INTERNATIONAL PERSONALITY

1. GENERAL ASPECTS. 2. ESTABLISHED SUBJECTS. 3. CONTROVERSIAL SUBJECTS. 4. OTHER INTERNATIONAL ACTORS. 5. THE CONDITION OF THE INDIVIDUAL IN INTERNATIONAL LAW

GENERAL ASPECTS: THE ALLEGED RULE OF ATTRIBUTION OF INTERNATIONAL PERSONALITY

- **Concept of personality or subjectivity:** various perspectives (linguistic, philosophical, legal).
  - From the legal perspective: entity with the capacity to act within a given legal framework, capable of being an addressee of the rules and of establishing legal relations, becoming a holder of rights and obligations.
    - Concept of **international personality** (initially) capacity to act in international relations, to establish legal relations with other international subjects, to be the creator and addressee of rules and to be the holder of rights and obligations governed by international law.
      - Classic doctrine of IL: Excessively influenced by its civil law background: it is the international legal system itself which determines, by means of a rule, which are the subjects legitimized to act within it.
        - rule attributive of international personality.
      - Modern doctrine of IL: More realistic, empirical or inductive conception of international personality.
        - AGO, REUTER and DUPUY: international personality did not belong to the world of legal-formal or "legal" categories but would derive from the realities ascertainable on the sociological and legal levels of international relations.

- The synthesis between these two currents : MIAJA DE LA MUELA
  - the only rule of attribution of international personality is that which is embodied in the so-called principle of effectiveness: the entities effectively acting in the international order (which *de facto* carry out activities that are the object of a certain recognition) are considered as persons or subjects of the legal order in question.
    - ✓ is not a single personality modality, but various degrees of personality development. When can it be said that an entity acting in international relations has acquired a sufficient projection to be considered a subject of the legal system? Professor Reuter: for an entity acting in international relations to be considered as having international personality, it must engage in a range of activities that fall into at least the following three fronts:
      i. Exercise of the power of legation (ius comunicationis-legationis), i.e., effective maintenance of official relations with other States or international organizations.
      ii. Exercise of the capacity to enter into treaties (ius tractandi) and, in general, capacity to participate in the process of creation of rules of international law.

iii. Capacity to answer for wrongful acts eventually committed and to challenge the responsibility of other subjects of international law (ius standi): i.e., capacity to be an active (claimant) and passive (respondent) subject of international responsibility.

ESTABLISHED SUBJECTS: STATE AND INTERNATIONAL ORGANIZATIONS

A. The State.
B. International Organizations.

A. THE STATE

- Primary subject of international law and occupies a central place in this order, since it is the pivot of most international law.
  - Primitive conception: only subject. Excessive dogmatic and narrow.
  - Today’s reality: The State is not the only subject of international law. In today's world, alongside States, the primary subjects of international law, there coexist other established subjects, which we might call "secondary" (created by the States themselves) the international organizations, with specific problems.

B. INTERNATIONAL ORGANIZATIONS

- 2nd half of the 19th century-onwards: Institutionalization of International Community. In order to achieve their purposes, they exercised de facto certain competences and assumed certain obligations in international relations.
  - Jurists who professed a formalistic view of personality: assimilation to State.
  - Evolution of international relations: international organizations, which de facto exercised de facto functions and competences in the international order, constituted a new category of subjects of international law.
  - Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. 1949:
    - Facts of the opinion: Assassination of Count Folke Bernadotte, who had been sent by the United Nations as mediator in Palestine following the Arab-Israeli conflict of 1947-48. In response to this assassination of a UN agent, the General Assembly consulted the ICJ on the possibility of the Organization to bring an international claim against the Government responsible for the death of the said agent.
    - ICJ: the question (the possibility of bringing an international claim) raised by extension the question whether the United Nations Organization ultimately possesses what the doctrine calls international personality.
    - ICJ Opinion: line of thought inspired by the theory of the “implied powers”.

        - The UN does indeed possess an international personality which entitles, in particular, to bring an international claim for damage suffered in the person of its agent both vis-à-vis any State member of the Organization and even vis-à-vis States which were not members of it.
    - Application of the same rationale, *mutatis mutandi*, to other IO: international organizations constituted a subject (secondary, if you will, but a subject nonetheless) of international law.
- The determination of the personality: case-by-case basis, having regard to the provisions of the constituent treaty and the functions, powers and responsibilities actually exercised by the organization concerned. Recalling the triptych proposed by Professor Reuter, it is significant to note that international organizations largely meet the required requirements:
    - communication capacity: Convention on the representation of States in their relations with international organizations, adopted in Vienna on March 14, 1975.
    - capacity to conclude treaties: Convention on Treaties concluded between States and International Organizations or between two or more organizations.
    - responsibility of international organizations: progressively moving in the affirmative.

CONTROVERSIAL SUBJECTS: BELLIGERANTS, PEOPLES AND NATIONAL LIBERATIONS MOVEMENTS, AND RELIGIOUS ENTITIES

A. Political entities linked to situations of belligerence.

B. Peoples and national liberation movements.

C. Religious entities: the Catholic Church and the Sovereign Order of Malta.

A. POLITICAL ENTITIES LINKED TO SITUATIONS OF BELLIGERENCE

- Entities of a political nature which, without having attained the status of States, have received a certain recognition at the level of international relations linked to situations of belligerence or to processes of revolutionary change, and generally have an ephemeral existence, which dies out naturally with the end of the conflict.
  - The so-called insurgents or insurrectionists who, having taken up arms against the legally established government of a given State (de jure government), have acquired a certain territorial establishment in the country.
    - Third States may be affected by the situation: formulation of a "recognition of insurgency".
    - Certain competences within the framework of international law: Jurisprudence.
      - *Gentini* Case (1903) Italian-Venezuelan Mixed Arbitral Commission: "the revolutionary authorities replace the legitimate authorities and exercise their functions".
      - Banco de Bilbao case, of 17 March 1938 or Arántzazu Mendi case, of 23 February 1939, during the Spanish Civil War: English Courts recognized the validity of the exercise of administrative powers by the insurgents against the Government of the Republic at a time when they had not yet imposed their rule over the whole of the country.

- Wider international relevance from the recognition of belligerency by the State against which the insurrection is directed or by third State: The recognition of belligerency confers on the insurgents a certain international projection, which entails the application of certain rules of this order:
  - Rules relating to armed conflict: limited essentially to the field of the law of war and with a validity normally limited to the duration of the armed conflict.

B. PEOPLES AND NATIONAL LIBERATION MOVEMENTS

- In recent times, the doctrine has considered the possible emergence of a new category in the international subjectivity landscape: the concept of “people”.
  - IL has proclaimed the political, economic and cultural rights of peoples.
- BUT only those peoples who struggle to acquire the status of States through a National Liberation Movement (NLM) have received some recognition as having international personality.
- **Peoples**:
  - Use of the term "peoples" in numerous international texts which consider this human group as having certain rights recognized by the international order (mainly in the context of the protection of human rights of a collective nature, the right of peoples to self-determination and the right of peoples to their resources and natural wealth). *Examples*: Preamble of the UN Charter: "We, the peoples of the United Nations...”.
    - This profuse (and sometimes confusing) use of the concept of a people as the holder of certain rights can be explained by two main considerations:
      - From a historical perspective.
      - From a more current perspective, the noun "people" possesses a democratic character that makes it politically preferable to other alternative terms.

- Necessity to reconcile right of peoples to self-determination with respect for the national unity and territorial integrity of States:
  - Right to external self-determination: the principle implies that peoples subjected to colonial or foreign domination have the right to struggle for political independence.
    - In cases of subjugation to colonial or foreign domination, the right to self-determination of the peoples is imposed on the principle of territorial integrity of States.
    - The same is true in the case of racist regimes (South Africa during the apartheid era) or peoples whose territory is subject to illegal occupation (Palestinian territories, Sahara, etc.).
      - ✓ GA Resolution 1514 (XV) of 14 December 1960, "Declaration on the Granting of Independence to Colonial Countries and Peoples", paragraph 2.
      - ✓ GA Resolution 2625 (XXV) of 24 October 1970, "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations".

- ❖ Right to internal self-determination: Peoples who do not have the status of colonies or are not subject to foreign domination or a situation of arbitrary subordination do not enjoy the right to political independence (secession). Although they do possess other rights:
  - right to survival (Convention on the Prevention and Suppression of the Crime of Genocide of December 9, 1948).
  - to non-discrimination (Convention on the Elimination of All Forms of Racial Discrimination of December 25, 1965)
  - respect for their attributes as a people (right to cultural, religious or national identity, as well as to political autonomy within the State in which they are integrated).
    - ✓ GA Resolution 61/295 13 September 2007, "United Nations Declaration on the Rights of Indigenous Peoples.

- Economic rights: some international texts have also contemplated "peoples" as holders of the rights proclaimed therein.
  - ❖ GA Resolution 1803 (XVII) of 14 December 1962, “Permanent sovereignty over natural resources“.
  - ❖ Resolutions that in the 1970s defined the outlines of the new international economic order.

- **National Liberation Movements**: Peoples who effectively fight for the acquisition of statehood through a National Liberation Movement (NLM) have received a certain recognition as potential holders of international personality.
  - The Algerian National Liberation Front (FLN).
  - The MLNs of the African colonies were also the object of extensive recognition and strong support from the UN itself in the 1970s: liberation movements in South Africa (SWAPO), in Zimbabwe (ANC) and in the various Portuguese colonies (Angola, Guinea Bissau, Cape Verde, Mozambique, Sao Tome and Principe).
  - MLNs who have fought in recent years to make the principle of self-determination effective of the remaining colonial territories (Saharawi Polisario Front).
  - The case of the Palestine Liberation Organization (PLO) is situated in part in a different context than the purely colonial context, framed by the dispute to which the creation of the State of Israel gave rise. The PLO has followed a line of progressive assertion in the framework of international relations: it has participated in numerous international conferences of both Arab countries and of a universal nature; it has a special observer status within numerous international organizations and is a member of international organizations at the global level (WTO, WHO and more recently UNESCO) and has been expressly recognized by almost all Arab countries and by quite a few non-Arab states.

- As of October 2017, out of the 193 member states of the UN, 137 (70.98%) had recognized the State of Palestine.
- Advanced position in terms of full affirmation of its international personality.

- Within the framework of the UN, they have been considered as recipients of aid, have been proclaimed as legitimate representatives of their peoples, and have even attained the status of observer.
- In the framework of international law, their projection has also been progressively consolidated, particularly in the fields of the law of armed conflict and humanitarian law, in the law of treaties and in the law of diplomatic relations.

C. RELIGIOUS ENTITIES: THE CATHOLIC CHURCH AND THE SOVEREIGN ORDER OF MALTA

- **The Catholic Church**:
  - Complex international situation not only because of its peculiar condition, both spiritual and temporal, but also because of the converging of triune structure:
    - The Church itself,
    - The Holy See
    - The Vatican City State.
  - Development of its condition:
    - *Origin of the temporal power of the Church*: 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. Papal Territories.
    - *Italian unification*: Pope Pius IX was forced to give in to the troops of Victor Emmanuel's troops, who proceeded to take Rome on September 20, 1870.
      - Incorporation of the Papal territories into Italy (plebiscite on October 20, 1870) and disappearance of the Papal State.
      - Powers of the Church were established by an Italian Law of May 13, 1871, called the Law of Guarantees (never formally admitted by the Popes):
        - Enjoyment of the Vatican and Lateran palaces and of the Villa of Castel Gandolfo.

- Certain temporal powers, including the ability to maintain diplomatic relations and the ability to conclude international agreements with States (concordats).

- *Lateran Agreements* of February 11, 1919 (between the Holy See and the Kingdom of Italy, ruled by Mussolini-Confirmed by Italian Constitution of 1947): Concordat on the exercise of Catholic worship in Italy, a political treaty creating Vatican City and regulating relations between the Church and the Italian State, and a financial agreement.
  - It recognizes to the Holy See "sovereignty in the international sphere" (art. 2), as well as "sovereign jurisdiction" over Vatican City (art. 3).
  - It recognizes the Holy See's moral power (art. 24).
  - Italy "recognizes the State of the City of the Vatican".

- Today's status:
  - the Holy See (governing body of the Catholic Church) effectively exercises:
    - The right of legation to the States.
    - Participates in international conferences.
    - Is a member of several international organizations and has observer status in others.
    - Concludes international conventions

- For its part, the Vatican City State (also through the Holy See) maintains:
  - diplomatic relations with numerous States.
  - participates in international conferences.
  - is a member of several international organizations.
  - has signed numerous international conventions, both bilateral, as well as multilateral.

- **The Sovereign Order of Malta** (or Order of St. John of Jerusalem):
  - Development:
    - *Origins*: time of the Crusades, when this institution of a religious-military character was constituted to attend primarily to the fate of the sick and wounded in the Holy Land and later to ensure the defense of the Holy Places.
    - *History of the Sovereign Order of Malta*: several periods that mark a progressive trend towards the disappearance of its territorial base:
      - from 1113 to 1291 the Order had its headquarters in the hospital of St. John of Jerusalem, in Palestine;
      - from 1292 to 1308 it settled first on the island of Cyprus and later on the island of Rhodes.
      - in 1523, by concession of Emperor Charles V., the Order settled on the island of Malta where it remained until its expulsion by Napoleon's troops in 1798.

- From that time on, the Order of Malta was successively settled in St. Petersburg, in Messina and in Catania, until in 1834 it finally settled in Rome, where it is currently headquartered.

- Question of its possible personality in international law:
  - Recognized by Italy, whose Court of Cassation ruled affirmatively on the matter in a Judgment of 13 May 1935, which has been confirmed by the repeated jurisprudence of the Courts of Justice.
  - In the same way, the Roman Curia affirmed in its Judgment of January 24, 1953, that its sovereign status entailed "certain prerogatives which the Order possesses by virtue of international law" ".
- Today: exercises certain competences at the international level and has been the object of a certain recognition by some States:
  - maintains embassies and legations to almost forty States in Europe, Africa, Asia and Latin America
  - is accredited to various international organizations (Council of Europe, UNESCO, WHO, UNHCR, etc.),etc.). The representatives of the Sovereign Order of Malta enjoy diplomatic privileges and immunities, and the Order establishes passports that have been admitted even by States that have not formally recognized this institution.

- However, the Order appears today to a large extent as a historical anachronism. The time when this institution had a certain territorial base must be considered as definitely over and if today the Order enjoys a certain recognition, it is due to its relevant past, as well as to the welfare and charitable function that it intends to fulfill at the present time.

OTHER ACTORS LACKING INTERNATIONAL PERSONALITY

A. Multinational corporations

B. NGOs

C. Humankind?.

A. MULTINATIONAL CORPORATIONS

- Contemporary world: characteristic phenomenon of the capitalist model of production.
  - UN definition (broadest sense): all those that control assets, factories, mines, sales offices, etc., in two or more countries.
  - Many political, economic and legal issues. Beyond their purely economic dimension, multinational enterprises also carry out certain activities that are characteristic of entities endowed with international personality.
    - Some multinational enterprises enter into agreements with the States, which have been called "quasi-international agreements" that pose difficulties in their qualification (public sector and in the private sector).
      - In many cases, such agreements expressly exclude their submission to the national law of the country in which the company is to operate, by providing for either to international law or to the provisions of the agreement itself (lawless contract).
    - Any disputes that may arise from the activities of multinational companies are sometimes submitted to international means of settlement: international arbitration (thus escaping the jurisdiction of the State in which the multinational enterprise operates).

- However, multinational companies do not seem to possess a real capacity for communication with States at the same level, nor do they seem to have the capacity for active or passive international responsibility (on this point they are subject to the regime of diplomatic protection like any other private individual).
- Therefore, it does not seem possible to maintain that multinational companies can be subjects of the international law, without ignoring the role that, as lobbies, they play in the international order.

A. INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS (NGOs)

- Private entities that carry out activities in the international framework:
  - ECOSOC Resolution of 27 February 1950: "Any international organization which has not been established by way of an intergovernmental agreement shall be considered as a non-governmental organization“
- They have a private character, since they are not formed by States and are not governed by international agreements.
  - Legal status is determined by the domestic law of the country in which they are constituted.
  - They are not subjects of international law, but their influence on contemporary international relations is undoubtedly decisive in many spheres and their contribution to the progress of these relations is particularly noteworthy
- However, a growing number of NGOs carry out activities within the framework of international society:
  - Among the oldest NGOs are the International Chamber of Commerce, the Inter-Parliamentary Union, the International Olympic Committee and the International Red Cross.

- International Red Cross: special relevance. Some authors have pointed out the possibility of considering, by way of exception, a certain personality for the Red Cross and, more specifically, of its International Committee (ICRC).
  - Created in 1863 as a private institution. Today it is composed of the national Red Cross societies, the league of Red Cross societies and the International Committee of the Red Cross (ICRC), which in a way constitutes the executive body of the Red Cross.
  - The ICRC (association subject to Swiss law) has concluded several headquarters agreements concerning its delegations, other agreements with numerous States to assist refugees, and with some international organizations.
- Apart from this special case, the international status of NGOs, is generally limited to the consultative dimension, i.e., to the status of "observer" (with the right to speak but not to vote) UN-art. 71 Charter.

➢ International practice has widely recognized the importance of NGO participation in all spheres related to their fields of activity, increasingly granting them consultative or observer status in international forums: international humanitarian law (ICRC), human rights (Amnesty International, Human Rights International, Human Rights Watch, etc.) and humanitarian assistance and aid (Doctors without Borders), environmental protection (Greenpeace International, Friends of the Earth International, International Union for the Conservation of Nature).

C. HUMANKIND (MANKIND)?

- Certain international texts have recognized a certain legal dimension to this collectivity:
  - GA Resolution 1962 (XVIII) of December 13, 1963, entitled "Declaration on the Legal Principles Governing the activities of States in the exploration and use of outer space" and the Treaty of the same name (commonly referred to as the "Space Treaty") of 27 January 1967 ".
  - GA Resolution 2749 (XXV) of December 17, 1970, entitled "Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction": Principles reflected in the Convention on the Law of the Sea 1982 (UNCLOS).
  - In the framework of international environmental law, mention is now made of the rights of future or future generations.
- But the attribution of a certain international personality to Humanity still faces serious difficulties:
  - Absence of a sufficient structure to support and vertebrate this Humanity, capable of exercising its rights and fulfilling its obligations in this order.
  - Behind the symbolic figure of Humanity, States are still present.

THE CONSIDERATION OF THE INDIVIDUAL UNDER INTERNATIONAL LAW

A. The rights of individuals: their protection by an international instance.

B. The obligations of individuals: their sanction by an international instance.

GENERAL CONSIDERATIONS

- The situation of the individual on the international level is basically characterized by what has been called "mediatization of man by the State", although the progressive humanization of this order increasingly recognizes individuals as having a certain projection as addressees of some of its norms.
  - In classical international law: States monopolized all capacity to act in international relations, with the result that the individual was completely diluted and only through the State could he or she receive any consideration (diplomatic protection, extradition, etc.).
  - With passage of time: many international norms and institutions have taken into consideration the human person, whose specific interests have been the object of a certain protection. However, at this initial stage, the human person appeared as "object" of the rule of international law, and it was only States that were bound by the rules in question and that could claim compliance with them in the event of a violation.
    - The regime of minorities established in the 1919 Peace Treaties;
    - international protection of human rights, the Universal Declaration of 1948; humanitarian law of war.
  - Recent times: Individual as a possible holder of rights and obligations directly emanating from the international legal order and eventually sanctioned by a jurisdictional instance of an international character.

