

PUBLIC INTERNATIONAL LAW

Academic Course: 2020-2021

Prof. Karla Zambrano González



This work is licensed under a Creative Commons Attribution 4.0 International License.

UNIT 4. International Personality and recognition

International personality

I. GENERAL FEATURES: THE SUSPECTED RULE OF ATTRIBUTION OF INTERNATIONAL PERSONNEL

Concept: A subject of international law is an entity possessing international rights and obligations and having the capacity to:

1. Maintain its rights by bringing international claims;
2. Be responsible for its breaches of obligation by being subjected to such claims.

- Classic doctrine: notion of international legal person from a legalistic perspective. Balladore-Pallieri: defence of the existence of a rule that attributes legal personality.
- Influences of civil law related to legal personality are not susceptible to being transferred as such and without any adaptation to the international law plan.

In contrast to the classical doctrine: Aug, Reuter, Dupuy = Prof. Miaja de la Muela: the international legal personality does not correspond to a formal legal criteria but to a verifiable reality, that is to say, it is based on the principle of effectiveness (the facts must be adjusted to the law).

How can it be said that an entity acting in international relations has acquired an enough project to be considered as a subject of the order?

3 elements to be taken into account:

1. *Ius communicationis* - maintaining official relations with other states or IOs;
2. *Ius tractandi* - Ability to hold treaties and to participate in the process of creating international law standards;
3. *Ability* to respond to illegal acts.

II. WELL-ESTABLISHED SUBJECTS: STATES AND INTERNATIONAL ORGANIZATIONS

A) The State

It is the most important category. The State is the primary subject of international law and occupies a central place within this order, since most of the rules governing international relations revolve around it.

Some scholars have the theory that States are the only subjects of IL, but it is not at all.

B) International Organizations

- From the second half of the 19th century appeared, on the international scene, the International Organizations.

Formalist vision of the personality - these new international organizations are assimilated to the State.

**Does the United Nations
possess international
personality ?**

The ICJ advisory opinion of April 11, 1949 on the reparation for injuries suffered in the service of the United Nations, stated that *the Court was of opinion by 11 votes against 4 that the Organization has the capacity to bring an international claim whether or not the responsible State is a Member of the United Nations.*

This advisory opinion could be interpreted as a definitive turning point towards the consideration of International Organizations as subjects of IL.

“The Court concluded that the Organization is an international subject. This is not the same as saying that the Organization is a State, which certainly it is not, or that its legal personality and its rights and obligations are the same as those of a State.

However, it is still necessary to say that the Organization follows a "super-State", whatever that expression may mean (...) The functions of the Organization are of such a character that they could not be effectively discharged if they involved the concurrent action, on the international plane, of fifty-eight or more Foreign Offices, and the Court concludes that the Members have endowed the Organization with capacity to bring international claims when necessitated by the discharge of its functions. “

CONCLUSION:

“In the event of an agent of the United Nations, the performance of his duties suffering injury in circumstances involving the responsibility of a Member State (or not), the United Nations as an Organization has the capacity to bring an international claim against the responsible de jure or de facto government with a view to obtaining the reparation due in respect of the damage caused to the victim or to persons entitled through him.”

Do all International Organizations have legal personality?

- The determination of the personality of each of these international organizations has to be logically made on a case-by-case basis, taking special attention to the provisions of their constitutional treaty, functions, competences and responsibilities carried out by the Organization.

III. CONTROVERSIAL SUBJECTS: POLITICAL AND RELIGIOUS ENTITIES

A) Entities recognized as belligerents

Belligerent or insurgent bodies within a state may enter into legal relations and conclude agreements on the international plane with states and other belligerents/insurgents.

According to Fitzmaurice —> belligerents has attributed treaty-making capacity to “para-Statal” entities recognized as possessing a definite if limited form of international personality. For instance, the I.R.A in Northern Ireland.

Insurgency means rebellion, riot or mutiny by portion of the citizens of a State against the established government.

