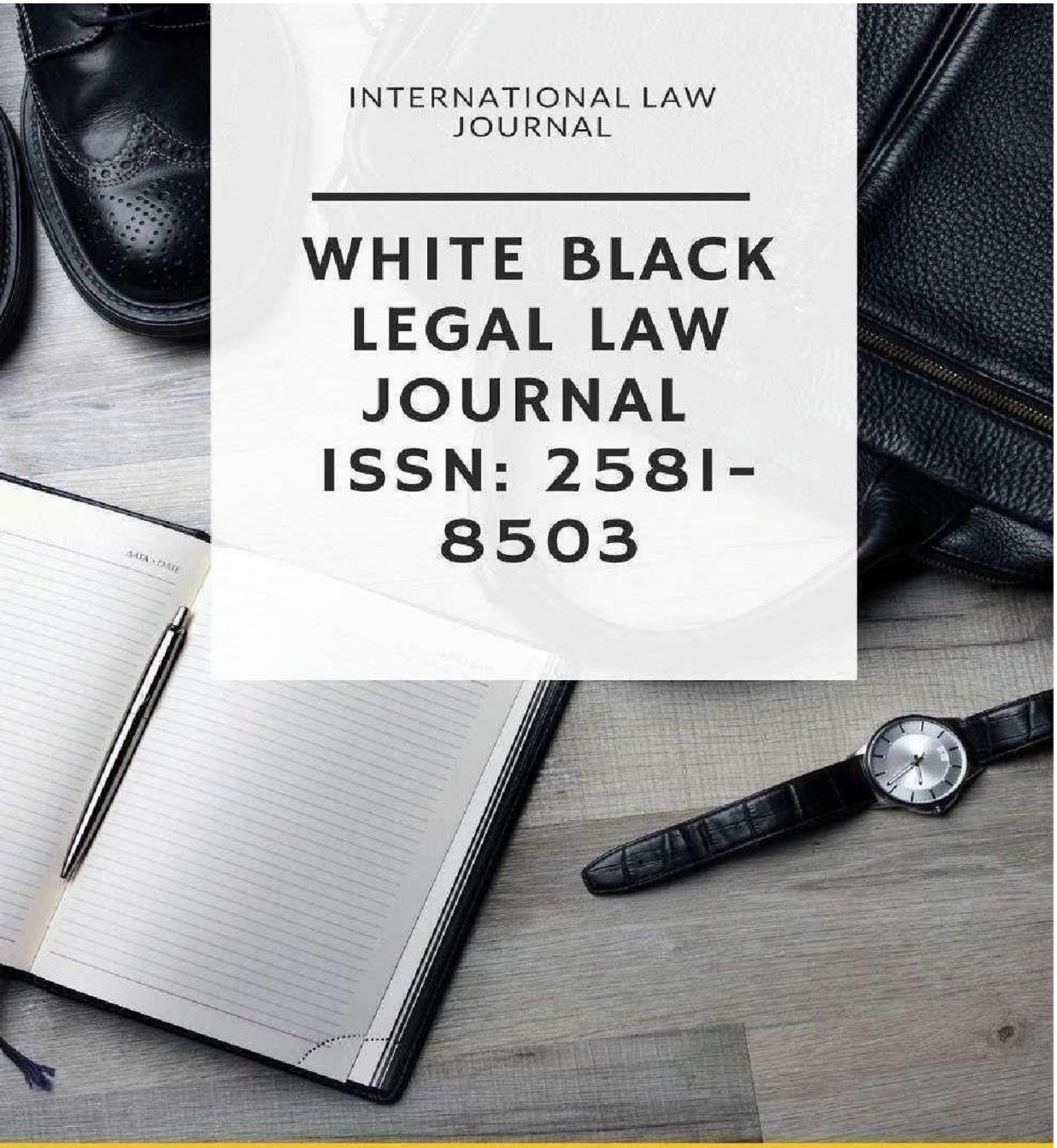


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SUBJECTS OF INTERNATIONAL LAW IN PUBLIC INTERNATIONAL LAW

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ABSTRACT

The question of who can possess rights and duties under public international law is central to understanding the structure of the international legal system. Traditionally, States were treated as the primary and, in practical terms, almost exclusive subjects of international law. This position reflected a system built around sovereignty, territorial authority and relations between governments. However, developments in the twentieth and twenty-first centuries have made that traditional account incomplete. International organisations now possess legal personality for the performance of their functions; individuals may hold rights under international human rights law and incur direct responsibility for international crimes; and peoples have acquired important rights, particularly the right to self-determination. At the same time, corporations, non-governmental organisations and other non-State actors influence the creation, implementation and enforcement of international norms, although their legal personality remains limited or contested.

This paper examines the meaning and tests of international legal personality and traces the movement from a State-centred model towards a more pluralistic international legal order. It analyses States as original and general subjects, international organisations as functional subjects, individuals as holders of rights and bearers of duties, and peoples as rights-holders in the context of self-determination. It also considers the position of multinational corporations, non-governmental organisations, national liberation movements and other non-State actors. Through leading decisions, including the *Reparation for Injuries* advisory opinion, *Barcelona Traction*, *Nottebohm* and *Prosecutor v. Tadić*, the paper explains that international legal personality is not an all-or-nothing status. Its content depends on the rights, duties, powers and procedural capacities conferred by international law. The paper argues that contemporary international law is best understood as a differentiated system of legal personality: States remain central, but they no longer monopolise international legal relevance.

A realistic account must distinguish between being an actor in international relations and being a subject with legally recognised rights or obligations.

Keywords: Public International Law; International Legal Personality; States; International Organisations; Individuals; Self-Determination; Non-State Actors.

1. INTRODUCTION

Public international law is often introduced as the law governing relations between States. That description remains useful, but it does not tell the whole story. International rules now regulate the conduct of international organisations, protect individuals, recognise the rights of peoples and, in certain areas, impose duties directly on persons and business entities. Questions concerning climate change, armed conflict, migration, international trade, human rights and transnational business conduct cannot be understood by looking only at governments. The identity of the entities that international law recognises, and the extent of the rights and duties it gives them, has therefore become an important issue. [1]

