
Chapter 7

International law: Subjects of International law International Human Rights Law

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1. Learning outcomes
2. Subjects of international Law
 - a. States
 - b. International Organizations
 - c. Individuals
3. International Human Rights law
4. Follow up questions

1. Learning outcomes

By the end of the chapter students are expected to know

- Understand the concept of international legal personality
- Identify elements the statehood
- Have a general understanding on the concept of State recognition
- Understand the scope of the legal personality of international organizations and how is it defined
- In what circumstances individuals are considered as subjects of International law
- Understand the general legal framework of International Human Rights law
- Have a broad picture the UN Treaty based mechanisms of HR protection

2. Subjects of international law

Within the framework of International Law subjects are entities that possess international legal personality. The primary regulation and determination of who shall possess legal personality and to what extent is defined by international law, thus and not all entities automatically considered as having legal personality or possessing the personality at the same level. Traditionally, at the early development of international law, only States were considered possessing legal personality¹. However, due to changing circumstances and with the development of new fields of international

law as human rights, international criminal law, economic law, others, the notion of international legal personality has been transformed drastically as well.ⁱⁱ

It is important to note that the concept of international legal personality is not absolute, instead, it is relative and different legal persons recognized by international law can have different types and scopes of personalities. Despite the non-exhaustive conceptual framework of the legal personality, there are specific components or to put it differently, abilities that can shed light on what does international legal personality mean.

International Legal Personality

- “Ability to bring claims before international tribunals exercising an international legal jurisdiction
- Enjoy rights and be subject to international legal obligations
- To participate in international creation
- To enjoy the immunities attaching to international legal persons within national legal systems
- Participate in international organizationsⁱⁱⁱ

a. States

States are considered to be the most important subject of international law. Not any entity has automatically acquired the status of the state. However, once “entity amounts to a State it has the capacity to avail itself of all the rights and be subject to all of the duties known to the international system.”^{iv} For an entity to be considered a state it has to fulfill the criteria of statehood which is prescribed by the *Montevideo Convention on the Rights and Duties of States*.

Criteria of Statehood:

Montevideo Convention on the Rights and Duties of States (1933)

Article 1

“The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (g) government; and (d) capacity to enter into relations with other states.”^v

As it is evident Article 1 of the Convention sets out four basic legal criteria of statehood. However, the existing state practice in international law suggests that besides these four elements there is also the fifth one, particularly the **recognition**, even though it is not expressly specified in Article 1 of the Montevideo Convention. Thus, this argument of whether it is required to be recognized by other states or not generated two theories on States related to recognition. Namely, constitutive and declaratory.

- **Constitutive Theory** – assumes that recognition has a constitutive effect. States according to this theory are conferred international personality only by act of recognition and not the process by which the states were factually formed. States are only established by the will of the international community
- **Declaratory Theory**– assumes that recognition is only formal acceptance of an already existing state or in other words it is a formal act of recognition of the fact of the

existence of a State.^{vi}

b. International Organizations

International organizations are another leading subject of international law. To bring few examples: United Nations Organization, European Union, African Union, Council of Europe, WTO, etc. However, not all of these organizations have the same level of legal personality. One of the central advisory opinions of the International Court of Justice on "*Reparation for Injuries suffered in the service of the UN*" developed a legal standard on identifying the scope of the legal personality of international organizations. Let us briefly go through the advisory opinion and the position of the Court.

Reparation for Injuries Suffered in the Service of the United Nations Opinion (ICJ Rep 1949 174, International Court of Justice)

Facts: In 1948 the agent of UN (mediator in Palestine) was killed in Jerusalem. Before commencing an action for compensation against Israel, the General Assembly requested the International Court of Justice for an opinion about the *legal capacity of the organization* to bring the claim.

Issue: Whether the UN possesses international legal personality?

Holding: the UN has legal personality, generally legal personality of international organization in this case of UN is unique and limited to a functional objective and aims of the organization.