The recognition of belligerency gives the insurgents a certain international projection

There are certain rules applicable of this order. In particular, the application of rules related to armed conflicts, which enable warring parties to control the navigation of neutral ships on the high seas and which oblige third States to maintain a strict neutral position.

The recognition of belligerency is a principle that has been affirmed by the international community, although it is essentially limited to the area of the Law of War and is normally circumscribed to the duration of the armed conflict.

B) '*Peoples*' and National Liberation Movements

Only those non-self-governing 'peoples' that strive to acquire the status of States through a National Movement of Liberation (MNL) have a certain recognition as possessing international personality.

WARNING: National liberation movements may, and usually do, have other roles, as *de facto* governments and belligerent communities.

- Political entities recognized as liberation movements have a number of legal rights and duties, the more significant of which are as follows:

a) In practice: NLM have the capacity to conclude binding international agreements with other international legal persons;

b) The applicability of the provisions of the Geneva Protocol I of 1997 related to conflicts involving national liberation movements if certain conditions are fulfilled;

c) Participation as UN observers

d) the designation of a non-self-governing people engaged in a process of national liberation has implications for the colonial (or dominant) power.

1. “Peoples”

The existence of non-self-governing territories within the scope of the Chapter XI of the UN Charter may open a controversy within the principle of self-determination.

By the one hand...:

“Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories” (art. 73 UN Charter).

By the other hand...:

Art. 21 of the UN Declaration of Human Rights states that *“The will of the people shall be the basis of the authority of government (...)”*

And art. 1 of the International Covenant on Civil and Political Rights states that: *“1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (...)”*

a) External right of self-determination

It implies that people under colonial or foreign domination have the right to fight for political independence.

In this sense, the Resolution 1514 of the General Assembly dated on December 14, 1960, related to the “Declaration on the granting of independence to colonial countries and peoples” has declared that:

2. All the peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (...)

5. Immediate steps shall be taken, in Trust and non-self-governing territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom”.

WARNING: The right of self-determination corresponds to this peoples who are in the event of a colonial or foreign domination, the right to independence of the peoples with the right to freedom is imposed at the beginning of the territorial integration of the States.

b) Internal self-determination right

Peoples who **do not have the status of colonies** and **are not subject to foreign domination** or a situation of arbitrary subordination do not have the right to political independence (secession).

Declaration 2625 (XXV) states that any of its provisions shall be understood as **authorizing the promotion of any action aimed at strengthening or weakening**, in whole or in part, **the territorial integration of sovereign independent States** that consider themselves "endowed with a government representing the whole population belonging to the territory without distinction as to race, belief or color".

Does Catalonia have the right of self-determination
according to IPL?

c) Economic rights

In the economic field, some international texts have also contemplated "peoples" as holders of the rights that are proclaimed in them.

In this sense, GA Resolution 1803 (XVII) on Permanent sovereignty over natural resources declares that *"The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned"*.

Also in the economic field, linked to marine resources, Resolution III of the Conference that adopted by the United Nations Convention on the Law of the Sea, on April 30, 1982, states that:

"In the case of a territory whose population has not attained full independence or a different system of autonomy recognized by the United Nations, or of a territory under colonial rule, the dissociations concerning the rights and interests of the population in accordance with the Convention shall be applied for the benefit of the population of the territory with a view to providing for its well-being and development.

2. National Liberation Movements

They have regained a certain recognition as eventual holders of international personality.

—> This situation occurs especially in the case of independence movements against a colonizing metropolis of a territory, the objective of which is to make effective the principle of self-determination.

See Resolution 2918 (XXVII) of the General Assembly on Question of Territories under Portuguese administration

Palestinian Liberation Front (PLF) -->It begins in a different context from the merely colonial marked by the dispute in the creation of the State of Israel. PLF has participated in several international conferences from both Arab and other countries. It has a special status as an observer in several international organizations (Arab League, Organization of African Unity (OAU), UN...). It is a member of other international organizations worldwide and has been expressly recognized by almost all Arab countries and non-Arab states.