The expression "subject of international law" generally refers to an entity that international law recognises as capable of possessing international rights and duties and, in some circumstances, of acting to protect or enforce them. Legal personality is not simply the ability to participate in international affairs. A company may negotiate with a government, an NGO may influence a treaty conference and an individual may be affected by a Security Council measure. Those facts alone do not establish that each has the same legal status as a State. The legal question is whether international law itself attributes rights, duties, powers or capacities to the entity concerned.

Historically, States occupied the central position. They made treaties, developed customary rules, brought claims before international tribunals and exercised jurisdiction over territory and population. The growth of international institutions after the First and Second World Wars, the development of international human rights law, the establishment of international criminal tribunals and the expansion of global economic regulation gradually altered this picture. International law now recognises a range of subjects, but it does not grant all of them identical legal capacities.

This paper examines that change. It first explains the meaning and tests of international legal personality, then considers the legal position of States, international organisations, individuals and peoples. It subsequently evaluates the position of corporations and other non-

State actors. The central argument is that international legal personality is functional and differentiated. States continue to enjoy the broadest and most general personality, while other entities possess particular rights or duties for specific purposes. This approach avoids two extremes: treating States as the only subjects, and assuming that every influential international actor is automatically a full subject of international law.

2. RESEARCH QUESTIONS, OBJECTIVES AND METHODOLOGY

The paper is guided by four questions: (i) what does it mean to be a subject of public international law; (ii) whether States remain the only full subjects of international law; (iii) how far international organisations, individuals and peoples possess independent international rights, duties and capacities; and (iv) whether corporations and other non-State actors should be regarded as subjects or merely as participants in international relations.

The principal objective is to explain the legal basis and scope of international personality rather than simply to list international actors. The paper also aims to distinguish international legal personality from international recognition, political influence and domestic legal personality. It uses a doctrinal method, examining treaties, the Statute of the International Court of Justice, advisory opinions, judgments and scholarly commentary. The discussion is primarily analytical and comparative; it does not claim that all categories of actors have equal status or identical procedural rights.

