rights which concept gained prominence by the second half of the 20th century. This emphasized that individuals are able to be seen within international law as more than mere tools of the state's foreign policy— though this would be significant more than two decades later.⁵⁷

7.5 The Tadić case (2005)

Prior to Kirsch, the Prosecutor v. Duško Tadić case was a great milestone in the development of international law, in particular in affirming the legal personality of and, concomitantly, the accountability of an individual under the international legal order. Generally, international law dealt mainly with States, treating individuals as subjects without standing or any responsibility. The Tadić trial shattered that approach when it established that individuals, under international law, can be held directly responsible for acts that constitute grave breaches of international norms of humanitarian law such as war crimes and crimes against humanity. By doing so, the ICTY sent a strong warn: Impunity cannot be justified on the grounds of sovereignty, and thus individuals who commit egregious violations of international laws—be they leaders or mere foot soldiers—will be prosecuted.

The Tadić case was especially significant in establishing the mechanism by which a multimember group can be held responsible for acts committed by certain of its members,

through the emergence of the doctrine of joint criminal enterprise (JCE), under which those who may not themselves physically commit the crimes but who lay the cornerstone of the common plan for such crimes can be apprehended. This further underlined the notion that under international law the perpetrators are not the only ones held accountable for many human rights violations but that every person who contributes effectively to those violations is also held responsible. In addition, by considering the conflict in Bosnia international and the victims as protected persons within the meaning of the Geneva Conventions, the Tribunal further enhanced the reach of individual liability by broadening the application of international humanitarian law to cover both internal and international conflicts.

The decision in Tadić ultimately coalesced with the emergence of individuals as rightful suspects or perpetrators of international crimes, apart from being merely victims or beneficiaries of rights. It laid down the foundation for future tribunals and the permanent International Criminal Court (ICC). In doing so, this prohibited anyone from being above the law, regardless of rank or position. Thus, it contributed to the slow but steady metamorphosis of international law into a system that puts accountability, justice, and the safeguard of human dignity at its heart.⁵⁸

Implications of these cases for International Law

The advancements presented in the examples above evoke a movement towards the recognition of individuals as subjects of international law. Altogether they have three most important implications for the international legal system:

7.1. The Broadening of Legal Personhood

These cases serve to illustrate how the understanding of legal personhood in international law has shifted from that of a state-centric concept to one that encompasses

⁵⁷ <https://www.britannica.com/place/Polish-Corridor>

⁵⁸ <https://www.icty.org/en/case/tadic>

the individual. The judgement of the Nuremberg and Tokyo Tribunals come up with a crucial precedential value accompanying the development of individual criminal responsibility. After, case of Pinochet, and establishment of the ICC, this development gained strength and became part of judicial policies. Gaining these rights indicates that individuals are not mere objects that states exercise rules over but subjects with rights in the courts of law and duties over their actions.

7.2. Encouragement of the Universal Jurisdiction and Human Rights

The case of Augusto Pinochet Particularly highlighted universal jurisdiction in that, universal jurisdiction permits any country irrespective of the location of the crime or the nationality of the offending individual to prosecute a person for committing heinous crimes such as torture. In the fight against impunity and in bringing individual offenders of gross violations of human rights to justice, this notion has been very central and international law that has been developed in such a way as to enhance the protection of human rights has changed dramatically in this respect.

7.3. Challenges of enforcement and consistency

Even so, individual accountability is still difficult to enforce. The ICC is visionary and epochal; however, it has its limitations. For instance, the Court does not have jurisdiction over countries unwilling to accede to the Rome Statute. Also, the application of individual accountability in international law may be inconsistent due to political factors and non-compliance with international laws by some countries.

8. Future recommendations for enhancing individuals role in international law

Rich variety of relationships is moving the individuals and the corporations further apart. Along the same reaction, as far as protection of individuals goes, a strategy oriented on

countries' boundaries will be limited and cannot be sufficient over the long term.

The following recommendations are directed at addressing the pressing need to develop the existing legal regimes with a view to their effectiveness for individual citizens beyond national borders.

8.1. Broaden and Tighten the International Mechanism for Defending Individual Rights.

In order to fully embrace individuals as any other subjects of International Law, it is important to formulate and perfect treaties and protocols addressing issues of human rights and individual guilt. Existing international human rights systems, though primary, remain limited in their enforceability and global reach. The next steps ought to involve:

Expanded Ratification and Enforcement Mechanisms: There is the need to promote global ratification of existing human rights treaties, including but not limited to the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture, in order to create greater and more universal legal protection of rights as well as the duty of respect by Individuals.

Specific Treaty Structures: New treaties establishing specific treaty structures more suited to the current issues of rights that is digital rights, environmental rights, cyber rights, and so forth should be developed.