— Condition of UN Member State - veto power SC US 2011.

C) Religious entities: Holy See and sovereign order of Malta

1. Holy See

Current situation: the international situation of the Holy See is quite complex because of its particular condition both spiritual and temporary and its main structure: the Church itself, the Holy See and the Vatican City State.

The origin of the temporal power of the Church is dated at the time of the fall of the Western Roman Empire (5th century), when the Pope became the only residual authority in Rome after the sacking of the city by the barbarians.

The temporal power of the Pontifical States is maintained during several centuries, but after its disappearance, the powers of the Church will be established by an Italian Law of 13 May 1871, called the Law of Guarantees. However, additionally to the enjoyment of the Vatican and Lateran palaces and the Villa de Castel Gandolfo, the Law of Guarantees recognized the Church's certain temporal powers, which it fully exercised, including the capacity to maintain diplomatic relations and the capacity to conclude international agreements with States (concordats).

In a Treaty and Concordat of 1929, Italy recognized “the Sovereignty of the Holy See in the international domain” and its exclusive sovereignty and jurisdiction over the city of the Vatican.

Numerous states recognize the Holy See and have diplomatic relations with it and the Holy See is a party to many treaties. Functionally, and in terms of its territorial and administrative organization, the Vatican City is proximate to a State. However, it has no population, apart from resident functionaries and its sole purpose is to support the Holy See as a religious entity.

The Lateran Agreements are composed by:

1. A Concordat on the exercise of Catholic worship in Italy;
2. A political treaty that creates the Vatican City and regulates the relations between the Church and the Italian State, and;
3. A financial agreement.

The Lateran Treaty recognizes the Holy See's "sovereignty in the international sphere" (Art. 2), as well as its "sovereign jurisdiction" over Vatican City (Art. 3), with the Holy See affirming its desire to stay away from temporal disputes between States, subject to the assertion of its spiritual and moral power when appropriate (Art. 24).

2. The sovereign order of Malta

The Sovereign Order of Malta (or Order of Saint John of Jerusalem) has its origins in the time of the Crusades, when this institution of religious-military character was constituted to attend fundamentally to the fate of the sick and wounded in the Holy Land and later to assure the defense of the Holy Places.

Today, the Order of Malta maintains embassies and legations to almost forty states in Europe, Africa, Asia and Latin America and is accredited to several international organizations (Council of Europe, UNESCO, WHO, UNHCR, etc.)

IV. OTHER SUBJECTS OF INTERNATIONAL LAW

A) Transnational corporations

These corporations constitute in the contemporary world a characteristic phenomenon of the capitalist mode of production. The UN, in a study published in 1973, **defined these companies in a broad sense**, considering as such "all those that control assets, factories, mines, sales offices, etc., in two or more countries.

Agreements between States and private companies. Please, note that these corporations are not subjects of international law.

B) NGO's

International non-governmental organizations (NGOs) are private entities that carry out activities in the international sphere. They are private because they are not formed by States and because their legal status is determined by the internal law of the country in which they are to be constituted.

NGO's participate as observers but they do not have the right of vote.

- For example: Red Cross, MSF...

C) Mankind?

The possibility of considering humanity as a subject of law has begun on a positive basis with certain international texts that have recognized a certain legal dimension.

Resolution 1962 (XVIII) on the Declaration of legal principles governing the activities of States in the exploration and use of Outer Space recognizes the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes.

V. STATUS OF INDIVIDUALS IN INTERNATIONAL LAW

Individuals are NOT subjects of IL.

A) Individual rights: their protection by an international Court

In a regional scope. The European Council establishes the possibility of present claims before the European Court of Human Rights.

With a more general character, the European Union has established a system of "supranational" law, among the characteristics of which the most outstanding is the direct effect of some of its provisions on the citizens of the Member States and the possibility to claim protection of their rights not only before the national jurisdictions but also in certain cases, before the European Court of Justice.

B) International obligations of the individuals

- situations of piracy, genocide, war crimes commission...

Delicta iuris gentium.