3. MEANING AND NATURE OF INTERNATIONAL LEGAL PERSONALITY

A legal person is an entity to which a legal system attributes a position of rights, duties, powers, liabilities or legal capacities. In domestic law, natural persons and companies are familiar examples. In international law, the question is more complex because the international legal system does not have a single legislature, executive or compulsory court with universal jurisdiction. International personality is therefore identified through the rules and practices of the international legal system itself.

The traditional understanding associated international personality with the capacity to possess rights and duties under international law and the capacity to bring international claims. A broader formulation also includes the capacity to make treaties, enjoy privileges and immunities, exercise jurisdiction, incur responsibility and participate in international legal processes. No single test, however, is decisive in every case. An entity may have international

rights without being able to bring a claim before the International Court of Justice (ICJ); another may conclude agreements for limited purposes without enjoying the general treaty-making capacity of a State.

In the *Reparation for Injuries Suffered in the Service of the United Nations* advisory opinion, the ICJ considered whether the United Nations could bring an international claim for injuries suffered by its agents. The Court held that the Organisation possessed international personality and capacity to bring such a claim. It reasoned that the United Nations had been entrusted with functions and rights that could only be explained by recognising a measure of international personality. The Court also made clear that the Organisation was not a State and did not possess all the rights and duties of a State. Its personality was shaped by its purposes and functions.[2]

The opinion is significant because it rejected the idea that international personality belongs only to entities resembling States. It also established a functional approach: the nature and extent of personality depend on the functions entrusted to an entity and the rights and duties necessary to perform them. This approach is particularly important for international organisations, but it also helps explain the limited status of individuals and other actors.

It is useful to distinguish four ideas. First, an actor is any entity that influences international relations. Second, a subject is an entity to which international law attributes rights or duties. Third, international legal personality describes the legal status that enables an entity to hold such rights or duties. Fourth, procedural capacity concerns whether the entity can invoke a particular legal process. These categories overlap, but they are not interchangeable. For example, Article 34(1) of the ICJ Statute provides that only States may be parties in contentious cases before the Court. This does not mean that individuals or international organisations have no international rights; it means that they cannot appear as parties in that particular forum.

4. STATES: THE ORIGINAL AND PRIMARY SUBJECTS

States remain the most established and comprehensive subjects of international law. They possess general legal personality, rather than personality limited to a particular institutional purpose. They make treaties, participate in the formation of customary international law, establish diplomatic relations, exercise territorial jurisdiction and bear international responsibility for internationally wrongful acts. Their central position is reflected in the structure of the United Nations and in the jurisdiction of the ICJ.

4.1 Criteria of statehood

Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States identifies four qualifications: a permanent population, a defined territory, a government and the capacity to enter into relations with other States. These criteria are widely used as a starting point in discussions of statehood. A permanent population does not require a particular population size. A defined territory does not require every boundary to be undisputed. The government criterion concerns the existence of an authority exercising effective control, while the capacity to enter into relations reflects independence in the international sphere. [3]

The criteria should not be applied mechanically. Modern statehood questions may involve foreign occupation, civil conflict, competing governments or claims to independence. Effectiveness is relevant, but it is not the only consideration. The principle of self-determination, the prohibition on the use of force and the rules concerning recognition may also affect the legal assessment. The Montevideo Convention further states in Article 3 that the political existence of a State is independent of recognition by other States. Recognition is therefore important evidence and has significant practical consequences, but it is not necessarily the act that creates statehood.

4.2 Sovereign equality and legal capacity

The United Nations Charter is founded on the principle of the sovereign equality of all its Members. Sovereign equality does not mean that States have equal economic or military power. It means that, as a matter of legal status, each State has equal basic standing. Article 2(1) of the Charter expresses this principle. State sovereignty includes independence, territorial integrity and the freedom to organise internal affairs, subject to international obligations. It is not an unlimited licence to act without regard to international law. [4]

States have broad treaty-making capacity, although the exercise of that capacity is governed by international law, including the Vienna Convention on the Law of Treaties. They may also invoke responsibility when another State breaches an international obligation owed to them. In appropriate circumstances, States may exercise diplomatic protection on behalf of their nationals. The *Nottebohm* case illustrates that the nationality link relied upon for diplomatic protection may require a genuine connection in the circumstances of the case. The decision should not be treated as a universal rule that every nationality must satisfy a single “genuine link” test; its reasoning arose in a particular factual and legal context. [5]

4.3 Limits on State centrality

The State remains the principal subject, but its centrality should not be confused with exclusivity. States have accepted treaty obligations that protect individuals, created organisations with separate legal personality and established criminal tribunals that exercise jurisdiction over natural persons. International law also recognises rights belonging to peoples, including the right to self-determination. These developments do not remove the State from the system; they show that the system has developed beyond a purely inter-State model.

5. INTERNATIONAL ORGANISATIONS: FUNCTIONAL SUBJECTS

International organisations are established by States, usually through a treaty, to pursue common objectives. Examples include the United Nations, the World Health Organization, the International Labour Organization and the World Trade Organization. Their legal personality is generally separate from that of their member States. This separate personality allows an organisation to own property, enter into agreements, enjoy privileges and immunities, employ staff and perform its functions in its own name.

5.1 The *Reparation for Injuries* opinion

The leading authority is the ICJ's 1949 advisory opinion in *Reparation for Injuries*. The Court examined the Charter, the functions of the United Nations and the position of its agents. It concluded that the Organisation had international personality and could bring an international claim for damage caused to it and, in appropriate circumstances, for injury to its agents. The Court emphasised that the United Nations was not a super-State and that its personality was not identical to that of its members. Its powers were those conferred expressly or impliedly by its constituent instrument and necessary for the fulfilment of its functions.[7]

The opinion established that international organisations can be subjects in their own right. It also developed the doctrine of implied powers: where an organisation is entrusted with a function, it may possess powers not expressly stated in its founding treaty if those powers are necessary for carrying out that function. The doctrine must be applied carefully; it does not authorise an organisation to exceed its mandate.

5.2 Scope and limits of organisational personality

Unlike States, international organisations generally possess the principle of speciality. Their powers are limited by the purposes and functions assigned to them by their constituent

instruments and by relevant rules of international law. The United Nations may act in matters of international peace and security because the Charter assigns it that role. The WHO's authority is linked to international public health. The WTO operates within the framework of international trade agreements. None has a general competence equivalent to that of a sovereign State.

International organisations may conclude treaties or other international agreements where their constituent instruments and applicable law permit. The 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations addresses this area, although it has not entered into force. Organisations may also incur international responsibility for conduct attributable to them that breaches an international obligation. The International Law Commission's Draft Articles on the Responsibility of International Organizations (2011) provide an important framework, though they are not themselves a treaty.[9]

Their procedural access also varies. International organisations may request or receive advisory opinions in accordance with the relevant rules, but they cannot be parties to contentious proceedings before the ICJ under Article 34(1) of its Statute. This example demonstrates why legal personality must be assessed in relation to particular rights and capacities, rather than treated as a single, uniform status.

6. INDIVIDUALS: RIGHTS-HOLDERS AND DUTY-BEARERS

The position of individuals has changed significantly. Under the traditional inter-State model, individuals were generally treated as objects of international law: their interests were protected through the State, usually by diplomatic protection. Contemporary international law has moved beyond that approach. Individuals now possess rights under human rights treaties and may bear direct responsibility for certain international crimes. This makes it difficult to deny that individuals have at least a limited form of international legal personality.

6.1 Individuals as holders of international rights

International human rights law recognises individuals as direct beneficiaries of international obligations. The Universal Declaration of Human Rights (1948), although not itself a treaty, became a foundational statement of internationally recognised rights. Binding instruments such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights impose obligations on States

concerning the treatment of persons within their jurisdiction. Regional systems, including the European, Inter-American and African human rights systems, provide further mechanisms for protecting individual rights.

Some treaties allow individuals to submit complaints to international or regional bodies after satisfying admissibility requirements. The First Optional Protocol to the ICCPR, for example, permits individuals within the jurisdiction of a State party to submit communications to the Human Rights Committee, subject to the Protocol's conditions. Such mechanisms do not make individuals parties before the ICJ, but they do provide a form of international procedural capacity. The right to petition is therefore an important indication of the growth of individual legal personality. [11]

6.2 Individual criminal responsibility

International law does not merely protect individuals; it can also impose duties directly upon them. The Nuremberg trials after the Second World War established the principle that individuals may be held responsible for international crimes. The International Criminal Tribunal for the former Yugoslavia reaffirmed that individuals may incur criminal responsibility for serious violations of international humanitarian law. In *Prosecutor v. Tadić*, the Appeals Chamber addressed the applicable law and the nature of violations in armed conflict, contributing to the development of individual responsibility under international humanitarian law.

The Rome Statute of the International Criminal Court (ICC) makes the point explicit. Article 25 provides for individual criminal responsibility for crimes within the Court's jurisdiction, including genocide, crimes against humanity, war crimes and the crime of aggression, subject to the Statute's conditions. Article 27 provides that official capacity, including that of a Head of State or Government, does not exempt a person from criminal responsibility before the Court. The ICC is not a court with universal jurisdiction over every offence; its jurisdiction depends on the Statute's rules, including territorial, nationality, referral and temporal requirements. [13]

6.3 Are individuals full subjects?

It would be inaccurate to describe individuals as possessing the same legal personality as States. Individuals cannot generally conclude treaties in their own capacity, exercise sovereign jurisdiction or bring contentious cases before the ICJ. Their international rights and duties are specific to particular legal regimes. Nevertheless, the fact that international law directly grants

them rights, imposes criminal obligations and provides complaint procedures demonstrates that they are no longer merely objects of international law. They are limited or functional subjects whose legal capacities depend on the relevant treaty and customary rules.

7. PEOPLES AND THE RIGHT TO SELF-DETERMINATION

Peoples occupy a distinctive position in international law. The right of all peoples to self-determination is recognised in Article 1 of both the ICCPR and the ICESCR. The United Nations Charter refers to the principle of equal rights and self-determination of peoples in Articles 1(2) and 55. The right is particularly significant in the context of decolonisation, foreign occupation and situations in which a people is denied meaningful political participation.

Self-determination is not simply a right to establish an independent State in every circumstance. It may be exercised internally through meaningful political participation, autonomy and the pursuit of economic, social and cultural development. External self-determination has been especially important in the decolonisation context. The International Court of Justice has discussed self-determination in several advisory opinions, including the *Western Sahara* opinion and the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* opinion. These decisions demonstrate the importance of the principle in contemporary international law.

The legal personality of "peoples" is not identical to statehood. A people may possess a collective right under international law without already constituting a State or having general treaty-making capacity. The right to self-determination is nevertheless a significant example of international law recognising a collective rights-holder other than a State. It also shows why the term "subject" should not be limited to entities that possess every capacity traditionally associated with States.

8. CORPORATIONS AND OTHER NON-STATE ACTORS

The growth of international trade, investment and global supply chains has raised difficult questions about the status of multinational corporations. Corporations can exercise substantial economic influence across borders. They enter into investment contracts, rely on bilateral investment treaties and may bring claims against States before arbitral tribunals where the relevant treaty or contract provides for such a mechanism. In some contexts, international law directly regulates corporate conduct or provides standards relevant to corporate responsibility. Yet corporations do not possess the general legal personality of States.

8.1 Corporations and international investment law

Investment treaties commonly give qualifying foreign investors, including companies, rights to bring claims against host States through investor-State arbitration. This is an important procedural capacity. It does not mean that corporations have become full subjects of international law in every respect. Their ability to bring a claim depends on the definitions, consent to arbitration and jurisdictional requirements in the applicable treaty or instrument. A corporation cannot assume that it has standing merely because it has invested in another country.

