The Individual - Subject of the International Human Rights Law

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Abstract
Traditionally, the state and the international governmental organisations were considered the main subjects of public international law. In this context, the human rights international law confirms the specific place of the individual as subject of law, with a comprehensive legal personality established through international treaties and courts of justice specialized in this domain.
Key words: *human rights, individual, subject of international law*

1. Introductory considerations

The doctrine writers generally agree to define the **subjects of international law as entities participating both in the elaboration of international legal norms and in the legal relations governed by such norms, endowed with the capacity to hold certain rights and duties under the international legal system.**

An important element in the identification of a subject of international law is the **legal personality, respectively of the legal capacity to act internationally.**

Certain writers[1] have identified the subject of international law as:
- the holder of rights and duties provided under international law
- the holder of the right to bring a claim before an international tribunal;
- the holder of certain interests for which provisions are made under international law.

Other writers[2] have outlined that two basic conditions need to be cumulatively met in order for the individual to become subject of international law: to be a holder of rights and duties, established and sanctioned directly by the international law.

Finally, certain doctrine writers[3] have outlined the fact that legal personality in international law necessitates the consideration of the interrelationship between the rights and duties undertaken internationally and the capacity to bring complaints, claims or contentious proceedings before a court. Therefore, any initiation of a legal action should be the result of a right recognized to that entity under the international legal system.

The international doctrine of human rights mentions, besides the **state** and, in certain cases, the **international governmental organizations**, the **individual** as subject of contemporary international human rights law.

2. Individual as subject of international human rights law

The promotion of human rights in the international law resuscitates the traditional debate concerning the place of individual in the international legal system.

[1] J.G. Starke, Introduction to International Law, Butterworths, London, Tenth edition, 1989, page 58
[2] Paul Reuter, Droit international public, 1ère éd., PUF, Paris, 1958, page 175
[3] Malcom Shaw, Cambridge University Press, Sixth edition, Third printing, 2010, page 196

As a principle, the human rights may not be conceptualized outside legal categories, especially outside the category of subject of law[4]. The doctrine sets out that the human rights may only be conceived when the individual is recognized as a subject of law, endowed with the capacity to hold certain rights and duties enforceable at law. The human rights are defined as individual rights, therefore pertaining to the person.

The matter of the place of the individual in the international legal system has been at the centre of lively doctrinal controversies. Most of the writers adopted the view according to which the only subjects of the international legal system are the states and the inter-states international organizations (as derived subjects), due to the fact that the individuals may have access to the international law exclusively by means of states and diplomatic immunity. In other words, the international law governs relations between states, therefore the individual may not be a subject of international law.

The same writers consider that the state is, as a matter of historical development of the international law, the general subject of international law and it may not be assumed that a state has consented to make its citizens subjects of international law, unless it has unequivocally expressed its intention to do so.[5]

Therefore, an international rule is not binding for the individual unless it is "individualized". At the time such rule is adopted, the states shall express their intention to confer rights and duties to individuals under the international legal system.

Even in this last circumstance, certain writers do not recognize the capacity of the individual as subject of law. They assert that the state has the authority to enforce the observance of rights and obligations by their citizens and to punish any illegal deeds.[6]

According to this view, it is clear that individuals are subject to certain international rules that either give them benefits or bind them. This does not mean that the individuals are subjects of international law as, most of the times, the state establishes a ”screen” between individuals and international law a: their legal personality, capacity to act, their active or passive responsibility are established under the international legal systems.[7].

It would, therefore, be very uncommon for the individuals to claim directly, at international level, certain benefits conferred under the national legislation, and even if such circumstance occurs, state mediation would be required. In other words, in the view such writers, the individual may, at the most, acquire a ”derived” legal personality, as a result of the will of another international law subject.

However, an increasing number of contemporary writers view the individual as subject of international law. They ground their argument on the rights and obligations established under several international treaties and also on the principle of responsibility in international relations, including criminal responsibility, for any illegal deeds committed by the individual.

The judgement of the Nürnberg International Tribunal of 1946 (followed in 1948 by the judgement of Tokyo International Tribunal) is invoked in this respect, which

[4] Frédéric Sudre, Droit européen et international des droits de l'homme, Presses Universitaires de France, 7e édition, Paris, 2005, page 86

[5] See the Advisory Opinion of the Permanent Court of International Justice of 3 March 1928 in the case "Jurisdiction of the Courts of Danzig", cited by J.G. Starke; work cited , page 61, stating that if the Parties intended, under a certain treaty, to confer certain rights to individuals, such rights shall gain recognition and effect in the international law, meaning to be recognized by the International Court of Justice.

[6] Patrick Daillier, Mathias Forteau, Alain Pellet, Droit international Public, LGDJ, 8e édition, Paris, 2009, page 717

[7] Ibidem, page 716

prosecuted certain defendants, thus outlining the individual responsibility under international law.

The international law principles recognized by the Charter establishing the Nürnberg International Tribunal on 8 August 1945, but also by the text of the judgement, entailed the drafting of certain unequivocal references to certain "individuals" guilty of crimes against peace and security of mankind. The Judgment of the Nürnberg Tribunal stated that "crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced" "[8].

