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Asymmetry in International Legal Personality

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Abstract

The state has represented the sole legal person of international law since its inception under the Westphalian system in 1648. It has continued to exercise the role of the only person in customary international law. With the change in the reality of international relations in the wake of the World War and the shift towards comprehensive international organization, intergovernmental organizations emerged as a new actor in international law. This new actor was not recognized by any distinguished legal status, as the state remained dominant in the reality of international relations, and the trend of international justice, specifically the judiciary of the Permanent Court of Justice (PICJ) remained consistent with the data of customary international law. International law remains the law that governs relations between states only. With the end of World War II and the emergence of the United Nations, the international legal personality of intergovernmental organizations was recognized, and then a distinct legal center emerged for the individual and for multinational companies, and international jurisprudence and jurisprudence began to deal with international legal actors other than the state (Non-State Actors). But these actors are not distinguished by identical legal positions with the state, nor identical legal positions within the same category, as the reality of international dealings and the path of international justice confirm the existence of asymmetry in the legal positions of the state personality.

Keywords: Legal Personality, Non – State Actors, state, Individual, Governmental International Organization, Multi-Nationalities Corporations.

INTRODUCTION

The international legal personality is the founding unit of public international law from which the rules of international law arise and develop in successive tracks. If the concept of legal personality was first established in national laws as a legal status granted to a natural person, then it soon evolved to include a legal person, whether within the scope of private or public legal transactions. It should be noted that international law was created from previous legal entities represented by the unrestricted sovereign states. The state continued as the only person who had the competence to establish the international legal rule and also as the only person addressed by this rule and able to implement the legal obligations stipulated in it. Then the active units in international law developed into non-state actors represented by intergovernmental organizations, individuals and multinational companies. These actors are not on the same level in terms of the ability to establish the international rule or implement the legal obligations contained therein, in addition to being people who do not enjoy the same rights and duties that are limited to the personality of the state. This study deals with the standards of the international legal personality of the state and non-state actors, and examines the disparity that exists between international law persons in terms of the ability to perform rights and abide by duties, as well as assume international responsibility.The study will be consistent with the data of contemporary international law and is limited to the study of the actors that grant a

distinguished legal status, represented by intergovernmental organizations and individuals, as well as multinational companies.

First: The concept of international legal personality:

The obligation and recognition of international law, as an independent legal system with special autonomy, presuppose the existence of persons addressed by the provisions of this law. The international legal personality began as an assumption close to the state, which is the first founding unit of the international rule, which actually began in 1648, with the legislation of the Treaty of Westphalia between the conflicting European countries in the post-Twenty Years War. This is confirmed by the historical signs and forebodings of contemporary international law, which contemporary and traditional jurists agree that it is a European law that began after the shift in the transfer of power and its transfer from the hands of the Pope to the emperors, kings and temporal princes. And here began to talk about the international personality and international law, so the international personality was only the sovereign state, and international law became the only one that governs relations between states. The international legal personality began as a model of legal relations linking a specific entity to a specific legal system. The English jurist Hobbes had used the term when he defined the state as (Person Constituted by contract). The German jurist Leibniz was the first jurist to use the term Persona juries gentian in his book Introduction to the Law of Diplomatic Nations in 1693. Leibniz says that the holder of power in the state that arose from the separation from the religious state "It has complete freedom to enter into international relations and is able to influence them in the way it chooses" and this is done in the light of the rule of law. Leibniz indicated that the state must abide by the law and act wisely in its military capabilities and political influence in a way that benefits and does not harm. Leibniz found that the Westphalian system is the standard that the state's actions must depend on. The concept of the aforementioned state was limited to European countries only.

Understanding the development and subjectivity of the international personality requires knowledge of the movement of international law and tracking the development and growth path of legal relations. This means that the criterion according to which the legal personality is granted, for example, to the state cannot be generalized and attributed to the rest of the legal non-state actor. Also, stripping the concept of legal personality from any illegal considerations, as described by Kelsan, confuses the understanding of the idea of the state and its personality, and therefore a distinction should be made between the real world and the world of law because the legal personality that is granted in law is for the purpose of facilitating the work of the law and making things and legal relations more abstract.

Oppenheim defines international personality as the ability to acquire rights and duties and the ability to establish these rights and duties.( )The jurist Brownlie defines it as extending to the ability of the international entity to demand the implementation of these rights ( ).Brierly notes that international legal personality can be restricted according to developments in international law. Hamid Sultan also defines it as the ability to acquire rights and duties and the ability to implement them, while Ibrahim Ahmed Shalaby links the relationship between the international legal system and the persons addressed by its provisions. According to Muhammad Talaat Al-Ghunaimi, it means "the capacity to acquire rights and abide by duties with the ability to protect them by submitting international claims, whether by filing lawsuits or by another means. It includes the ability to set rules of international law."( )

The apparent meaning of these definitions confuses legal personality and legal capacity, assuming that they are two sides of the same thing despite their differences. Legal capacity is part of the state's personality, as legal personality is proven without the capacity to exist.