Reasoning:

- The Court stressed that to find the answer for the raised question it is important to look at the founding/constituting documents of the organization (in this case the UN Charter)
- In the constituting document the founders (States) input intentions/aims and expectations for the organization. Hence, to pursue that aim and objective the organization must be empowered with certain personality. Otherwise it could not carry out the intentions of its founders if it was devoid of international personality.
- The practice has confirmed that UN has privileges and immunities within territories of its members → thus it possesses legal personality^{vii}

Accordingly, from the advisory opinion, we can conclude that the legal personality of each organization is unique and individual, and it depends on the aim/purpose and objectives of the organization that was conferred to it by the founders. To identify those aims, it is necessary to look at the constituent documents of the organization. The personality of each International Organization will be commensurate the objectives and aims it pursues.

c. Individuals

Development and the emergence of such fields as international human rights law, international criminal law, and humanitarian law generated a circumstance when individuals became subjects of international law. There are three conditions upon which individuals due to given context and circumstances for a certain period will be granted limited legal personality, thus

temporarily become subjects of international law. First, when they commit international crimes (crime of aggression, genocide, crimes against humanity and war crimes), thus the perpetrators can be tried by international courts and tribunals as ICC, ICTY or ICTR. Second, when individuals commence complaint mechanisms before the courts/institutions of human rights protection against the state. To specify it is when an individual applies to European Court of Human Rights or UN Treaty based mechanisms against the violation of their rights by States. Finally, when individuals are in the process of acquiring or in the status of refugees or asylum seekers.

3. International Human Rights Law

Normative foundations of Human Rights.

The development of human rights is argued to have ancient roots, however contemporary International Human Rights Law boomed and have been placed into legal framework after the WWII^{viii}. The horrors of the WWI and the Holocaust acted as a catalyst for the establishment of international and universal standards and rules for the protection of human rights. Thus, on December 10, 1948 the Universal Declaration of Human Rights was proclaimed and adopted by the United Nations General Assembly in Paris (General Assembly resolution 217 A).^{ix} Even though by legal force declarations do not have a binding character, the University Declaration of Human rights became part of international customary law. Further, in 1966 two separate treaties were adopted: International Covenant on Civil and Political Rights and International Covenant on Economic, Social, Cultural Rights. Thus, these three documents form the international bill of rights and constitute the normative foundation of international human rights law.

Normative Foundation of International Human Rights law International Bill of Rights		
Universal Declaration of Human Rights (1948) UDHR	International Covenant on Civil and Political Rights (1966) ICCPR ^x	International Covenant on Economic, Social, Cultural Rights (1966) ICESCR ^{xi}

Principles of international human rights law

The core and grounding principles of human rights were first reflected in the UDHR and later had been crystallized in ICCPR and ICESCR. Those principles are universality, inalienable, and indivisibility/interdependency of human rights. The principle of universality means that human rights belong to all human beings without any exception and conditions. Inalienable means that human rights cannot be taken away from us. Finally, indivisible and interdependent principle assumes that governments should not pick and choose which rights are respected and which not, all rights irrespective of their social, political, economic or cultural nature are indivisible and interdependent.

Principles of Human Rights		
Universal	Inalienable	Indivisible and interdependent

State obligations under international human rights law

International Human Rights Law is a law that regulates the relationship between individual vis-à-vis the State. Thus, the primary obligation is vested upon States by international law concerning human rights. There are three fundamental types of obligations that each State is expected to fulfill with respect their individuals, namely obligation to respect, protect and fulfill. The obligation to *respect* means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to *protect* requires States to protect individuals and groups against human rights abuses. The obligation to *fulfill* means that States must take affirmative action to facilitate the enjoyment of fundamental human rights.^{xii}

State obligations/duty		
Respect	Protect	Fulfill

United Nations Treaty Based Mechanisms of Human Rights Protection

There are different mechanisms of human rights protection on the global and regional levels such as the European Court of Human Rights, Inter-American Court or African court. However, for the citizens of Kyrgyzstan, the only available mechanism of human rights protection on the international level is the UN Treaty-Based Mechanism of HR protection. Therefore, let us briefly go through them. United Nations treaty-based mechanisms are one of the essential international institutions in the protection of human rights. These are of particular importance for citizens of the Kyrgyz Republic, as it enables individuals to bring complaints against their government for alleged violations of their treaty obligations.

