



FROM OBJECTS TO SUBJECTS: INDIVIDUALS AND THEIR LEGAL PERSONALITY IN INTERNATIONAL LAW

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ABSTRACT

The recognition of individuals as subjects of international law marks a profound shift from the traditional state-centric framework that dominated international relations for centuries. Historically, international law was concerned primarily with the rights and duties of states, and individuals were largely excluded from this legal structure. However, significant changes began after World War II, particularly through the Nuremberg Trials, which established the precedent for individual criminal responsibility under international law (United Nations, 1945). The adoption of the Universal Declaration of Human Rights (UDHR) in 1948 by the United Nations further reinforced the legal status of individuals, granting them inherent rights that transcend national borders (United Nations, 1948). This recognition was cemented through binding treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the establishment of the International Criminal Court (ICC) in 2002 (International Covenant on Civil and Political Rights, 1966; Rome Statute, 1998). The ICC, with its mandate to prosecute individuals for crimes such as genocide, war crimes, and crimes against humanity, epitomizes the shift towards recognizing individuals as legal actors within the international legal system (Rome Statute, 1998). Despite these advancements, challenges remain in fully implementing individual legal personality, including issues of state sovereignty, jurisdictional limitations, and inconsistent enforcement across regions. Moreover, political resistance from states, particularly in cases of international accountability, continues to hinder the universal application of these principles. This paper explores the historical trajectory of individual legal personality in international law, its current status, and the challenges it faces in shaping a more inclusive and effective global legal order.

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INTRODUCTION

The recognition of the individual as a subject of international law marks a fundamental shift in the legal framework traditionally dominated by states. Historically, international law treated individuals as objects whose rights and responsibilities were mediated through state actions. However, the Universal Declaration of Human Rights (UDHR) of 1948 was a transformative milestone, explicitly acknowledging individuals as direct right-holders under international law. According to M. W. Janis, 1984¹, the UDHR "created a framework for the individual's legal status at the international level".

This shift was further advanced by subsequent treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). These instruments, as highlighted by Chiara Giorgetti 2019², provided "mechanisms that allowed individuals to hold states accountable for violations, making individuals active participants in international law".

Parallel developments in international criminal law also affirmed individual responsibility for violations of international norms. The Nuremberg Trials established that "individuals, not states alone, can be held accountable for crimes against humanity, war crimes, and genocide" Abdulbasit Olawale, 2022³. This principle was institutionalized in the statutes of the International Criminal Court (ICC), reinforcing the individual's direct legal obligations under international law.

This paper aims to explore the evolving role of the individual within international law. First, it delves into the historical exclusion and gradual inclusion of individuals. Second, it examines the theoretical frameworks that justify their recognition as subjects. Third, it analyzes contemporary mechanisms for protecting individual rights and enforcing accountability. Finally, it discusses the challenges and critiques faced by the international legal system,

¹ M W Janis, 'Individuals as Subjects of International Law' (1984) 17 Cornell International Law Journal 61. [Individuals as Subjects of International Law](#) > accessed 6 January 2025

² Chiara Giorgetti, 'Rethinking the Individual in International Law' (Elgar 2019) [Rethinking the Individual in International Law](#) > accessed 6 January 2025

³ Abdulbasit Olawale, 'Whether or Not an Individual Can Be a Subject of International Law: The Contemporary Approach' (2022) International Journal of Legal Studies [Whether or not An Individual Can Be a Subject of International Law: The Contemporary Approach](#) > accessed 6 January 2025

supplemented by relevant case studies, before concluding with recommendations for future reforms.

HISTORICAL DEVELOPMENT OF INDIVIDUALS IN INTERNATIONAL LAW

Classical International Law and the Exclusion of Individuals-

The classical Westphalian model of international law (1648)⁴ was characterized by the sovereignty of states, where the role of individuals was largely relegated to the realm of domestic jurisdiction⁵. Early international treaties, such as the Treaty of Utrecht (1713)⁶, addressed issues of territorial boundaries, trade, and peace between states, with no reference to individual rights or responsibilities.