8.2. Heighten International Accountability Mechanisms for Individuals and State Actors

Every individual must be afforded and encouraged to take appropriate actions when their rights are infringed upon. This is imperative if they are to be regarded as persons to whom the international law applies. Recommendations to improve the enforcement mechanism include:

Strengthening the Scope of Operation of the International Criminal Court (ICC): Enhancing the ICC's powers of operation by giving the Court more states and more resources could

allow conflicts and crises to be resolved more quickly by rioters, warlords and indignant citizens. More state cooperation with the ICC and more country jurisdiction would further bear the brunt of human rights abuses.

Establishment of Regional Human Rights Courts: The introduction of regional courts that would accept individual complaints, much like the European Court of Human Rights, would furnish individuals with the means for obtaining justice in their regions. This would also help reduce the pressure on international institutions like the ICC, resulting in a better organized system of international justice.

8.3. Advocate for Universal Jurisdiction Where Serious Human Rights Abuses Are Concerned

Universal jurisdiction enables countries to bring to justice individuals guilty of serious offenses such as genocide, crimes against humanity and torture, regardless of where the crime has occurred or who the perpetrator is. To emphasize and enhance the role of individuals within international law:

Encourage the Adoption of Provisions on the Universal Jurisdiction by States: The encouragement of the use of universal jurisdiction provisions would result in increasing the number of states willing and able to prosecute serious international crimes at the domestic level, thus ensuring even more paths to justice and accountability.

Formulate Criteria for Exercise of the Jurisdiction: In order to prevent any abuse or politically motivated prosecution, it will be important to create international legal mechanisms outlining the correct application of the universal jurisdiction. Such mechanisms will help further those aspirations by allowing equity and uniformity in the application of the mechanisms.

8.4. Strengthen External and Internal Human Rights Mechanisms

Enhancing the capacity and the coverage of the human rights mechanisms is essential in the protection and representation of individuals

as provided under international law. Suggestions include:

a. **Bolstering the Human Rights Council of the United Nations (UNHRC):** To ensure more effective response to human rights violations, the UNHRC ought to be allowed more investigatory authority, independence from political or administrative control as well as guaranteed financial support. This would enhance the representation of individual concerns by the Council at the international level.

b. **Developing National Human Rights Institutions:** It is imperative to persuade countries to create national human rights institutions that are independent and well-resourced so that individuals are guaranteed local means of obtaining justice. These institutions would be useful in bridging the gap between the people and the international agencies and thus, assist in implementing international human rights law within the country.

8.5. Encourage Cooperation Across Jurisdictional Boundaries

In order to adequately safeguard individual rights, it is important for international law to be integrated into the national law. Effective cooperation can guarantee that the dignity of the individuals is maintained even in their own country. Therefore, To this end:

Bring International Norms into the Scope of the Domestic Law: It is believed that the recognition of the integration of the international standards on the human rights in the domestic laws by the member states is likely to enhance the level of protection of the individuals in such member states. For example, member states could enact custom laws or arrange for international agencies to bring national laws into conformity with global rules and standards.

Set up Continuous Legal Education Programs for Legal Practitioners: the enhancement for the judges, attorneys, and other practitioners of international human rights and international

criminal law would enable them to handle cases with international aspects in a more effective manner. Attorneys possessing this kind of knowledge can be more effective in contributing to the protection of human rights in the national courts and consequently, in the preservation of the international principles within the countries.

9. Conclusion

The progression of persons in international law shows an interesting reversal of fortunes, that is, from being an obscure lot to being recognized. In the past, people were viewed as passive components in a system focusing on the state, however, with time, most people have started to see them as active components– those who have rights and obligations. This shows that there is an emerging global trend which calls for the recognition of individuals with the aid of human rights, coping institutions, and coping laws in place to shield individuals from their abuse.

There are historical milestones, theories, and case studies why there is always a tug of war between states and individuals. After all, most of the international law, if not all, used to be established with the states at the core of everything and where justice was more or less attained within certain territorial limits. That is no longer the case; that is a striking difference, for in her place has come a new geography, one which features the locus of the individual.

Still, the future seems far from certain. New legal measures need to be put in place to catch up on the emerging wave of challenges brought about by other actors in society. There are challenges like global digitalization, climate change, and business ethics that require international law reform. Universality, treaties, and accountability of the individuals in charge are all steps that should be taken and not merely pleasant ideas in the defense of the individuals.'s roles. The suggestions made by the author – from enhanced international coverage of individuals to enhanced participation of non-governmental

organizations – point out ways in which this standing room for individuals can be further secured.

Ultimately, the validity of international law is determined by its effectiveness in safeguarding the rights of people in the jurisdiction. Inclusiveness is not a vision of justice that can only be achieved in the context of the nation state. Such a transformation of ideas cannot be confined to legal systems; it is a step towards greater social justice and equity. Where every person, whatever their citizenship, has rights and duties towards the globe, and not merely to those within their borders. Individuals as a unit may not be the only one central in the future of international law; every person's dignity, justice and human rights will have to be upheld and that is the guarantee that there will be a respect for international law by all."