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THE PRACTICE OF STATES REGARDING THE LEGAL STATUS OF INDIVIDUAL AS A SUBJECT OF INTERNAL PUBLIC LAW

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Abstract

Within the international society, several categories of entities act, all having the status of actors of international relations. However, not all of these are considered subjects of public international law relations. The necessity to determine the quality of the subject of law and to identify them is legitimized by the need to establish which of these entities have the capacity to acquire international rights and obligations, which of them participate in the elaboration of the norms of international law and in the development of the reports governed by the legal norms.

Within the international society, several categories of entities act as actors of international relations (states, international governmental and non-governmental organizations, nations or peoples fighting for the conquest of independence, transnational societies, individuals)., but not all are considered subjects of public international law reports. The subject of international law is a person (entity) who possesses international legal personality, that is, is capable of holding international rights and obligations and has the ability to take certain types of actions at international level which of them participates in the elaboration of the norms of international law and in the development of the reports governed by the legal norms of international law (Maftei & Coman, Considerations on the Legal Status of the Individual in Public International Law, 2010, p. 103) It is established that, traditionally, states have been considered the only subjects of international law (Oppenheim L., 1912, p. 19). In the opinion of Ion M. Anghel, who expresses the unanimous idea enshrined in the specialized literature, only the states have the capacity to acquire and assume all the rights and obligations of an international character in their capacity as "original, typical and fundamental subjects of the of international law " (Anghel I. M., Subiectele de drept internaţional, Ediţia a II-a, revăzută şi adăugită , 2002, p. 53), the
international legal personality of the state, revealing its double quality, as creator and recipient of international legal norms. With the advent of international governmental organizations, it became necessary for these entities to be granted "a kind of" international legal personality, different from that of the states, being considered as "derivative subjects" of international law, their legal capacity being limited and different from an organization international for another, and its content must be expressly provided in the statute. In accordance with the theory of plurality of subjects of international law (Moca & Duțu, Dreptul internațional public, vol.I, 2008, p. 128) admitted from the post-war period, the category of topics of public international law includes, besides states and international organizations and non-state entities, such as belligerents, insurgents, national liberation movements, who benefit, under certain conditions, of a certain type of international legal personality. It should also be added that a special international status was granted to the Holy See and the Vatican City and the Sovereign Order of Malta. In this context, we must add that, although in the center of the attention of the doctrinaires, concern for the human being constituting the essence of law, in general, and international law, in particular, his situation regarding the quality of subject of international law of the individual, remains still unclear and controversial topic in the specialized literature. Ian Brownlie argues that in strictly analytical terms one cannot claim that the individual is a subject of international law (Brownlie, Principles of Public International Law, 6th edition, 2003, p. 65) but states, since the 1966 edition of the principles of international law, that "*there is no general rule that the individual cannot be a subject of international law and, in certain contexts, he appears as an international legal person." The analysis of the evolution of conceptions regarding the quality of subject of international law reports reveals diametrically opposed theories, some authors unequivocally admit this quality to the natural person, others contesting its inclusion among the topics of international law Thus, if Blüntschli considers that states are the only subjects of international law* (Blüntschli, 1881, p. 64), Scelle și Duguit, Scelle and Duguit stated that only individuals can be subjects of law, a theory rejected, however, by H. Triepel, D. Anzilotti, W.G.F. Philimore and other positive doctrines (Dumitrescu L. , 2008, p. 72). Presented in a plastic manner, some pro-cons statements are reflected in arguments of legal quintessence regarding the collective entity called by the French jurists morality person". The replicas of two great French lawyers, L. Duguit and, apparently, J.C., have become notorious. Soyer, who supported, one every idea of the existence of the morality person, , and the other disagreement about the existence of another person outside of the human being:,, I never had breakfast with a legal person" and the reply: "Neither did I, but I often saw her paying the receipt." Although the concern for the protection of the human being has its origin in natural law, having ancient roots, the development of positivist theories of law, especially in the IXth century, it blocks this concern and focuses its attention on the central and even exclusive role of the state in international law (Shaw M. N., 2003, p. 232) In the second half of the al XIX-lea century and the beginning of the XX century, however, important steps that states have taken in the field of humanitarian rules for conducting war by adopting international documents of major importance in this area We recall the Geneva Convention to improve the fate of wounded soldiers in the armies during the campaign (August 22, 1864), but also the broad codification of the laws and customs of the war undertaken by the two Hague conferences of 1899 and 1907 Convinced that these codifications contain gaps, the signatory states of these conventions have introduced in the preamble to the Hague Convention of 1899, the Martens clause, the content of which is provided: *"Until a more complete body of the laws of war is elaborated, the high contact parties declare that, in the cases where they were not provided for in the regulations adopted by them, the inhabitants and the belligerents remain under the protection and regulation of the the law of the people, as they result from the customs established*

by the civilized peoples, by the laws of humanity and by the imperatives of the public consciousness. " (Geamănu, Dreptul internațional contemporan, vol. II, Ediție a II-a revizuită și adăugită, 1975, p. 366) ""The Second World War has generated in international law the tendency to attach the direct responsibility of individuals for crimes committed against peace and security". As a result, by the judgments of the International Courts in Nuremberg and Tokyo, war criminals or persons who have committed crimes against the community have been convicted. (Dumitrescu L., 2008, p. 73) The International Court of Nuremberg emphasized that"International law imposes duties and obligations on both individuals and states" and that "crimes against international law are committed by people, not by abstract entities and only by punishment to the persons who commit such crimes the provisions of international law can be applied "(Judgment, 1947, p. 220).