While international law occasionally acknowledged the status of individuals—such as pirates being labeled *hostis humani generis* (enemies of all mankind)—such instances were exceptions rather than the norm⁷. Even the early laws of war, codified in the Hague Conventions (1899⁸ and 1907)⁹, focused primarily on state obligations, with protections for individuals contingent on state compliance.

The Post-War Era and the Nuremberg Trials-

The atrocities of World War II, including the Holocaust, underscored the limitations of a purely state-centric legal order. In response, the international community sought to hold individuals directly accountable for their actions, leading to the establishment of the Nuremberg Trials (1945–1946)¹⁰. The Nuremberg Charter articulated a revolutionary principle:

"Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced".

⁴ Peace of Westphalia: Treaty of Münster (signed 24 October 1648, entered into force 15 May 1649) 1 CTS 271.

⁵ Antonio Cassese, *International Law* (2nd edn, Oxford University Press 2008).

⁶ Treaty of Utrecht (signed 11 April 1713) 27 CTS 475.

⁷ Brownlie, Ian, *Principles of Public International Law* (6th edn, Oxford University Press 2003)

⁸ Convention (II) with Respect to the Laws and Customs of War on Land, Hague, 29 July 1899

⁹ Convention (IV) respecting the Laws and Customs of War on Land, Hague, 18 October 1907

¹⁰ Nuremberg International Military Tribunal Charter (1945–1946) art 1 [The Charter and Judgment of the Nuremberg Tribunal – History and Analysis: Memorandum submitted by the Secretary-General](#) >accessed 8 January 2025

For the first time, individuals were prosecuted for crimes such as genocide, war crimes, and crimes against humanity, bypassing the shield of state sovereignty. The trials established key precedents, including: Individual Responsibility: Individuals, including heads of state, could be held accountable for violations of international law. Rejection of Sovereign Immunity: Political leaders could no longer claim immunity for actions carried out in their official capacity.

The principles established at Nuremberg laid the groundwork for subsequent developments in international criminal law, including the establishment of the International Criminal Court (ICC)¹¹.

The Universal Declaration of Human Rights and Human-Centric Law-

In 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly, signaling a global commitment to protecting the inherent dignity and rights of individuals (United Nations, 1948). The UDHR¹² proclaimed that all individuals are entitled to fundamental rights, including life, liberty, and equality, irrespective of nationality, race, or religion.

This human-centric approach was later codified in binding treaties such as:

- The International Covenant on Civil and Political Rights (ICCPR) (1966)¹³
- The International Covenant on Economic, Social, and Cultural Rights (ICESCR) (1966)¹⁴

Together, these treaties form the International Bill of Human Rights, establishing a comprehensive framework for the protection of individuals under international law.

¹¹ William A Schabas, *An Introduction to the International Criminal Court* (5th edn, Cambridge University Press 2017)

¹² Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) [A/RES/217\(III\): Universal Declaration of Human Rights](#) >accessed 8 January 2025

¹³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) [International Covenant on Civil and Political Rights | OHCHR](#)> accessed 8 January 2025

¹⁴ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) [International Covenant on Economic, Social and Cultural Rights | OHCHR](#) >accessed 8 January 2025

THEORETICAL FOUNDATIONS OF INDIVIDUAL RECOGNITION

The debate over the role of individuals in international law is deeply rooted in the tension between state sovereignty and the protection of individual rights. Sovereignty, a cornerstone of classical international law since the Treaty of Westphalia (1648), grants states supreme authority over their internal affairs and shields them from external interference. This principle has long been regarded as essential for maintaining order and stability in the international system¹⁵. However, the emergence of human rights law in the 20th century fundamentally challenged this traditional understanding by asserting that individuals, rather than states, are the ultimate bearers of certain inalienable rights.

Human rights law imposes obligations on states to protect the rights and dignity of individuals within their jurisdiction, thereby introducing a direct relationship between individuals and the international legal system. This paradigm shift represents a move away from the purely state-centric model of international law to one where individuals are increasingly acknowledged as subjects of international law. The tension arises because the protection of individual rights often necessitates external scrutiny or intervention, which some states perceive as a violation of their sovereignty.

