

International Law and the Question of Status of Individuals in Contemporary Era

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ABSTRACT

The concept that individuals are just agents of a state changed over time into the understanding that individuals are responsible for their own behavior during an armed conflict. Now, persons who participate in the planning, preparation or execution, or otherwise contribute to the commission, of crimes during an armed conflict are held individually responsible. Also the concept of responsibility of the other followers of International Law in the contemporary era is the matter that have to take into consider to provide real implementation of rights concerning to individuals based on international Law. Pointing out that the status of the individuals should not consider as the passive actors or alternative elements throughout the international law, and highlighting the originality of the acts and the reacts (which may cause to the responsibility) by this follower of the international law is the matter that the paper aimed on it.

KEYWORDS: International Law, International Support of individual, International Law Entities, international responsibility of states, international responsibility of International Organizations.

1. INTRODUCTION

Evolution of international law in this area occurred in two directions. First, historically, international law tries to suppress some entities due to their harmful activities. Second, in contemporary times, dominant trend is to support all individuals who exist under international law.

Section I: Support of individual

Support of individual occurs on several levels. In fact, individuals who are in cruel condition are supported. Also supported are some groups of individuals who have not received sufficient care. And currently, there is tendency to provide a real international human right support to all individuals. This tendency is particularly significant on regional level rather than international level. On regional level, sometime the individual witness recognition of his/her rights before international courts.

a) Support of individual without considering national dependence

Two different, but analogous, or almost analogous conditions may be imagined for their results. One, individuals who lose their nationality, that is, Heimatlos and other people who, maintaining their nationality, may not actually exploit their nationality such as refugees.

1- Heimatlos

Statelessness is a painful condition where individual has no nationality or no longer has a nationality. Statelessness may be produced due to lack of national law in relation to grant of nationality. In case where a person is denationalized, for example, due to marriage, or due to decisions made by some states about collective denationalization, for example, order issued by the USSR in December 15, 1921 to denationalize white Russians, or Nazi Germany Act dated June 14, 1934 that denationalized all German nationals who had taken refugee abroad, specially Jew Germans. Finally, some dictator regimes have taken absolute decisions regarding denationalization of some persons, especially political oppositions. A very striking example is Solzhenitsyn who was deprived of his Russian nationality for several years. Attempts to avoid such situations or to reduce such cases have occurred in two directions (for example, 1961 convention signed within the framework of the UN). On the one hand, it was attempted to limit right of the state, especially it was provided that a state may not be able to deprive people of their right to have a nationality with religious, racial motivations. This was approved by article 15 of 1948 universal human right declaration that provides that no one will be able to be denationalized arbitrarily. The second direction

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constitutes contractual attempts to grant nationality right to these stateless individuals in host states. Generally, the idea is to provide as decent condition to stateless people as ordinary foreign people enjoy. However, not to the extent those privilege foreigners enjoy this right. For example, people who are covered by convention containing article of most favored nation (Carreau, Dominique, 1998, pp 329- 345).

2- Refugees

Refugee refers to individuals who have always had nationality, but the said nationality is fictive, in the sense that, they cannot actually use this nationality, because it is not possible for them to return their original country without assuming a big risk.

Due to increased asylum cases after World War II, attempts was made to support it, the first of such measures is relatively old. For example, in October 28, 1923, a convention was concluded, according to which the parties to agreement assumed obligations in favor of Russian and Armenian refugee residing in their territory. In 1946, an international organization for refugees was created. In 1951, The Office of the United Nations High Commissioner for Refugees replaced it. In 1951, a new convention on international condition of refugees was concluded, which improved their condition compared with their condition in 1933.

The goal sought in recent convention was to grant refugees the sane rights as those of natives in some areas (religion, work or education) and same rights as those of foreigners. However, the latter doesn't mean granting the same rights as those of privilege foreigners. Usually, refugees are in better condition than stateless persons are. So, in France, a public institute to defend rights of these individual (French organization for support of refugees and stateless persons (O.F.P.R.A)) has been established in 1952, which is a very busy institute, because according to figures provided by French Ministry of Foreign Affairs, there are 169863 political refugees in France.

b- Support of certain groups

1- Support of national minorities

After World War, support for national minorities became one of the very important goals of international community. It should be noted that pact of League of Nations provides no regulations in this regard. However, many peace treaties that ended World War I provided regulations in this regard to support certain national minorities in recently gained independence countries, or in countries whose borders had undergone significant changes. For example, peace treaty concluded between allied states (Poland, Czechoslovakia, and Greece) on the one hand, and Hungary, Bulgaria, Turkey on the other hand contained certain regulations that secured rights of national minorities of states in the first category. Also, similar regulations were introduced in conventions related to Haute Silesie/Memel to secure support for national minorities, for example, individual freedom, and religious freedom, education, granting civil and political rights.

Most importantly, they all enjoyed right to brought suit directly. That is, individuals have the right to bring suit to council of League of Nations. In particular, they are able to refer to special court, Joint Court of Arbitration (T. A. M.). Finally, there was a traditional solution, which was that states party to the agreement may always refer to permanent court of justice or council of League of Nations for investigation of possible violation of the said peace treaties. Thus, 39 joint courts of arbitration were established between Germany and Austria, Hungary, Bulgaria, Turkey on the one hand, and allied powers on the other hand, 30,000 cases were referred to German and Polish courts, 20,000 to French courts, 130,000 to German and American courts. However, despite unquestionable capabilities thereof, we see that no similar system has been created within framework of peace treaties concluded after World War II(Dominique Carreau,Ibid.).

2- Support of people of territories under guardianship of the League of Nations or under custody of the UN

To take final decision on some colonial territories belonging to enemies, a decision needed to be taken to create an international guardianship regime under supervision of League of Nations and an international custodianship regime under supervision of the UN. Thus, the international court of justice frequently examined condition of southwestern Africa whose custody was assigned to South Africa by the League of Nations. In its 1950 advisory opinion on condition of southwestern Africa, the court held that: "guardianship system was created for the benefit of people of the territory and the whole humanity as an international institute which is assigned an international mission, that is, sacred mission of civilization". Generally, states governing territory must expand observance of human rights and its principal freedoms, which are explicitly stated in article 76 of charter related to international custodianship regime. Due to nonobservance of obligations in this regard, the UN took back in 1970 guardianship assigned to South Africa over southwestern Africa. People of territories under custody also were allowed to request observance of their rights. For example, they have the right to bring suit to competent authorities of the UN. On the other hand, custodianship council of the UN may dispatch agents to have direct contact with people of these

territories, and so, consider their condition in site. In other words, people of these territories may enjoy their rights without mediation of governing power.

3- International support for workers

It is relevant to note the essential role of international labor organization which was created in 1919 by Treaty of Versailles. However, consideration of details of this international body is not within the scope of this paper, but it is relevant here to mention three principal feature of it. First, it was emphasized that national representatives of international labor organization must be composed on a trilateral basis, that is, alongside representatives of states, employers' representatives, and workers' representative, that is, workers and employers' syndicates also attended.

International contracts which are discussed in international labor organization try to realize principal human rights in economic and social areas, and to reach common standards. For example, agreements concluded to fight forced labor, discrimination in workplace and development of social security system, approval of labor acts, syndicate freedom, etc., and finally, provision of control instruments, which are undoubtedly held by governments. Governments must provide annual reports on contracts to international organization. They may bring suit against other member states due to violation of international labor law. These suits may even lead to possible conviction of offender state following international investigations. Undoubtedly, individuals may not enact international regulatory formalities to use their contractual rights. Therefore, he/she is dependent on measure by government in this regard. However, nothing may prevent workers and employers syndicates to attract attention of participators of international labor conferences on their abnormal individual and collective condition in some member states of international labor organization.

Again, here wrongdoing has international aspect yet suppression has just the national one. Like the wrongdoings resulted from immoral smuggling (abnormal dispersion or drug dealing) and the wrongdoings done in the international realm (illegitimate attachment of airplane called "hijacking" and cutting submarine cables) which are to be separated from each other. In all cases, respective international conventions tend to specify the wrongdoing suppressed by domestic law of the member states. And the live example of the rule is *dedoublement fonctionnel* previously given and was the special focus of G. Scelle.

C. Participating in International Regime

By companies, here we mean legal entities with self-seeking intention without regarding their legal status in domestic system. On the other hand, no matter whether the companies complying with domestic customary law or private law, it must be noted that legal evolution for them is a far cry slower than it was for the people and they have found the status of a person for international law after a long delay.

Yet in the recent years, the movement has found a great speed due to considerable economic gravity of large companies with global claim and multinational companies. The companies has reached the equal negotiation with the states due to their economic power and even are able to impose their will to the most weakest of the states. The companies have been able to deconstruct the traditional and obsolete legal formation inherited from classical international law. The law treated them in a paradoxical manner; that is, after a long time of denying them, it insisted on recognizing the rights less than it did for the other ones. Yet, the current reality is extremely different. In this regard, contemporary international law is active in two opposite directions; on one hand, it has made an attempt to consider them as "subjects" specific to legislating – whether good or bad. On the other, whether or not, companies are still present with a face of international regime entities having highly important role yet with partial status and in form of a spot (D. Carreau/T. Flory et P. Juillard,1990,pp. 54-66 ,611-616).

1- Companies, the Subject of International Law

As noted, one of the most important ideas of contemporary international law is that the endeavourer to regulate the activity of very large companies – multinational companies is to not giving them a uniform status. The spread of the work seems to be non-resolvable. Although several actions are taken in this regard, not so much is gained. International law has not been able to completely impose itself to supranational "economic power", yet.

At global level, UN and trade conference and international development organization have put their all pledge on developing a Code de bon Conduite for the multinational. Yet this imperative Code de bon Conduite has not so much chance to be produced due to the problems in formulating it and achieving compromising solutions acceptable to everyone.

But we face some regional studies in the regard mainly in three different orientations. Some organizations like OCDE have taken action to develop Code de bon Conduite. For example, L'OCDE in 1976-1979 has tended to develop principles directeurs which are to impose to both member countries and multinational countries. Yet, the principles are "non-imperative" at least at present (Supra N516). On the other hand, some international have

accepted some rules such as the rules related to economic misuse. Then, Articles 85 and 86 of Rome Treaty condemn restricting behaviors and misuse of the dominant status. Thus, European Community tries to fight the multinational issues in a secondary way.

Finally, an example execution: ANOD Group countries (Bolivia, Colombia, Ecuador, Peru and Venezuela) in 1971 took action to create a real charter for multinational companies developed between the citizens of the countries. The rules governing the creation, activity and resolution of their probable conflicts will have an international foundation thereafter. Hence, ANOD multinational companies turned into direct entities of a sort of regional certain international law.

2- Companies International Law Entities

In fact, by being located at the origin of some imperative international rules for other international community actors like states, the multinational companies have demonstrated themselves as international law entities. We see before how "international private bank power" - the founder of creating markets like "European exchanges" and "European stocks" -has tended to establish customary rules or general principles of imperative law for the entire loaners and barrowers with any status (states, international agencies or persons).

In the same concept, multinational companies have taken action to sign real international contracts with the states like "oil contracts" in early 1970s between the cartel of the very significant companies (Haft Kahharn) with manufacturing companies in Tehran, Tripoly or New York. The agreements between companies must also be noted which have been signed for some international transportation activities. (e.g. Chargeurs role in "maritime conference" or airlift operators in "traffic conferences" hold by IATA, the roles of companies as international entities are justified for various reasons. Firstly, the companies intervene in new sectors due to international law gaps and are able to impose their own international law just like other entities. Moreover, at least they use the well-meaning absence of the states who did not want or could not interfere with such "private economic international power".

Surprisingly, at least in legal area, the companies are treated worse than the individuals and companies cannot refer their claims to international authorities, unless in the framework of European Economic Community where companies have the same individuals; rights for directly or indirectly referring to judicial office of European Economic Community (EJCE). But, due to economic power companies are almost able to impose their arbitration condition to the states. The condition anticipates the reference to ad hoc court authorized to settle the conflicts independent from the parties and with respect to international law. The issue is in specific the current procedure of international great contracts we have previously faced. Arbitration condition is one of the elements of internationalizing the contracts. So, companies are among the important actors and individuals in international regime whose legal status has not been specified, yet (Dominique Carreau, Ibid).

D. Institutes in International Regime: non-governmental organizations

The phenomenon of private institution is a very old one, because it goes back to 18th century. On the other hand, before the interstate international organizations, the phenomenon did exist. We mean private organizations with no profit-seeking goals and acting based on the states rules. But some of them have inevitable international influence. Number of them are 1000s with a great activity range, since it covers all human activities: cultural, scientific, humanitarian, sport, syndical, economic or social. Personality-wise, the institutes just suffice to some general considerations below: on one hand, their legal character is generally resulted from domestic law. Rarely in international law, if not functional, is the character recognized. However, current trend is toward giving them a sort of germinal form.

1- A Legal Character of Domestic Law

To legally exist, the institutes must be created based on governmental rules. So, they have the same status as the companies. Their recognition as a legal character called governmental institute does not mean their identification by the same status in the government and the issue is tangibly different from the companies. Hence, generally, the organs merely find legal character the context of the states creating them, and this is even true with the mixed institutes where the states can be considered as an agency among the member agents.

2- Legal Character with suitable rare duties in International Law

Some nongovernmental organizations are technically very useful and their private status can play a suitable role. This is the same logic based on which the states can designate some of their authorities to institutes; for instance, airlift international institutes (YATA; a Canadian institute) which has very important authority for determining airplane ticket rates and services provided in the airplane, (As seen before) so the private institute can act as a very strong complement of interstate organization (IACO) which is a public organization established by

states. In short, we face a set of professional international law accepted by stakeholders (like the rules established by international federations of sport, international hosting rules issued by International Host Inst. and the international trade terms developed by international trade chamber). The professional international law remembers the law established in domestic regime by vocations and refers to an important source of international legality vaguely recognized out of the circle of the professionals. More interesting is the role of Red Cross international committee which is a Switzerland institute, but since it formally tends to doing international public services so part of its activities are resulted from international law. Then, for instance four Geneva conventions 1949 recognize rights for this committee like visit right for prisoners of war, and imprisoned civilians, helping them, collecting and presenting information about them and making any decision required for aiding war victims. In sum, the committee has the humanitarian intervention right and is able to directly contact the states and sign agreements regarding its international activities. Accordingly, Red Cross international committee has a mixed dual international status both public and private entering the competence of international law and domestic law of Switzerland. Here, also we face the role of some international institutes tending to establish private cartel or sign agreements with states which have been studied before.

3- The Advisory Status of Nongovernmental Organizations

Here, we face the germination of an international status; namely, allocating some special activities to them rather than recognizing perfect international character for nongovernmental organizations.

Article 71 of UN charter which has accepted the advisory status of some nongovernmental organizations is a good example of the case which did not exist in the time of nations' community. Then, some nongovernmental organizations attend in the affairs of economic and social councils of UN by just having the advisory right rather than definite vote right (now 4000 interstate organizations have the monitoring status in UN economic and social council), also some other international organization have accepted the nongovernmental organizations advisory status. For instance, European Communities have given the regime to some nongovernmental organization with a degree less than OCDE.

There are various cases of useful cooperation between interstate international organizations and private international organizations with nongovernmental organizations.

In short, today most nongovernmental organizations are considered the subject of international law some of which with the title of "advisory" have more active yet limited role. Exceptionally, respective organizations can appear like international law entities due to their suitable "private cover" and in particular when the states feel that themselves have no adequate tool for doing a work and decide to assign them.

Finally, nongovernmental organizations have undeniable role especially like "pressure groups" in internationally active organizations like: European Community, global bank, and regional development banks. Hence, coordinating their roles at international level and giving them a new yet certain character in international law have been will be useful. Attempts are made in this regard especially in 1923 and 1950 in international law institute but no results have been gained so far (bid).

Section II: The explanation of human rights and humanitarian law

The human rights refer to a series of values, concepts, documents and mechanisms which all focused on supporting the human dignity and position. The main origin of human rights is the philosophical insights, school of natural rights, political and religious perspective. In case of the statutory human right, that is changing into human rights legislations, the role of human rights and international law is potentially crucial. International humanitarian law refers to a series of human rights legislations, especially related to a time of war. In the other hand, the humanitarian law is a sort of war law or as a human rights instrument during the war.

1- Interrelationship between the human rights and humanitarian law

There are a series of similarities and differenced between the mentioned two concepts. In discussing the concepts of convergence and similarities, it has to be mentioned these two concepts were separately developed. In late 1960 and the time of conflicts in Africa, Middle East and Vietnam, the issues related to the mentioned two concepts were arisen at the same time. In fact, the boundary between the human rights and humanitarian law is nowadays somehow invisible, in a way many of human rights norms and principles can be applied in humanitarian law. Today, although the mentioned two concepts are horizontally different, they are vertically similar. The Human right is a right which is believed to belong justifiably to every person in every time, even in war time. But the humanitarian law is a right supporting every person in armed conflicts. So, they seem to be rather related. In other hand, they both improve the way a person is treated and mainly deal with the human rights. In view of human rights which is based on respect for human life and welfare, any way or conflict is considered being as against with human

rights. With the signing of Geneva protocol 1977 on international conflicts (No 1) and non-international conflicts (No 2) amended to the four Geneva treaties 1949, the Convergence of human rights and humanitarian law clearly appeared, that is to mention, a part of the provisions directly inspired from the International Covenant on Civil and Political Rights 1996. The introduction of protocol No 2 states: “ it has to be kept in mind that all international documents related to human rights potentially support the human dignity and position and that Individual should be protected by the principles of humanity and public conscience commands in the absence of binding rules. Convergence issue of human rights and humanitarian law can be found in many documents and legislation passed by Congress and international conferences and orders of the International Court of Justice; including Treaties prohibiting torture 1984 (paragraph 2, article 2), children's rights treaty 1989 (article 38), the Vienna World Conference 1993, an advisory concept of the International Court of Justice 1996 and Treaties prohibiting torture, children's rights treaty, the Vienna World Conference, an advisory concept of the International Court of Justice and the Legitimacy of the ban of nuclear weapons use (articles 79 & 91). Although there are some similarities between the human rights and humanitarian law, there are different in some aspects; their legal documents are distinct from each other, the humanitarian treaties are totally universal, some other are regional, some part of human rights are the political rights related to the government structure which is not topical in humanitarian law. Human rights may be suspended in exceptional circumstances but this isn't true about the humanitarian law. The countries are themselves responsible for the human rights violation but in case of humanitarian law violations, both the countries and individuals are responsible. Such distinctions are elaborated in current study in detail (Zaei Bigdeli, 2005, pp 1-14).

2- The human right, humanitarian law and international commitments

The human rights imply that the legal obligation is to be essentially met both in human rights and humanitarian law. Every right is a privilege and any duty is a legal obligation. The international human rights generally consist of a series of human rights and legal obligations. Such human rights and legal obligations are tightly interdependent. For example, how can we recognize the religious freedom for an individual and at the same time required him/her not to follow the opinions of other religions? Or how can we place a correspondence right for a prisoner of war while making him violate the ways to treat with other war prisoners?

So, there should be a legal obligation for each right, although they may be in different places. Obviously, the violation of such legal obligations will jeopardize the human rights origin but compliance with legal requirements can effectively ensure the human rights. Here, the role of international commitments in general international law is more considerable. If the international commitment system is damaged, the international law or the international human rights can be successful as expected. The international commitments are of two aspects: criminal and non-criminal. The non-criminal international responsibility is one of the fundamental institutions of law, being considered as a potential mechanism in international law. The logic of responsibility is based on the fact there is no authority without responsibility. Today, the basis of international criminal court is built upon the non-criminal responsibility which is introduced separately. In other hand, the international responsibility means non-criminal responsibility. The non-criminal responsibility system is a rather traditional one which is now developed into an independent legal system called law of international responsibility. Non-criminal responsibility includes the activists of international law too. In other hand, if the countries violate the international law, the responsibilities of those countries are to be achieved. Besides, if the international organizations commit illegal international acts, they have to be made in charge. In contrast, the criminal responsibility system is a rather new system in which the individuals are most responsible (Ibid).

3- The characteristics and nature of international responsibility

Although the non-criminal responsibility system is quite distinct from the criminal one, they have something in common, which is the definition of responsibility. In accordance with articles 1 and 2 on the international duty of the countries dated in 2001, the countries are obliged to their commitments. Of the main violations is any behavior which is against the international commitments of a country. In criminal responsibility system, any behavior ensuring the criminal act attributable to other human being is recognized as responsibility. In accordance with article 19 on the international responsibility of the countries dated in 1996, all the countries were exposed to criminal responsibilities which then were deleted in 2001. With further study, it can be shown these two concepts have some similarities and differences. The first and main analogy is that both systems require the behaviors or acts to be against the international law. Second, that behavior or act should be attributable to the procurator. There seem to be some differences too. First, the action is criminal. The criminality of the action causes the non-criminal duty system to be different from the criminal one. The second distinction is the difference seen between the agents in two criminal and non-criminal responsibility Systems. In a non-criminal duty system, the countries and international organizations are responsible for their own illegal acts but in a criminal one, the individuals are responsible.

4- Evolution of the concept of international responsibility

The evolution of non-criminal responsibility system owes to ongoing activities of the international law commission of UN. The commission finally reached to a conclusion in 2001 and hereby approved the articles on the international responsibilities of the countries. In case of international criminal responsibility, it is essentially required to consider the measures taken after the second war and war crimes trials in Tokyo and Nurnberg courts, international courts for former Yugoslavia and Ravenna, the law on crimes against peace and human security dated in 1996 and finally the statute of international criminal court. The non-Criminal Duty System, either treaty or non-treaty, is a single system which is different with criminal duty system. In fact, the origin of the commitment violated is the same but the nature is quite different. The nature of criminal responsibility is criminal and that of non-criminal responsibility is non-criminal. In accordance with paragraph 4, article 25 of the criminal court statute, regulations on the individual's criminal responsibility will have no effects on the responsibility of the countries based on the international law (Ibid).

Conclusion

The points of defining right and duty in international territory have been changed. Although in traditional theory the main authority has *been thought as the power and authority*. *By the changing in the relations between the states during the first and Second World War, new subjects have been interned to international territory which cause that the abstract power of government for analyzing their manners in international territory appeared.*(for more clarification about different effective elements on this matter refer to(Hosein Miri,2012,pp 1-8)see also (Hassan Movaseghi,2012, pp 1-6) also(Mahmoud Yousefvand, 2012, pp 1-9)); So in this way the states agreed that as they give some parts of its powers to make an organization which is ultra-governor to put against their decisions. Because of this purpose the states in the introduction of United Nations charter and use this phrase (we people of United Nations) during the emphasize main human right and personality and the value of human personality expressed on looking after the "Justice" and donate some part of its authority to Security Council (line1 of article24 of charter) they agreed to obey the decisions of this Council (Article25 of charter) and the appointment of charter put in forward of others. By empowering (Personalizing) in international relations and interring the human right requisites in international regulations, gradually the subject of international cooperation becomes more serious and interned the international documents. An appointment to cooperate is made of two context (Interests & nervous points Cooperative) and (the personal Cooperative values) of states and doing the regulations of interstates like the commercial and economical, doing the human right and environment laws without international cooperation is impossible. In fact the International Cooperation in contemporarily international law is made of crossing two currents of "Authority base" & "Sociality base" in this manner that still the authority of states in international law is admired by international organizations, requisites of gathering is makes some deities for states in the field of peace and international security, the human right and humanity laws force them to relate which it cause that a part of their power become limited. As an instance, the appointment of governments to solve their problems peacefully (Article33 of charter) which it need is cooperation between the sides of discuss. In fact the governments are counted in some way they pass by from their powers (Authority base), in favor of peace and international security (sociality base). Also in the field of human right and humanity law the principle of supporting a man in front of state authority cause to shape general regulations (erga omnes). The responsibility principle of every body and makes a requisite for all the states for cooperation and being against it.

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