

The Individual in International Law: ‘Object’ versus ‘Subject’

Professor Solomon E. Salako¹

¹ School of Law and Archbishop Desmond Tutu Centre for War and Peace Studies, Liverpool Hope University, Liverpool, UK

Correspondence: Professor Solomon E. Salako, School of Law and Archbishop Desmond Tutu Centre for War and Peace Studies, Liverpool Hope University, Liverpool, UK. E-mail: salakoes@hope.ac.uk

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Abstract

There is uncertainty about the status of the individual in international law. The traditional positivist doctrine of international law is that States are the sole subjects of international law and that the individual is the object. The contemporary approach is that the individual is an original subject of international law and the owner of international individual rights. This approach relies for its justification on areas of international law such as investment protection treaties, intellectual property treaties, international human rights law, individual criminal liability in international law and Vienna Convention on Consular Relations where the individual has been brought into contact with international law.

The objects of this article are: (i) to assess critically the various areas where the individual has been brought into contact with international law with a view to showing that the individual is not a full subject of international law; and (ii) to show that insofar as the individual possesses a limited *locus standi* in international law and a limited array of rights, that is, *limited legal capacity*, the proffered existence of an international legal personality of the individual is not only superfluous but also confuses international legal personality which involves the capacity to perform legal acts in the international sphere with legal personality in municipal law.

Keywords: the individual, international law, object, subject, treaties, international legal personality

1. Introduction

The personification of the State took place in the mid-eighteenth century in the works of Emrich de Vattel and Christian Wolff (Note 1). While Vattel's emphasis on State personality and sovereignty led to the conception of an international law applicable strictly to the relations among States (*inter gentes*), Wolff added to the principle of sovereignty of States another principle, namely, the horizontal equality of all States. The traditional positivist doctrine of international law from the eighteenth century to date is that States are the sole subjects of international law because international law is binding on States in their relations with each other and does not normally impose duties or confer rights upon individuals (Manner, 1952). Therefore, the individual is the *object* and not the subject of international law.

The contemporary approach is that States are primarily but not exclusively the subjects of international law; that the individual directly possesses rights, powers and duties in international law; and that the individual may be regarded as a *subject* of international law and as possessing international personality (Parlett, 2011). It was in the early twentieth century that the protection of individual rights was introduced by the first two 1929 Geneva Conventions which were the first humanitarian law treaties that referred to rights for individuals. Since then, the Geneva laws developed in two moves: from the Geneva Conventions in 1949 to the two Additional Protocols of 1977. To date, the contemporary approach relies on areas of international law such as investment protection treaties, intellectual property treaties, international human rights law, individual criminal liability in international law and Vienna Convention on Consular Rights where the individual is brought into contact with international law. The fact is that although the treaties instantiated conferred selective rights and duties on the individual, the resolution of the problem of international personality of the individual depends on the concept of legal personality. In legal theory, the words “person” and “personality” are used in the legal and philosophical sense. Rather than using the word “personality”, perhaps the appropriate term is the Latin *persona*, the equivalent of the Greek word *prosopon*, which refers to the mask worn by an actor and was extended to the part played by the human being in legal proceedings (Paton, 1972). When the Latin word *persona* is substituted for “personality”,

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