For instance, the principle of non-intervention in domestic affairs—a core tenet of sovereignty—has been challenged in cases of gross human rights violations, where the international community has sought to intervene to prevent atrocities. This dynamic is evident in the development of the Responsibility to Protect (R2P)¹⁶ doctrine, which was endorsed by the United Nations at the 2005 World Summit.

Responsibility to Protect (R2P): The R2P doctrine redefines sovereignty as not just a privilege but a responsibility. It asserts that states have an obligation to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. When a state fails to uphold this responsibility, either through incapacity or deliberate action, the international community is obligated to intervene—diplomatically, and in extreme cases, militarily¹⁷.

¹⁵ Robert Cryer, Darryl Robinson, Sergey Vasiliev, and Elizabeth Wilmshurst, *An Introduction to International Criminal Law and Procedure* (4th edn, Cambridge University Press 2019) [AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE](#) >accessed 8 January 2025

¹⁶ 2005 World Summit Outcome Document (adopted 16 September 2005) UNGA Res 60/1, paras 138–140. [A/RES/60/1 2005 World Summit Outcome](#) >accessed 8 January 2025

¹⁷ Gareth Evans and Mohamed Sahnoun, 'The Responsibility to Protect' (2001) 81(6) *Foreign Affairs* 99.

For example: The international intervention in Libya (2011)¹⁸ under the auspices of R2P demonstrated how sovereignty could be overridden to protect civilian populations.

Conversely, the failure to intervene effectively in Syria highlighted the challenges of balancing state sovereignty with the moral and legal imperatives of R2P.

This growing emphasis on individual rights has created a normative framework that limits the absolute authority of states. While many states accept the obligations imposed by human rights treaties, others resist what they see as the imposition of Western norms or interference in their internal affairs. This ongoing tension underscores the complexity of reconciling sovereignty with the protection of individual rights in the global legal order.

INTERNATIONAL LEGAL PERSONALITY OF INDIVIDUALS

The concept of international legal personality refers to the capacity of an entity to possess rights and obligations under international law and to bring claims or be held accountable before international courts. Historically, states were the sole bearers of legal personality in international law, as they were considered the only entities capable of engaging in international relations. However, the recognition of individuals as partial subjects of international law represents a significant evolution in the field.

The growing recognition of individuals as subjects of international law has been accompanied by various theoretical justifications. Two primary theories underpin this development: natural law theory and positivist theory.

1. Natural Law Theory

The natural law theory asserts that individuals inherently possess rights and duties derived from their humanity, independent of state recognition or codification. This perspective is rooted in the philosophical traditions of thinkers like Hugo Grotius and John Locke, who emphasized the universality of human rights based on reason and morality.

¹⁸ UN Security Council Resolution 1973 (2011). [S/RES/1973 \(2011\) | Security Council](https://www.un.org/press/docs/2011/11scres1973.html) > accessed 8 January 2025

Core Beliefs of Natural Law Theory: All individuals are entitled to fundamental rights by virtue of being human, and these rights transcend state boundaries or legal systems. International law has a moral obligation to recognize and protect these rights, irrespective of state consent.

Modern Application in International Law: The principles of natural law influenced the adoption of key human rights instruments, such as the Universal Declaration of Human Rights (1948), which affirms the universality and inalienability of human rights. The idea that crimes such as genocide or crimes against humanity violate the very essence of human dignity aligns with natural law principles. For instance, the Nuremberg Trials (1945–1946)¹⁹ prosecuted individuals for crimes against humanity, emphasizing that such acts are universally condemnable, regardless of national laws permitting them.

2. Positivist Theory

In contrast, positivist theory contends that individuals acquire international legal personality only when explicitly granted by states through treaties, conventions, or customary international law. According to this view, the recognition of individuals as subjects of international law is not inherent but rather a product of deliberate legal development.

Core Beliefs of Positivist Theory: International law is based on the consent of states, and individuals are not automatic subjects of this law. Rights and obligations for individuals must be explicitly codified in legal instruments.

