

**INTERNATIONAL LAW IN THE 21ST CENTURY: A SYSTEM FOR
ALL, NOT JUST STATES**

Alamonova Shoira Ergash kizi

Lecturer of Tashkent State University of Law

shoiraalamonova@gmail.com

Abstract: *in the 21st century, international law faces unprecedented challenges shaped by globalization, transnational issues, and the increasing role of non-state actors. This article examines the evolving nature of international law, advocating for a system that serves not only sovereign states but also individuals, non-governmental organizations, and multinational corporations. By analyzing contemporary legal frameworks and highlighting the impact of global crises—such as climate change, terrorism, and human rights violations—this work argues for a more inclusive approach to international law that recognizes the interconnectedness of global actors. The article suggests reforms to existing legal structures, emphasizing cooperation and accountability in fostering a fairer global order.*

Keywords: *international law, globalization, non-state actors, human rights, climate change, transnational issues, global governance.*

Traditionally, public international law or international law has been defined as “the body of rules and principles of action which are binding upon civilized

states in their relations with one another.”¹ Alfred Von Verdross also gives a definition almost identical to the one in this content: international law is that legal order which regulates the relations between independent (sovereign) states.²

Although above definitions are given for the formation of an initial understanding and to go deeper into the essence of the topic, central question the paper raises pertains not so much to the notion of international law itself, but to the relationship between states and international law. To be more precise, this paper discusses the formation of international law, and at the same time, the question of whether international law is for states is answered based on the sources.

Today, there is a lot of debate and different approaches about the creators of international law. As per the Brierly, the most important international legal actors are the states, which are the only ones that can create international law so far.³ Indeed, the role of states in this field is highly important, but they are sole international lawmakers? What about the other subjects?

The question “Who is the subject?” found an obvious answer in a strongly state-centered system, where states had the monopoly of law-making, law

¹ James Leslie Brierly, *The Law of Nations: An Introduction to the Law of Peace* (6th edn, Oxford at the Clarendon Press 1963) 9. A country is commonly referred to as a “state” under international law. Public international law concerns state-to-state relations and intergovernmental bodies, whereas private international law concerns relationships between private parties across international jurisdictions including commercial affairs and family law.

² Alfred Von Verdross, ‘On the Concept of International Law’ (2017) 43(3) AJIL https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/on-the-concept-of-international-law/F96F7AF4F6CBB00586803F586AE6AFC9?utm_campaign=shareaholic&utm_medium=copy_link&utm_source=bookmark accessed 23 October 2023

³ Anders Henriksen, *International Law* (4th edn, OUP 2023) 60

adjudication and law enforcement processes.⁴ But, states had the monopoly of all three aspects before, not now. Brierly did not take the role of the other subjects into consideration as international lawmakers. As Charney rightly points out, though the first international law dealt only with bilateral relations between autonomous states, due to the expansion of the role of multilateral treaties in the 20th century, international organizations also came to the field as subjects and contributed to the development of international law.⁵

After Second World War, intergovernmental organizations, non-governmental organizations (NGOs) and even natural persons with the possession of international legal personality are joined in international legal arena as new actors (such as, the United Nations – UN, WTO, Greenpeace). To elucidate, if these actors are capable of possessing international rights and duties, and bringing them international claims, they can be a subject of international law. But in some cases, they were participated in international relations without that legal personality. Their contribution is also relatively high on international law-making process without any doubt.

According to the Article 15 (2) of the Rome Statute of the ICC, Prosecutor can gather information from organs of UN, inter-governmental or non-governmental organizations besides those states on his/her own initiative⁶.

⁴Weil, Prosper, 'Le droit international en quête de son identité : cours général de droit international public' (1992) Recueil des cours 237, citing Andrea Bianchi [2016] Routledge [5]

⁵Jonathan I. Charney, 'Universal International Law' (1993) 87(4) AJIL https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/universal-international-law/BFC1D0B4E05C9E20273094BE2F1F0912?utm_campaign=shareaholic&utm_medium=copy_link&utm_source=bookmark accessed 23 October 2023

⁶ Rome Statute of the International Criminal Court, 1998 art 15 (2)

Therefore, if the NGOs provide prosecutor with necessary materials, these materials play an important role in influencing the Prosecutor to reveal an investigation (such as Congo case, 2004).

Furthermore, NGO's and individuals may emerge before the court as victims and participate in the proceedings as *amicus curiae* regarding the ICC Statute⁷. To be more precise, Article 85 of the Rules of Procedure and Evidence enlightens that natural persons, organizations and institutions who have suffered harm within the Court jurisdiction can act as victims.

On the other hand, to help with the Court work, the Court has possibility to employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations, or non-governmental organizations in exceptional circumstances⁸. Witness testimony and information provided by *amicus curiae* can serve as the basis of a court document if found by the prosecutor to be justified. Thus, in my view, although NGOs and individuals' role are non-party intervention in court proceedings, they highly impact owning above-mentioned rights on court decisions, international law-making process. Regarding that evidence, we may say that international law is made not only by states, but also the other subjects ranging from organizations to the individuals.

At the same time, it is also important to clarify the issue of whether international law is only for the benefit of states or for the benefit of other subjects. Nevertheless, archetypal international law is concerned with the legal responsibilities and rights of States towards one another, but its principles,

⁷ Ibid, arts 44, 85

⁸ Ibid, art 44(4)

materials, and techniques are much more broadly applied. A common example is again international law governing the powers and duties of international organizations. In other words, while Member States of the European Union (EU) are bound by internal EU law in their dealings with one another and with organs of the EU (such as the European Commission), their relationships with the EU are governed by international law.⁹

But, another question is arisen in this context: What about individuals? International law is also for individuals? The Permanent Court of International Justice recognized in the 1920s that treaties could create rights for individuals that could be enforced domestically in some cases. Furthermore, the European Convention on Human Rights provides individuals with the right to file claims alleging violations¹⁰. Also, International Covenant on Civil and Political Rights (1966),¹¹ and International Covenant on Economic, Social and Cultural Rights (1976)¹² provides individuals with protection against various human rights issues from discrimination, arbitrary governmental actions to the right to work and social security, health and education. Thus, I maintain that the emphasis on people demonstrates that states believe their mandate is derived from the people, which is why individuals should be afforded the status of subjects on the international scene. Despite the fact that states remain the primary actors on the international scene, individuals are becoming increasingly important, and they are at the heart of a number of international agreements. Individuals may have access to a broad

⁹ Vaughan Lowe, *International Law* (OUP 2007) 5

¹⁰ Árni Þór Sigurðsson, *The status of individuals under international law – are they subjects or just objects?* (2014) 7-8

¹¹ International Covenant on Civil and Political Rights 1966, pt 3

¹² International Covenant on Economic, Social and Cultural Rights 1976, pt 3

range of international claims, which may de jure be under the exclusive jurisdiction of states but may not be so de facto.

In conclusion, although international law initially regulated relations only between countries, the scope and subjects of contemporary international law have expanded greatly. It should be emphasized that if international law is created directly by states, it is also indirectly made by other non-state entities, international organizations and even individuals. From this point, it can be understood that the formation and existence of international law is highly dependent on the influence of the other subjects in addition to the states. Furthermore, as above mentioned, international law serves the interests of all subjects of international law, not solely for the benefit of the states themselves.

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