

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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The International Legal Personality **Of Non-State Actors**

Authored By - Kaushik Subramanya

ABSTRACT

A Legal person is an entity which has a legal personality. Legal personality is the nature of that entity which enables that person to have certain rights and duties. It is the ability to possess rights and be obligated to do any act or do a thing in law such as to own property, sue another person or enter into contracts. How do we examine this concept on the International plane? Historically, only states have been actors on the international level and solely possessed rights and duties. This has however changed in recent times. Non-State actors possess such rights and duties but to what extent? Do they have full International legal personalities such as states or are their rights and duties limited? This concept has evolved over time and is still hotly debated. This research paper proposes to examine the International legal personalities of International organizations, multinational corporations and humans to better understand the current position of law on this matter. The main objective of the paper is to examine and compare the International legal personality of Non-State actors to State actors.

Keywords: International, legal personality, Non-state actors, States, International law.

INTRODUCTION

International Legal Personality is endowed to entities under Public International Law which means that those entities which are bestowed with rights and is said to have an International Legal Personality. The concept of International legal personality serves the purpose of forming the legal basis for the capacity to contract and institute legal proceedings on an international platform. The study of legal personality on the international platform is crucial in the modern world due to rapid globalization and the role played by International politics and interactions in the functioning of the world.

Legal personality allows a person to have rights and duties in a particular sphere, so the question arises as to in what capacity do entities have such personality and what is the source of the same. Traditional International law in the form of conventions and treaties such as the treaty of Versailles bestowed rights and duties to only states. The intent of International law was to recognise and govern only state actors as the law came into being through the will of the states and was meant to be followed by states. This means that International law took no notice of Non-State Actors such as International Organizations and NGOs as they were devoid of International legal personality. This has however evolved and Non - State actors have been given an International Legal personality. Let us examine the legal personalities of non-state actors in this paper.

INTERNATIONAL ORGANIZATIONS

The International Court of Justice or the ICJ decided in 1949 that International Organizations such as the United Nations does have a distinct International legal personality¹. The court stated that International legal personality is possessed by an entity if it is:

“capable of possessing international rights and duties and [has] the capacity to maintain its rights by bringing international claims”

The ICJ decision led the way for multiple international organizations to be recognized as possessing international legal personality. The power to enter into international treaties determines whether or not an entity does possess an international legal personality and when we look at international organizations we understand that they do possess such a power. Article 6 of The 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations states “ The capacity of an international organization to enter into treaties is governed by the rules of that organization.”² Thus, the power of international organizations to enter into treaties is confined to the rules stipulated by their respective constitutions³. International Organizations, therefore, do not have a complete legal personality. They can enter into treaties and obligate international actors to do an act only

¹ Reparation for Injuries Suffered in the Service of the U.N., Order, 1948 I.C.J. 121 (Dec. 11)

² The 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations states, art.6.

³ *International Legal Personality*, Law Teacher (Aug. 26, 2021),

within the rules and constitution it was established within. When we analyze the legal personality of an International Organization such as the United Nations, we observe that it derives its legal personality from the United Nations Charter⁴ which was drafted by the member states. This implies that the states conferred some duties and responsibilities to the United Nations to carry out certain functions. The ICJ, in the *Reparation for Injuries Suffered in the Service of the United Nations* case⁵ held that “It must be acknowledged that its Members [as expressed in the U.N. Charter as a whole], by entrusting certain functions to it with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged. Accordingly, the Court concluded that the Organization is an “international person”. Here we analyze that the court's opinion expressly mentioned that the legal personality of the International organization is granted by the state. The debate which has risen in recent times is whether International organizations after being established should have a legal personality to act beyond the powers and functions explicitly mentioned in the treaty it was established on. After the establishment of such an organization, legal personality is given to the organization and not its founding or member states⁶, therefore it has an independent personality and the animus of an International organization is held by the working members such as the Secretary-General and his subordinates with regards to the United Nations. In most cases, this is not the case and the states can always choose to dissolve any international organization.

CORPORATIONS

A study of the International legal personality of multinational corporations will lead us back to ICJ's *Reparations for injuries advisory opinion* in which the ICJ declared the United Nations to have an international legal personality. The court held that there are 4 elements of International legal personality for Non- State actors which have to be looked into. They are:

- “1) an independent or autonomous existence;
- 2) the ability to possess international rights or obligations;
- 3) the actual possession of those rights and obligations; and
- 4) the ability to enforce rights on the international plane.”

⁴ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, [accessed 26 March 2023]

⁵ *Reparation for Injuries Suffered in the Service of the U.N.*, Order, 1948 I.C.J. 121 (Dec. 11)

⁶ James E. Hickey Jr, *The Source of International Legal Personality in The Twenty First Century* (Jan. 1, 1997),

It is established that corporations do have an independent and autonomous existence, therefore we have to look into whether or not they can possess and if they actually do possess rights and duties. It is well established that corporations enter into bilateral or multilateral agreements with other corporations and even countries themselves. When there is a breach of contract between 2 corporations, an international arbitration clause obligates both parties to settle their disputes. It is also well established that corporations should also enforce international obligations as the UN Guiding Principles on Business and Human Rights⁷ obligates corporations to be mindful of respecting Human rights and can also be held liable for violating them. This international duty on corporations gives them an International legal personality⁸ as they possess both rights and duties. These rights and duties are enforceable through various International dispute mechanisms which have been set up. Dispute mechanisms can vary from WTO mechanisms to the ICSID set up by the World Bank⁹. Thus rights and duties of such entities can also be enforced. Multinational corporations are however created by national legislation and are subject to national scrutiny. Their international rights can be limited by their respective governments or even monitored by them. A common example of this is military deals by private companies with foreign nations. Such deals can be monitored and altered by the state and can even be restricted if the foreign nation is an enemy state. Thus their rights are limited.

INDIVIDUALS

Historically, International law never recognised individuals or humans to possess international rights and duties. Humans were only treated as legal objects and not legal personalities. Legal proceedings for the enforcement of rights of individuals only took place if the state chose to take up the cause and could only assert its claims against another state and not an individual. Therefore, individuals were protectable only if states had an interest in that individual¹⁰. This meant that stateless individuals such as refugees did not possess any rights or duties. This basically treated humans as mere objects and the violation of the interest of the state through its citizens was the only basis to seek enforcement of individual rights.

⁷ The UN Guiding Principles on Business and Human Rights

⁸ Vincent Chetail, *The Legal Personality of Multinational Corporations, State Responsibility and Due Diligence: The Way Forward* (Dec. 6, 2013),

⁹ Tara Van Ho, *International Legal Personality of Corporations: How Investment Law answers the Supreme Court Question in Jesner* (Oct. 2, 2017),

¹⁰ James E. Hickey Jr, *The Source of International Legal Personality in The Twenty First Century* (Jan. 1, 1997),

However, The Convention Relating to the Status of Refugees¹¹ also known as the 1951 Refugee Convention sets out the rights for refugees who have been granted asylum in foreign countries. This, therefore, confers the rights to even stateless persons. Post World War 2, two courts were set up, the Nuremberg Trials and the Tokyo Trials which held individuals criminally liable for their actions against people who suffered from their actions. Holding individuals criminally liable on an international level and recognising the rights of victims who suffered from their actions recognises both rights and duties of individuals and society on an international plane. The ICJ's order to obligate Pakistan to provide consular access to Khulbhushan Jadhav is a recognition of an individual's right by the International Court of Justice. This, therefore, suggests that individuals do have an international legal personality.

CONCLUSION

The pre-United Nations period saw International Legal personality bestowed to only states¹² and non-state actors were devoid of such a personality and therefore were only objects or recipients of the law. The recognition of the United Nations as a distinct International Legal Personality opened the doors for many Non-state actors to be recognised as legal personalities on the International platform and were conferred with rights and duties. International organizations, corporations and individuals all possessed International rights and duties and were thus conferred with the above-mentioned status. Entities such as corporations, International organizations and individuals are not a homogenous group, the concept is still very subjective and very ambiguous. Multiple theories exist on who grants such a status of International legal personality to entities and many still suggest that only states can and therefore only states are full international legal personalities and other non-state parties only have a partial international legal personality. Whereas many suggest that entities can self-proclaim to be international legal personalities by fulfilling the criteria in the ICJ's reparations opinion.

¹¹ Convention Relating to the Status of Refugees, 1951.

¹² *International Legal Personality*, Icelandic Human Rights Centre