We believe that the international legal personality was provided to the state in its traditional capacity, and then the rest of the other legal personalities were formed from it, as the state is the founding unit of international law, and it is the one who establishes organizations and grants the legal status of the individual and the rest of the entities through joint international treaties with similar states.( )

Second: The impact of the international law environment on the development of the international personality:

The environment of international law represented by international relations is a constantly changing environment and in a state of continuous development. These changes produce legal effects on the reality of international relations, whether positively or negatively. The data of international relations is based on the stages of competition to the point of conflict or cooperation. And wherever the conflict prevails, the tools of international law regulating the means of using force or the means of resorting to it are active. Conversely, wherever cooperation prevails, the tools of interactive international law that develops cooperative international law become active. The history of international law highlights that the most important leaps in its history came in the wake of all-out wars.

If we review the history of international relations since the Treaty of Westphalia until the First World War, we find the uniqueness of the state's personality and its unlimited ability to establish, interpret and even cancel international legal rules, and the state enjoys a wide range of rights with the absence of any competing personality to the state's personality and the rule of the customary international law rules model, including its problems in application and interpretation, and the absence of any international legal system that prevents or reduces the severity of armed conflicts between states.( )Therefore, we found a tendency towards codifying the customs of war that moderate the severity of the means used in armed conflict and make them more humane, as stated in the Hague Conventions of 1899 and 1907.

As for the impact of the world war on the environment of international law in general and on the development of the international personality in particular, it was embodied in the search for common interests between states and the foundation on them to prevent the renewal of armed conflict. Then the League of Nations was established as the first comprehensive global organization looking for lasting peace, and its birth represented the emergence of a new entity next to the state( ).

Nevertheless, the character of the state remained the tyrant, as the Permanent International Court of Justice, which existed during the period of the League and in the case of Mavrommatis-Formula ( ), indicated that only the state has the competence to protect its citizens if they are harmed as a result of the actions of other states that violate provisions of international law. This is what was repeated in the Danzig case ( ) by describing international law as a law that governs relations between states. In this respect, the jurist Gorge Schwazenberger says that the state was the original person in international law, but it is no longer this only person, and every state has become free to join or not to join international governmental organizations. But such accession must be followed by acknowledgment of the existence of a legal entity of this organization.( )The recognition of the international legal personality was delayed until the emergence of the United Nations, specifically through the advisory opinion of the International Court of Justice in the case of damages incurred in the service of the United Nations. This means that the organization has rights and duties and at the same time has, to a large extent, the legal capacity and international personality to work in the field of international relations even though it is not a state.

The movement of codifying customary international legal rules has left its impact on the development and multiplicity of manifestations of international commitment. The emergence of international treaties open to all states has had an impact on changing the environment of international law, specifically the treaties on which international humanitarian law and international human rights law were founded, as these treaties paved the way towards recognizing an international legal status for the individual. The impact of international economic cooperation and international trade agreements was evident in the emergence of an international legal center for a new entity; the multinational corporations. The changing environment of international law has made it a law governing relations between states and new people in public international law.

Third: The asymmetry of international law persons in acquiring rights:

International law was established through states as its original constituent unit. Through international treaties, legal entities emerged that acquired the description of legal

personality or legal status according to money. And if we look at the state's ability to acquire rights, we find that it is an indeterminate ability. Countries acquire full legal jurisdiction over their geographical territory with sovereign immunity that prevents third parties from interfering with their jurisdiction except in accordance with an international legal rule that has been concluded previously ( ). The state has the right to abide by its unilateral will and to establish reciprocal international obligations through the conclusion of international treaties with unlimited ranges, whether by concluding bilateral or collective treaties or joining an existing treaty. The state also monopolizes the exercise of diplomatic competence through the establishment of diplomatic relations with other states and other intergovernmental organizations in accordance with the principle of consensuality. The state has the right to resort to international judicial means to protect its rights and the rights of its nationals, as well as the right to use armed force for self-defence, which is enshrined in the Charter of the United Nations through Article 51 of the Charter ( )

The origin of these rights is due to the fact that they are rights that are closely related to the personality of the state and cannot be waived. This is in contrast to the reality of the case of intergovernmental organizations, as intergovernmental organizations, despite their recognition of an international legal personality, remain within an objective framework that applies to all countries, as well as a limited functional framework that varies from one international organization to another according to the treaty establishing the organization. The legal capacity of the intergovernmental organization is linked to the extents drawn by the member states in the treaty establishing the organization. Then, the rights of each organization can be identified separately by reviewing the treaty establishing it.

In general, the pattern of intergovernmental organizations exercising their rights can be determined through the existence of explicit competencies established in the founding treaty, as well as implicit competencies that are necessary for the organization to perform its assigned functions.( )It can be said that the scope of the rights of the organization cannot be identical and does not come close to the scope of the rights of the state, as the organization has a limited scope to exercise the competence of concluding international treaties or enjoying diplomatic privileges and immunities. Intergovernmental organizations, with the exception of the United Nations, do not have the advantage of using armed force. It can never be an opponent before the International Court of Justice. When reviewing the legal status of individuals, we find that this status is determined by the treaties concluded, whether they are of direct expiration or need to be incorporated into national legislation. Therefore, the individual's ability to generate rights appears to be non-existent, and he does not have the ability to directly claim their application or international protection, or even resort to international litigation when his rights are violated by a foreign country. This means that the state still has the right to diplomatic protection for its nationals. Most countries refuse to submit to the supervisory means established in human rights treaties, while realizing the existence of international courts that grant the individual the right to file and pursue cases, such as the International Court of the Seas, which was established under the 1982 Convention on the Law of the Sea, as well as the European Court of Justice and the European Court of Human Rights. When examining the legal status of multinational companies, which are defined as an independent company with a special legal system that has direct or indirect control over the assets owned by a company or several companies located in different countries regardless of the location of its primary management ( ), and despite the jurisprudential controversy about the nature of its position and the legal system to which they belong, we refer to WolfangFriedmann's opinion that these companies are preoccupied with a global and complex work that forces them to make numerous contacts with various governments and in many cases with public international financial agencies.

This fact suggests that the international status of these companies cannot be easily ignored, although this situation does not rise to the international legal status enjoyed by the state or even the international organization.( )

However, it must be recognized that there is an international legal space for these companies based on the approval of the concerned countries for this position, which will be very narrow and

revolve in a limited field. These rights that were allowed for multinational companies can be seen within the framework of the International Covenant on Civil and Economic Rights, such as the text of Article (22) of the International Covenant, which stipulates freedom of association and joining ( ). It should be noted that the European Court of Human Rights has granted multinational companies legal protection based on human rights law.

Article 34 of the European Convention on Human Rights provides for granting any natural or legal non-governmental person the right to raise legal responsibility and seek judicial protection from the court in case of a violation of any of his legal rights established in accordance with the provisions of the European Convention on Human Rights ( ). Thus, these companies have the right to judicial protection just like natural individuals, international non-governmental organizations or even national non-governmental organizations. Within the framework of the agreement, the company has a set of economic, social and even civil rights, such as freedom of expression or freedom of ownership and transfer of ownership. Article (6) of the European Convention on Human Rights allowed multinational companies the right to access justice and redress and the right to present their evidence to an impartial court.( )

Article (10) stipulates the right of legal persons, whether natural or legal, to use freedom of expression and to receive or impart information without interference by public authorities in the state. Moreover, it explicitly prohibited the subjection of companies working in the field of information and media from the condition of obtaining a prior license ( ). International investment treaties grant a set of rights and guarantees granted to multinational companies, such as the right not to confiscate corporate assets except in accordance with the law and with fair compensation ( ), as well as including the condition of choosing to resolve legal disputes according to international arbitration and the requirement of legislative stability.

Fourth: Asymmetry in the performance of duties and international responsibility:

In the same context, the asymmetry in the legal capacity to acquire rights is represented by the duties of states among the subjects of international law. We note the lack of asymmetry in the performance of duties and the assumption of international responsibility among the persons of public international law. We also note that the state is obligated to submit to international law and respect human rights and freedoms even within the scope of its relationship with its citizens. Then it has the duty to adhere to the rules of international law and implement them in good faith. The state must also resort to peaceful means in settling its international disputes, and avoid the use of armed force in a way that threatens international or regional peace and security, and this use is limited to self-defense only, and the state refrains from assisting a state that is waging an aggressive war ( ), as well as for other duties that fall within the scope of international environmental law and international humanitarian law.

In the context of international responsibility, we find that the state is subject to the rules of international responsibility for any damage it causes to others, whether this damage is the result of a legitimate or illegal behavior of the state. This indicates that the origin of the responsibility is to bear the consequences of the legal act and the harmful consequences that occur when exercising it, whether the obligation is contractual or an obligation under customary international law. As for the international criminal responsibility, we note the difficulty of the criminal issue of the state. With regard to examining the duties of international governmental organizations, what was previously mentioned about the diversity of rights of intergovernmental organizations, according to the difference in their establishing treaties, presupposes a difference in the framework of the duties of these organizations as well. There is also a difficulty in establishing a flexible classification standard that defines the duties of IGOs in general.

It can be said that the organization has a basic duty to achieve the goals entrusted to it by its member states in accordance with the founding treaty. It must also not exceed the limits of functional jurisdiction and not abuse the immunities and diplomatic privileges granted to it, whether from the headquarters country or its member states or even non-members of it, otherwise it will be subject to legal responsibility whether the harmful

behavior was issued in its name or issued through its employees. Here, the legal responsibility of the intergovernmental organization varies according to the type of act that resulted in the damage. If the act is of an international nature, the organization bears responsibility according to the rules of international law, and responsibility arises according to national law for some relationships that arise from civil contracts and the eligibility of the contract.

The member states can be referred to when the organization fails to redress the damage. It is difficult to imagine the international criminal responsibility of intergovernmental organizations because they do not have any military force, even in the case of the United Nations, since the activation of the collective security system is through the armed forces of the member states and not a special force for the organization. As for the duties of individuals in public international law, they are based on its deciding legal status, for just as international law establishes rights for it, it obliges it to duties. The most prominent of what can be mentioned are the legal duties on the individual, the duties that fall within the scope of international humanitarian law, although the parties to the international conventions related to international humanitarian law are states, and the apparent discourse of the texts of the conventions deals with them( ).However, those who are actually responsible for the obligations of international humanitarian law are individuals, as they are covered by legal protection, and they are also primarily responsible for violating their legal obligations ( ). This means that the international criminal responsibility system is a system in which only the individual is questioned without the state or even the international organization as a legal person, and individuals bear international criminal responsibility for the state. This is what is stipulated in the statute of the International Criminal Court, as Article (25) stipulates that the jurisdiction of the Court is limited to the issue of natural individuals without any regard to the official capacity they hold( ).As for the multinational companies, they lack a solid legal system that regulates them despite the discipline and obligations they usually follow. These obligations include the obligation to implement human rights standards and environmental law standards when carrying out its economic activity. This obligation is established along with 'the polluter pays principle', as environmental law obliges the person responsible for polluting the environment to compensate for the damage he has caused to the natural environment ( ), as well as to respect employment policies for human rights standards. Companies must respect the principle of equal opportunities, non-discriminatory treatment, provide the appropriate health status for their employees and workers, and not subject them to any kind of humiliating treatment.

The United Nations issued draft rules on the responsibilities of non-national corporations and other business enterprises in the field of human rights, which were drafted by the United Nations Sub-Commission on the Protection and Promotion of Human Rights in 2003. This draft was subsequently reinforced by the issuance of Guiding Principles on Business and Human Rights issued by the Council Human rights in 2011. There are some international conventions, such as the United Nations Convention against Corruption, the European Convention for the Protection of the Environment and the United Nations Convention on Drying Up the Sources of Terrorist Financing, which refer to some models of national criminal responsibility that are imposed according to international standards to confront the behavior of multinational companies that reach the level of crimes set forth in these agreements( ).

Conclusions

We can analyze the level of international legal personality into two levels. The first level is represented by the original legal personality, which is mainly limited to describing the state, and the state only, in its traditional concept, which is based on absolute sovereignty, and then the contemporary state that is subject to the law, whether when exercising its national legal jurisdiction or exercising its international legal jurisdiction. On the other hand, the second level can be referred to as the designation of the legal personality derived from the state, as the state can, through international treaties, appoint new people and establish new legal centers, such as international governmental organizations, the individual or multinational companies. However, the scope of this legal personality or legal status is limited

and does not reach the level of the original international personality of the state. Here, we find an asymmetry between the legal personality of the state and the legal persons other than the state (Non-State Actors). We also note the asymmetry in the extents of the international legal personality within the same pattern, as the functions and privileges of one intergovernmental organization differ from another, and the status of the individual varies from one state to another according to the agreements to which his state or the state in whose territory he resides.

Finally, the emergence of intergovernmental organizations and the development of the legal status of the individual or multinational companies open the way to imagine future developments and the emergence of new people or new international legal centers in international law from the current non-actors. International non-governmental organizations appear to be one of the most candidates for the development of their international legal status from a consultative center to a participatory center in the international law industry.

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