Currently nine UN mechanisms established based on treaties and containing effective committees hear complaints originating both from other nations and by individuals. The table below illustrates the treaty mechanisms and the status of ratification of respective treaties and optional protocols by the Kyrgyz Republic.

Status of ratification by the Kyrgyz Republic	Treaty Name	Relevant Committee
Ratified in 1994 including the optional protocol. Ratified second optional protocol in 2010	International Covenant on Civil and Political rights (1966)	Human Rights Committee (CCPR)
Ratified in 1994	International Covenant on Economic, Social and cultural rights (1966)	Committee on Economic, Social and Cultural rights (CESCR)

Ratified in 1997	International Convention on the Elimination of Racial Discrimination (1965)	Committee on the Elimination of Racial Discrimination (CERD)
Ratified in 1997. Ratified optional protocol to the convention in 2002	Convention of the Elimination of Discrimination Against Women (1999)	Committee on the Elimination of Discrimination against Women (CEDAW)
Ratified in 1997. Ratified optional protocol in 2008	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	Committee against torture (CAT) The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)
Ratified in 1994	Convention on the rights of the Child (1989)	Committee on the Rights of the Child (CRC)
Ratified in 2003	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	Committee on Migrant Workers (CMW)
Signed in 2011	Convention on the Rights of Persons with Disabilities (2006)	Committee on the Rights of Persons with Disabilities (CRPD)
	International Convention for the Protection of All Persons from Enforced Disappearance (2006)	Committee on Enforced Disappearances (CED)

4. Follow up questions

- What constitutes international legal personality?
- Do you agree with the theories on recognition of statehood?
- Why is it necessary to look at the constituting documents of international organizations to define its scope of legal personality?
- In what circumstances individuals are considered as subjects of IL?
- Define and explain the principles of international human rights law?
- Briefly explain the system of UN Treaty based mechanism on HR protection

ⁱ Lassa Oppenheim, *International Law: a treatise*, 1912

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- ⁱⁱ Chapters on People and Nations, International Organizations, Minorities and Majorities from B. Fassbender, A. Peters, *The Oxford Handbook of the History of International Law*, Oxford University Press, 2012
For further information on subjects you are recommended to read following authors: Antonio Cassese, *International law* (Oxford University Press, 2005, second edition),
Larry Damrosch, *International Law: Cases and Materials*, (West Group Fourth Ed. 2001, and Fifth Ed. 2009),
Anthony Aust, *Handbook of International Law*, (Cambridge University Press 2010),
Malcolm Shaw, *International law*, (Cambridge University Press Fifth Edition 2003)
- ⁱⁱⁱ M. Dixon, R. McCorquodale, S. Williams, *Cases and Materials on International Law*, 5th edition, Oxford University Press, 2011, p. 132
- ^{iv} M. Dixon, R. McCorquodale, S. Williams, *Cases and Materials on International Law*, 5th edition, Oxford University Press, 2011, p. 133
- ^v Montevideo Convention on the Rights and Duties of States (1933)
- ^{vi} V. Lowe, *International Law*, Oxford University Press, 2007, p. 161
- ^{vii} Reparation for Injuries Suffered in the Service of the United Nations Opinion (ICJ Rep 1949 174, International Court of Justice)
- ^{viii} Schutter, Olivier De. *International Human Rights Law: Cases, Materials, Commentary*. Cambridge University Press, 2014.
Sheeran, Scott, and Sir Nigel Rodley. *Routledge Handbook of International Human Rights Law*. Routledge, 2014.
Shelton, Dinah. *The Oxford Handbook of International Human Rights Law*. OUP Oxford, 2013.
- ^{ix} UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)
- ^x UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999,
- ^{xi} UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3
- ^{xii} <https://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx>