



# Research on the Theory and Practice of International Legal Personality

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## Abstract

At the present stage of the development of international relations, an important aspect is the specification of the rights and obligations of the subjects of international law, which are elements of international legal personality, which is subject to multifaceted study. The research of its problematic elements is fundamental to improving the rules of international law in general and domestic law in particular. The study of its problematic elements is essential for the improvement of the rules of international law in general, and domestic law in particular. The object of this article is international legal personality in public law, with the aim of studying and identifying the theoretical and practical aspects of international legal personality in public law. It is hoped that it will be helpful to other scholars in their exploration and study of this issue. The development and perfection of the international legal liability system is conducive to safeguarding the common interests of the international community as a whole.

## Keywords

International legal personality, public international law, subjects of international law

## Introduction

The term “legal personality” is derived from the Latin *persona*, originally referring to a mask in a play, but later also to the actor who played the role in the play (Zhou Ping, 2014), and Roman law gave the free man the legal meaning of “*caput*”, so that he could have the rights of citizenship, freedom and family rights, while the corresponding slaves, etc., did not enjoy these rights. This was the earliest “legal personality”, which was not enjoyed by slaves, who were the counterparts of free men. The rights that a person (*Mensch*) enjoys in civil society are called legal personality. With the development of legal theory, the discussion of “legal personality” was extended from natural persons to legal persons, and with the creation of the concept of legal person for the first time in the German Civil Code, Savigny proposed the “doctrine of legal personhood” to explain the legal personality of corporate legal persons, which is considered to be Savigny proposed the “mimetic doctrine of legal personality” to explain the legal personality of corporate legal persons, which is based on the legal mimesis to enjoy rights and obligations but does not have the capacity of meaning. At the same time, scholars of the “positive theory of legal person” believe that legal persons have legal personality due to their objective existence, and even believe that they have the same complete legal personality as natural persons.

According to the general legal theory, public law is a subsystem of law, which consists of rules that regulate the relationship between the interests of the state and local governments in the exercise of public power through the compulsory method of legal regulation. Public law includes the branch of substantive law public law (constitutional, administrative, criminal, financial law, etc.) and the branch of procedural law public law (criminal procedure, civil

procedure, administrative procedure law, etc.) (Antonovich M., 2011). The work of this article is aimed at studying the theoretical and practical aspects of international legal personality in public law.

## 1. International Legal Personality

International legal personality, also known as international personality, usually refers to the ability and capacity to participate independently in international legal relations and to be directly subject to rights and obligations under international law. Only entities with international personality can become subjects of international law, and the concepts of international personality and subjects of international law are thus often used interchangeably. In international law, a member of the international community with international personality is called an international person or an international legal person, who has the capacity of rights and conduct in international law and can independently conduct international interactions, participate in international relations and directly bear the rights, obligations and responsibilities determined by international law. The person has the ability to conduct himself/herself in international relations, and is directly subject to the rights, obligations and responsibilities established by international law (Malcolm N. & Shaw Q.C., 2008).

International legal personality is an attribute of the subject of international law, which includes the following elements: international legal capacity, international legal capacity and international tort, which are all characteristics of the subject of international law. It follows that international legal capacity is the ability to exercise rights and responsibilities, international legal capacity includes the right to enjoy rights and responsibilities and is the same for all participants in international relations, although the number of rights and responsibilities of individual entities may vary, international tort - to assume for their actions capacity to be legally responsible. In this regard, legal capacity and capacity to act are inseparable concepts of the subject of international law. However, in the history of the world there have been instances when States have been completely or partially incapacitated while maintaining their status as subjects of international law. Thus, during the Second World War, countries occupied by Hitler's government retained their legal capacity and their capacity was exercised by their governments in exile. It should be noted that, in addition to the above-mentioned features, the features of international legal personality include the ability to participate in the creation of international law (Liang Xi, 2011). The study of its problematic elements is essential for the improvement of the rules of international law in general, and domestic law in particular.

The International Court of Justice has held that in any legal system, the subjects of law are not necessarily identical in their nature or in the scope of their rights, which are determined by the needs of society. To recognize that the United Nations has international legal personality does not mean that it is a state, or that it has the same legal personality and rights and obligations as a state, much less that it is a "supranational" in any sense of the word. The United Nations is still an interstate organization its capacity to act in international relations is limited by the UN Charter, it can only enjoy the rights granted by the Member States with sovereign states in the UN Charter, and cannot go beyond the scope of the UN Charter. It is now an indisputable fact that international organizations have an international legal personality distinct from that of their member states (Baraev V.M., 2011).

## 2. Subjects of international law

To determine the characteristics and problematic aspects of international legal personality, it is necessary to identify the subjects of international law. A subject of international law is also called an international personality, i.e. an entity with international legal personality (sometimes referred to simply as "international personality"). Legal personality is the legal capacity to be a legal person, i.e., the collection of capacities to maintain and exercise legal rights, and to submit to legal obligations and duties (Jan Klabbers, 2002). This is essentially equivalent to capacity, i.e., the capacity to enjoy rights and assume obligations. Accordingly, international personality means "the capacity of an entity recognized as having rights and obligations under international law". Having international personality can be said to be the essence of the concept of a subject of international law. Civil law theory also considers that "the subject of rights, capacity or personality have the same meaning". Theoretically, international personality is a prerequisite for a particular entity to enjoy rights and obligations in international law, and the enjoyment of international personality does not necessarily imply the actual enjoyment of rights and/or obligations, but in practice this difference rarely manifests itself, and if it does, it is extremely short-lived. An entity with international personality always actually enjoys certain rights and/or assumes certain obligations. For this reason, it can also be said simply that the subject of international law is the holder of rights and the bearer of obligations under

international law. The Oxford Dictionary of Law defines a subject of international law as “an entity to which international law confers rights and imposes obligations”.

With the development of international relations, especially the changes in the subjects of international law, the international legal responsibility system in international law, both the subject of responsibility and the content and form of responsibility have also undergone significant changes. First of all, the change of the subject of responsibility, traditional international law believes that the state is the only subject of international law. Therefore, it is believed that the state is certainly the only bearer of international legal responsibility, but modern international law, in addition to the state, also includes international organizations and political entities fighting for national independence, which should also bear international legal responsibility when the latter two commit international misconduct in violation of international law obligations or acts not prohibited by international law but cause damage (Liu Changmin, 2004). Therefore, they should not be excluded from the discussion of the subjects of international legal responsibility.

### **3. Practice of international legal responsibility and principles**

According to international practice, the current forms of international law with regard to the responsibility and principles of States can be summarized as follows.

#### **3.1 Cessation of the wrongful act**

When a state engages in an internationally wrongful act, regardless of its consequences, it is first obligated to cease the wrongful act. The inclusion of the cessation of a wrongful act as a separate legal obligation in the rules of State responsibility is primarily a departure from the realities of international society and the current state of State relations. Its function is primarily to terminate an internationally wrongful act that is still in progress in order to ensure the continued validity and observance of the violated principles and rules of international law. Moreover, the termination of a wrongful act is intended to secure the future compliance of the State concerned with its international obligations (Wang Hua, 2003). The obligation to terminate a wrongful act, unlike the obligation to make reparation, does not depend on whether the act as a whole has been completed. Unless the international rights and obligations in question have been modified, or have been terminated, or the wrongful act in question has been excused or recognized, the author State is required to correct it and to continue to comply with its obligations. Thus, the obligation to terminate the wrongful act is absolute and unconditional. In traditional doctrine, when it comes to forms of State responsibility, the emphasis is often on the limitation of sovereignty, restitution and apology, and attention is often paid to a specific event or act. However, when a wrongful act is a continuous and successive act, it is necessary to wait until the end of the act before starting to pursue responsibility, which is bound to increase the victim's degree of victimization, and some violations cannot be eliminated without immediate termination, such as the legislation of a state violates international law or international treaties signed by the state, if the law is not repealed and re-legislated, the harm is unlimited. It can be seen that in international relations, it is very relevant to clarify this obligation.

#### **3.2 The principle of territorial integrity of the state and the principle of inviolability of state borders**

The principle of territorial integrity is contained as a separate body of international principles in the Final Act of the Conference on Security and Cooperation in Europe of August 1, 1975 (United Nations, 1975). Chapter IV of this document is entitled "The Territorial Integrity of States". It provides that States will respect the territorial integrity of each participating State. The provisions of this document also stipulate that a member state shall not make the territory of that state the object of military action or other direct or indirect measures of force in violation of international law. Any occupation will not be recognized as legitimate. The content of the principle of inviolability of state borders is contained in Chapter III of the Final Act of the Conference on Security and Cooperation in Europe of August 1, 1975, entitled "Inviolability of Borders". Thus, the participating States consider all borders of the participating States, as well as those of all European States, to be inviolable, and they will therefore refrain from any infringement of those borders. The High Contracting Parties shall refrain from any claim or action aimed at usurping part or all of the territory of any High Contracting Party - the principle of peaceful settlement of international disputes. This principle requires States to settle their disputes peacefully and gives them the right to choose this method.

### 3.3 The principle of non-interference in internal affairs

The principle is the prohibition of interference in internal affairs. This provision is clarified in the norms of international documents, namely the Helsinki Document of 1992 (the above-mentioned issue is a legitimate interest of all states and not exclusively a matter of individual states (General Assembly, 1960), the Universal Declaration of Human Rights of 1948 (universal recognition of inalienable human rights) is the basis of freedom, justice and universal peace. It is important to note that there is an exception to the principle of non-interference in internal affairs, and the Charter of the United Nations provides that the principle of non-interference does not preclude the Council from taking coercive measures against the State concerned. Experience has shown that military actions taken by individual countries or groups of countries under the guise of humanitarian intervention can have positive effects. They violate international law and are condemned by the international community. Thus, the U.S. interventions in Grenada and Panama were condemned by the United Nations and the Organization of American States. The International Court of Justice has refused to discuss the possibility of legalizing humanitarian interventions.

### 3.4 Human rights and fundamental freedoms

The principle of self-determination of peoples and nations: First of all, it should be noted that the subjects defined by the UN Charter in the context of this principle are quite large and integrated groups. In this regard, we should also pay attention to minorities, religions, which also have a certain independence, i.e., the right to cultural autonomy and respect for their interests within the state. United Nations practice understands the principle of the right to self-determination as the right of colonized peoples to be independent of the metropolis. This understanding is contained in the 1960 Declaration on the Independence of Colonial Countries and Peoples (United Nations, 2002). The document also emphasizes that any attempt to violate, in whole or in part, the unity and territorial integrity of States is incompatible with the aims and principles of the Charter of the United Nations. Thus, the possibility of abusing the principle of self-determination is limited by the principle of territorial integrity.

## 4. Conclusion

There are still many problems and controversies in the existing research results on international legal personality, and even certain theoretical blind spots still exist. It is necessary to continue to conduct in-depth and detailed research and analysis in conjunction with the legal practice of international organizations and the development and improvement of their international personality, to create richer theoretical results and further apply them to the international legal practice of international organizations, to promote the harmony of the world, advance the development of countries and to ensure the well-being of people.

## References

- Antonovich, M. International law. Kyiv: Yurinkom Inter, 2011.
- Baraev, V.M. Problems of compliance with the principle of non-use of force in international relations (doctoral thesis). Dnepropetrovsk National University, Dnepro, 2011.
- General Assembly. Declaration on granting independence to colonial states and Peoples, 1960. Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_280#Text](https://zakon.rada.gov.ua/laws/show/995_280#Text).
- Jan clabbers. An Introduction to International Institutional Law. Cambridge University Press, 2002.
- Liang Xi. The Law of International Organizations by Liang [M]. Wuhan: Wuhan University Press, 2011.
- Liu Changmin. On the International Legal Status of Non-State Subjects [J]. Modern International Relations, 2004, 2.
- Malcolm N. Shaw Q.C. International Law, sixth edition, New York: Cambridge University Press, 2008, pp: 1302.
- Matthias Lehmann. Regulation, global governance and private international law: squaring the triangle, Journal of Private International Law, 2020, 16:1, 1-30, DOI: 10.1080/17441048.2020.1744255.
- Thin, S. Community Interest and the International Public Legal Order. Neth Int Law Rev 68, 35-59 (2021). <https://doi.org/10.1007/s40802-021-00186-7>
- United Nations. A summary of judgments, advisory opinions and orders of the International Court of Justice, 2002. Re-

trieved from [https://legal.un.org/icjsummaries/documents/russian/st\\_leg\\_serf1\\_add2.pdf](https://legal.un.org/icjsummaries/documents/russian/st_leg_serf1_add2.pdf).

United Nations. Final Act of the UN Conference on Security and Cooperation in Europe, 1975. Retrieved from [https://zakon.rada.gov.ua/laws/show/994\\_055#Text](https://zakon.rada.gov.ua/laws/show/994_055#Text).

Wang Hua. The study of responsibility issue of international law [M]. Dalian Maritime University, 2003.

Zhou Ping. The original treatise on Roman law [M]. Beijing: The Commercial Press, 2014:6.