In 1946, the General Assembly of the United Nations affirms the principles of the Charter of the Nuremberg Tribunal and the decisions of this tribunal, thus making them part of international law (A.G., 1946). By resolution 96 (I) of the same year, the General Assembly of the United Nations declared that genocide is a crime under international law bearing individual responsibility, a fact reaffirmed in the text of the Convention for the Prevention and Suppression of the 1948 Genocide Crime"The contracting parties, confirming that the genocide, committed both in time of peace and in time of war, is a crime of international law committed to prevent and punish it" - art.1 (UN, Convention on the Prevention and Punishment of the Crime of Genocide, 1948).

Individual responsibility was also confirmed in respect of serious violations of the four Geneva Conventions of 1949 and of the additional protocols I and II of 1977, which relate to armed conflicts. On this basis, the two special international tribunals for war crimes were established, one for the former Yugoslavia in 1993 and the other for Rwanda in 1994, for criminal prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of each of these countries. The Security Council of the O.N.U. decided, by Resolution 827 of May 25, 1993, to establish an international court for the sole purpose of punishing persons responsible for serious violations of humanitarian law committed in the territory of the former Yugoslavia between January 1, 1991, and the statute of the International Court for the former Yugoslavia (Scăunaș, 2007, pp. 409-410). The competence ratione personae of the Tribunal refers to the natural persons, authors, co-authors, instigators and accomplices, who have committed serious violations of international law (Maftei, 2010, p. 159) International Criminal Court for punishing persons responsible for genocide and other serious violations of international humanitarian law committed in the territoryRwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring states, between January 1, 1994 and December 31, 1994, was established by Security Council Resolution 955 of November 8, 1994, pursuant to Chapter VII of the UN Charter, according to the model of the International Court for the former Yugoslavia (Selejan-Guțan, Bianca; Crăcinăna, Laura-Maria, 2008, pg. 242-243) The events in the former Yugoslavia and Rwanda have led to the renewal of the states' concern for the establishment of a permanent international criminal court, which was one of the permanent themes of the O.N.U. In 1998, the Rome Statute of the International Criminal Court was adopted at the United Nations Diplomatic Conference, in the form of an international convention, open for signature on July 17, 1998, at the UN headquarters, and entered into force on July 1, 2002, after the deposition of 60 instruments of ratification (Diaconu D., 1999, p. 36). The statute includes within the jurisdiction of the Court "the most serious crimes of interest to the international community as a whole", which constitutes the crime of genocide, crimes against humanity, war crimes and the crime of aggression and provides that "the person who commits an offense under the jurisdiction of the Court is individually responsible and liable for punishment in accordance with this Statute. "(art. 25 (ICC, 2011) But after World War II, international law also became concerned with the individual / natural person especially from the perspective of human rights and fundamental freedoms.

This trend is reflected in the United Nations Charter, adopted on June 26, 1945, which invites Member States to respect the human rights and fundamental freedoms of individuals and peoples. The Charter of the United Nations reaffirms the faith of the people in the dignity and value of the human being and establishes as an objective of the Organization, at the same time as maintaining peace and security, carrying out collaboration in promoting and encouraging respect for the fundamental rights and freedoms of all people, regardless of race, gender, language or religion. The cooperation of the states within the United Nations has resulted in the adoption of fundamental texts in the field of human rights with universality, documents that underpin the entire international legal construction on human rights, , because the provisions of these documents constitute true international human rights standards (Maftei, 2010, p. 116). An important reference for this matter remains the Universal Declaration of Human Rights, adopted on December 10, 1948, conceived as a framework document that enshrines the fundamental rights and freedoms of human beings worldwide (Mazilu, 2010, p. 319), a document with an emblematic value, which

consecrates from the Preamble the common ideal to which all nations and nations must tend"So that all the persons and all the organs of the society, having regard to this declaration permanently, strive, through teaching and education, to develop the respect for these rights and freedoms and to ensure, through national and international measures, the recognition and the application their universal and effective status both within the Member States themselves and in the territories under their jurisdiction ". The problem of the protection of human rights gained a great extent after the adoption of the O.N.U. and the Universal Declaration of Human Rights, were created by international acts bodies with vocation of universality and regional bodies with competences in this field, through which the states are obliged to take measures legislative and administrative to ensure the necessary legal framework and the appropriate means for the exercise of the fundamental rights and freedoms by all people, without discrimination, which highlights the importance given by the states to the cooperation in this matter. International human rights regulations developed after the adoption of these documents, the states negotiated and adopted numerous conventions, pacts, dealt with under the aegis of international or regional organizations: the United Nations, the Council of Europe, the European Union, etc. Within them, the individual is considered as a recipient and beneficiary of the norms of international law, he is protected either as an individual human being or as a member of a group of persons. We can easily observe that the evolution of international law reflects the permanent concern of the states regarding the individual / natural person, who is the recipient of international rules both in terms of the protection of fundamental rights and freedoms, as well as the commitment of individual responsibility.

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