The position is more complicated on the duties side. International human rights treaties generally impose obligations on States, not corporations as treaty parties. However, corporate activities may engage State duties to protect human rights, and domestic law may impose civil, criminal or regulatory liability on companies. The UN Guiding Principles on Business and Human Rights (2011) describe the State duty to protect, the corporate responsibility to respect human rights and the need for access to remedy. The Guiding Principles are not a binding treaty, but they have influenced policy, due diligence legislation and business practice.

The question of a direct international duty on corporations remains unsettled and varies across legal regimes. Certain international criminal law developments and domestic proceedings have addressed corporate involvement in serious abuses, but there is no general international criminal jurisdiction over corporations comparable to the ICC's jurisdiction over natural persons. The better view is that corporations have limited and issue-specific international capacities, while much of their enforceable responsibility continues to operate through domestic law and State obligations.

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8.2 Non-governmental organisations

Non-governmental organisations (NGOs) influence international law through research, advocacy, monitoring, litigation support and participation in international conferences. Some have consultative status with the United Nations Economic and Social Council under Article 71 of the UN Charter. NGOs may submit information to treaty bodies, contribute to fact-finding and assist victims in accessing legal processes. Their influence can be substantial, particularly in humanitarian law, environmental protection and human rights.

However, influence and access do not automatically amount to full international legal personality. NGOs are usually created under domestic law and do not possess general treaty-making powers or the capacity to bring contentious cases before the ICJ. Their status is generally participatory and functional. It may be described as an important role within

international governance without equating them with States or intergovernmental organisations.

8.3 National liberation movements, insurgents and armed groups

International law sometimes recognises particular capacities for entities that are not States. National liberation movements have, in certain historical and institutional contexts, been accorded observer or representative status. International humanitarian law also imposes obligations on parties to non-international armed conflicts, including organised armed groups. Common Article 3 of the Geneva Conventions applies to each party to a non-international armed conflict, while Additional Protocol II sets out further rules where its conditions are met. The fact that an armed group is bound by humanitarian rules does not confer statehood or general international personality. It demonstrates, however, that international law can impose obligations on non-State entities in specific circumstances. [18,19]

9. A DIFFERENTIATED APPROACH: WHY PERSONALITY IS NOT ALL OR NOTHING

The categories discussed above show that international legal personality is best understood as a spectrum of legally defined capacities. States have general personality. International organisations have personality connected to their functions and constituent instruments. Individuals hold human rights and may incur direct criminal responsibility. Peoples possess collective rights, particularly self-determination. Corporations may have treaty-based investment rights and issue-specific obligations or standards. NGOs and armed groups may have recognised roles or duties in particular regimes.

This differentiated approach is preferable for three reasons. First, it reflects actual international practice. The United Nations is not a State, but it has legal personality. An individual is not a State, but may bring a human rights petition or be prosecuted for an international crime. Second, it avoids artificial labels. Instead of asking whether an entity is a "full subject" in the abstract, the inquiry asks what rights, duties and capacities international law grants it. Third, it preserves the special position of States without denying the legal significance of other actors.

The approach also requires care. Not every international agreement creates rights for every individual or corporation. Not every resolution is binding. Not every NGO has formal standing. Not every collective group qualifies as a "people" for the purpose of self-determination. A

sound legal analysis must identify the precise source of the claimed right or duty, the entity to which it applies, the conditions attached to it and the forum in which it may be enforced.

10. CRITICAL ANALYSIS

The expansion of international legal personality is an important development, but it is uneven. International law has become more open to individuals and organisations, yet access to remedies remains limited. Many human rights mechanisms depend on State consent, optional protocols or exhaustion of domestic remedies. Individuals cannot generally sue States before the ICJ. International criminal proceedings are selective and constrained by jurisdiction, resources and cooperation. Recognition of rights therefore does not always guarantee an effective remedy.

A second concern is accountability. International organisations exercise public functions and may affect individuals through peacekeeping, sanctions and administrative decisions. Their separate legal personality is necessary for independent action, but it can make accountability complicated. Questions arise about attribution, immunities, access to courts and remedies for persons harmed by organisational conduct. Functional personality should not become a shield against responsibility. The powers of an organisation and the legal consequences of its conduct must be considered together.

Third, the position of corporations reveals an imbalance between rights and responsibilities. In investment law, corporations may obtain direct procedural rights against States. By contrast, the international enforcement of corporate human rights responsibilities remains fragmented. Domestic regulation, due diligence laws, civil liability and voluntary standards have developed, but there is no single comprehensive global treaty imposing uniform direct obligations on all multinational enterprises. This unevenness raises a question of fairness: actors with substantial cross-border power should not enjoy legal advantages without corresponding accountability.

Fourth, the recognition of peoples as rights-holders raises difficult questions about representation. Who speaks for a people? How should competing claims to representation be resolved? How should self-determination be balanced with territorial integrity and the rights of minorities within a State? International law has developed principles to guide these questions, but their application remains highly context-dependent. The right should neither be reduced to a purely political slogan nor applied as an automatic entitlement to secession.

Finally, the expansion of personality should not be confused with the disappearance of State sovereignty. States remain responsible for implementing most international obligations within

their territories and retain the central role in treaty-making and institutional design. The more convincing account is therefore one of coexistence: State sovereignty continues, but it operates within a legal order in which individuals, organisations and peoples have increasingly recognised legal positions.

11. SUGGESTIONS AND WAY FORWARD

First, international instruments should state more clearly when they create rights or duties for non-State entities and what remedies are available. Clarity in drafting can reduce uncertainty about standing, jurisdiction and enforcement.

Second, international organisations should strengthen internal accountability mechanisms and ensure that immunity does not leave serious claims without a reasonable avenue for review. Accountability can be improved through independent review bodies, transparent investigations and effective claims procedures.

Third, States should continue developing domestic laws that implement human rights and environmental standards in relation to corporate activity, including proportionate due diligence and access to remedy. International cooperation is necessary because corporate structures and supply chains often cross several jurisdictions.

Fourth, international institutions should make meaningful space for affected communities, peoples and civil society organisations while maintaining transparent standards of representation and participation. Participation should improve the quality of international decision-making without confusing consultative access with formal legal standing.

Finally, legal education should teach international personality as a question of specific rights, duties and capacities. Students should be encouraged to examine the relevant treaty, customary rule or institutional instrument instead of relying on a simple division between "subjects" and "objects" of international law.

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12. CONCLUSION

The subjects of international law reflect the changing character of the international legal system. States remain its principal and most comprehensive subjects because they possess general legal personality, broad treaty-making capacity and the central role in international institutions. Yet the idea that States are the only subjects is no longer sustainable. The *Reparation for Injuries* opinion confirmed the separate international personality of the United Nations. Human rights law recognises individuals as direct holders of rights, while

international criminal law imposes duties and responsibility on them. The right to self-determination recognises peoples as holders of collective rights. Corporations, NGOs and armed groups also occupy legally significant positions in particular regimes, although the extent of their personality differs considerably.

The most accurate understanding is therefore neither that every international actor is a subject nor that only States can be subjects. International legal personality is created and shaped by international law. Its scope depends on the particular rights, obligations, powers and procedural capacities recognised for each entity. This differentiated approach reflects the reality of contemporary international relations while preserving the distinctive legal status of States.

Ultimately, international law is no longer concerned only with how States treat one another. It is also concerned with how power is exercised over individuals and communities, how international institutions are held accountable and how cross-border private activity is regulated. Recognising the different subjects of international law is not merely a technical classification exercise; it helps identify who can claim protection, who must comply with international rules and who can be held responsible when those rules are violated.

FOOTNOTES

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3. Montevideo Convention on the Rights and Duties of States art. 1, Dec. 26, 1933, 165 L.N.T.S. 19.
4. U.N. Charter arts. 1(2), 2(1), 55, June 26, 1945, 1 U.N.T.S. XVI.
5. Vienna Convention on the Law of Treaties arts. 6, 26, May 23, 1969, 1155 U.N.T.S. 331.
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