Based to this approach, the contemporary doctrine writers acknowledge the more important role of the individual in the international legal system. Certain writers consider that, basically, the international society is a society made of individuals responsible directly under the international law. There are some other writers[9] as well who criticize the theories according to which, at present, only states and inter-governmental institutions are subjects of international law. According to them, the essence of international law was ultimately aimed at the human being and this was outlined in the origins of the Natural Law on which the classical international law is based. **The modern practice has proved that individuals have become more often recognized participants and, therefore, subjects of international law.**

Nowadays, a large majority of the international doctrine writers agrees that this phenomenon has become an undisputable reality of the last decades, especially in the realm of protection of human rights and humanitarian law.

The contemporary doctrine outlines the fact that, by adopting UN Charter, the international community acknowledged that the fundamental rights and freedoms are no longer a national jurisdiction issue, but an international issue, therefore considering that the Charter endowed the individual with immediate international rights.

Moreover, the universal international treaties (starting with the two International Covenants of 1966) or regional international treaties (e.g. European Convention on Human Rights) establish, unquestionably, a set of fundamental rights and freedoms among which several are considered non-derogable (e.g. the right to life) or of "jus cogens", as well as certain duties. Furthermore, beside the substantive rights and related duties, the treaties establish certain procedural rights and duties, which guarantee the individuals direct access to specialized international courts, where the states have passive legal standing.

As regards the contribution to the process of international norms elaboration in the field of human rights, it is obvious that, at present, such contribution is not a direct one but **mediated** by state or non-governmental organizations, interest groups[10] which bring together people with a common view in certain fields relevant for the protection of human rights, even by individual opinions expressed in the international doctrine by reputable writers or in the courts case-law, through individual or separate opinions. The doctrine invokes, as mediated contribution to the elaboration of human rights international norms, the judicial decisions of the specialized international courts where the individual held active legal standing, submitted arguments and evidence that resulted in a court decision.

As regards the international legal capacity of the individuals, in particular their right to act internationally, their possibility to bring contentious proceedings before

[8] J.G. Starke, work cited , page 62
[9] Malcom Shaw, work cited , page 258
[10] Patrick Daillier etc., work cited , page 716

international courts[11], as well as non-contentious proceedings[12], also by means of individual claims submitted to the specialized organizations of UN or to the regional ones. Furthermore, the expression of the legal personality at international level, in the field under discussion, involves directly the individual criminal responsibility, situation confirmed at present at normative and institutional level, as well as by the practice.

Having an old customary basis whereby piracy on sea or slave trade were incriminated, nowadays the international law establishes the criminal responsibility for individual deeds of drugs trafficking, safety of international civil aviation or fight against terrorism. Probably the most obvious field regulated at present remains that of ”crimes against humanity” and "crimes of genocide”, as such have been defined and incriminated by the The Rome Statute of the International Criminal Court of 1988 (article 33 paragraph 2) as such have been applied in case of certain ad-hoc international criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia or that for Rwanda.

3. Conclusions

The legal personality of the **individual** in the international relations has been gradually recognized in the last decades by an increasing number of international law writers, particularly in the specific field of international protection of human rights.

As regards the **realm of international law of human rights,** one should bear in mind the fact that the **central axis remains the relation between state and individual**, which requires the observance of certain rights and the undertaking of certain duties, jurisdictional and non-jurisdictional contentious proceedings for the enforcement of such, as well as the conclusion largely embraced by the contemporary international society, according to which the protection of human rights has become an issue of international cooperation and guarantee and may no longer be accepted as object of absolute and exclusive sovereignty of the state.

Therefore, the individual is one of the main subjects of international law, beside the state and, according to certain writers, the international governmental organizations.

References

Starke J.G., *Introduction to International Law*, Butterworths, London, Tenth edition, 1989;

Reuter P., *Droit international public*, 1ère éd., PUF, Paris, 1958;

Shaw M., Cambridge University Press, Sixth edition, Third printing, 2010;

Sudre F., *Droit européen et international des droits de l'homme*, Presses Universitaires de France, 7e édition, Paris, 2005;

Daillier P., Forteau M., Pellet A., *Droit international Public*, LGDJ, 8e édition, Paris, 2009;

Brownlie I., *Principles of public international law*, Fourth edition, Clarendon Press Oxford, New York, 1990;

Dinh N.Q., Daillier P., Pellet A., *Droit international public*, 3e édition, Librairie générale de droit et de jurisprudence, Paris, 1987;

Miga-Beşteliu R., *Organizaţii internaţionale interguvernamentale*, Editura All Beck, Bucureşti, 2000;

Miga-Beşteliu R., Brumar C., *Protecţia internaţională a Drepturilor Omului*, Universul Juridic, Ediţia V-a, Bucureşti, 2010.

[11] For example, the European Court of Human Rights

[12] Individual claims submitted to the Human Rights Committee for established under the Protocol to the International Covenant on Civil and Political Rights