A. THE RIGHTS OF THE INDIVIDUALS: THEIR PROTECTION BY AN INTERNATIONAL INSTANCE

- Progressive advance towards the establishment of certain rights that correspond directly to the individual and there has been a progressive advance towards the establishment of mechanisms for the protection of these rights directly before an international body (framework of international organizations).
- Evolution:
  - Precedent of the Mixed Arbitral Tribunals (MAT) set up after the First World War.
  - the League of Nations established a petition-claim procedure for the inhabitants of mandated territories.
  - UN:
    - established a right of petition for the inhabitants of territories under trusteeship (art. 87 Charter).
    - International Covenant on Civil and Political Rights of 1966 contains an Optional Protocol establishing Human Rights to which "communications" may be submitted by individuals who are victims of a violation of the rights set forth in the Covenant in question (Protocol, Art. 1).

- A similar possibility of individual recourse has been established by the United Nations Convention on the Elimination of all Forms of Racial Discrimination of 21 December 1965 (in force since January 4, 1969).

- A particular case is that of "international civil servants", working in the service of international organizations: legal protection is provided by the rules of international law and by Administrative Tribunals of an international character.
- The most advanced levels of attribution to the individual of certain rights susceptible of being claimed before an international jurisdictional instance have occurred at the regional level, especially on the European continent
  - within the Council of Europe: possibility of bringing an individual action before the European Court of Human Rights.
  - Within the European Union has established a system of "supranational" law, the most salient features of which include the direct effect of some of its provisions on the citizens of the Member States, and the possibility for these individuals to claim the protection of their rights not only before national jurisdictions but also, in certain cases, before the Court of Justice of the European Union.

B. THE OBLIGATIONS OF THE INDIVIDUALS: THEIR SANCTION BY AN INTERNATIONAL INSTANCE

- Individuals also appear in certain cases as addressees of international norms which impose obligations on them and whose violation calls for a repressive sanction to be imposed by national courts or, in exceptional cases, by an international criminal court.
- Development:
  - So-called delicta *iuris gentium*, such as piracy, the practice of slavery, trafficking in persons, counterfeiting of currency, drug trafficking, trafficking in protected species, hijacking of aircraft, etc., the criminalization of which is initially established by international treaty but the punishment of which is attributed to States through their own courts (universal criminal jurisdiction).
  - International instruments to prosecute those responsible for war crimes, crimes against peace and crimes against humanity:
    - After 2nd WW: new categories of crimes were defined in an international instrument (the London Statute of August 8, 1945) and their sanction was implemented through an international jurisdictional instance created for this purpose: the International Military Tribunals of Nuremberg and Tokyo.
    - The International Law Commission drew up a Draft Code of Crimes against the Peace and Security of Mankind (1996).

- For its part, the UNSC established an International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and an International Criminal Tribunal for Rwanda (ICTR) in 1994, to prosecute individuals considered most responsible for the commission of international crimes in those terrible conflicts.
- Other mixed (international/national) criminal tribunals have since been established for Timor Leste (1999), Sierra Leone (2002), Cambodia (2003), Iraq (2003) and Lebanon (2007).
- In addition, on July 17, 1998, an intergovernmental conference in Rome adopted the Statute of the International Criminal Court (ICC), that entered into force on July 1, 2002, and constitutes the first instance of its kind with universal jurisdiction and scope.

➢ Individual appears as the addressee of norms of international law that criminalize certain categories of particularly serious crimes and whose repression can be carried out by international criminal tribunals.