Modern Application in International Law: The Rome Statute (1998), which established the International Criminal Court (ICC), is a prime example of positivist theory in action. The statute explicitly grants the ICC jurisdiction over individuals accused of genocide, war crimes, and crimes against humanity. Without such codification, individuals would not have a legal personality before the ICC. Similarly, international treaties like the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture²⁰ grant individuals specific rights and impose corresponding obligations on states to protect those rights.

¹⁹ Nuremberg International Military Tribunal, Judgment and Sentences (1946) [INTERNATIONAL MILITARY TRIBUNAL \(NUREMBERG\) Judgment of 1 October 1946](#) >accessed 8 January 2025

²⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | OHCHR](#) >accessed 8 January 2025

RECOGNITION OF INDIVIDUALS IN CONTEMPORARY INTERNATIONAL LAW: INDIVIDUALS AS RIGHTS-HOLDERS

The recognition of individuals as rights-holders represents a significant evolution in international law. Traditionally, international law was considered state-centric, with states being the primary subjects of rights and obligations. However, the development of international human rights law, refugee law, and anti-discrimination law has directly conferred rights upon individuals, making them active participants in the global legal order. This transformation highlights the international community's growing emphasis on protecting the dignity, safety, and equality of all individuals.

1. Refugee Law: The 1951 Refugee Convention and Its Protocols

The 1951 Refugee Convention²¹ (also known as the Convention Relating to the Status of Refugees) is one of the most important legal frameworks for the protection of refugees worldwide. It provides individuals fleeing persecution with fundamental rights and establishes the obligations of states to protect them.

Key Provisions: Definition of a Refugee (Article 1)²²: The Convention defines a refugee as someone who, owing to a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion, is unable or unwilling to return to their country of origin.

Principle of Non-Refoulement (Article 33)²³: The cornerstone of the Refugee Convention is the principle of non-refoulement, which prohibits states from returning refugees to territories where their lives or freedom may be at risk. This principle is binding under customary international law, even for states that are not parties to the Convention. Example: The protection of Syrian refugees fleeing the ongoing civil war has frequently invoked this principle.

Rights of Refugees: The Convention establishes the rights of refugees, including access to courts and legal remedies, freedom of movement, and access to education, employment, and public services on par with nationals of the host state.

²¹ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954)

²² Convention Relating to the Status of Refugees, 1951 Art 1

²³ Convention Relating to the Status of Refugees, 1951, Art 33

2. International Humanitarian Law (IHL): The Geneva Conventions

International Humanitarian Law (IHL) is a branch of international law that seeks to protect individuals during armed conflicts. The Geneva Conventions (1949) and their Additional Protocols are the cornerstone of IHL, establishing protections for civilians, combatants, and

3. Anti-Discrimination Law: Addressing Vulnerabilities through Key Treaties

Anti-discrimination law in international human rights treaties focuses on protecting vulnerable groups from systemic inequality, violence, and marginalization. These treaties establish obligations for states to ensure equality and non-discrimination.

KEY TREATIES AND THEIR PROTECTIONS:

*1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979)*²⁴: Often referred to as the “Bill of Rights for Women”, CEDAW establishes comprehensive rights for women, including Protection from gender-based violence, equal access to education, employment, and healthcare, political participation and protection from discrimination in marriage and family life. CEDAW recognizes that gender inequality often intersects with other forms of discrimination, such as race or economic status, making it a critical tool for addressing systemic injustice.

*2. Convention on the Rights of the Child (CRC, 1989)*²⁵: The CRC is a landmark treaty that recognizes children as individual rights-holders. It provides special protections to children, acknowledging their vulnerability and need for care. Key provisions include: The right to education (Article 28)²⁶ and the right to health (Article 24)²⁷. Protection from exploitation, including child labor and trafficking.

²⁴ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) [Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 | OHCHR](#) > accessed 8 January 2025

²⁵ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) [Convention on the Rights of the Child | OHCHR](#) > accessed 8 January 2025

²⁶ CRC, 1989 Art 28 [IHL Treaties - Convention on the Rights of the Child, 1989 - Article 28](#) > accessed 8 January 2025

²⁷ CRC, 1989 Art 24 [IHL Treaties - Convention on the Rights of the Child, 1989 - Article 24](#) > accessed 8 January 2025

Case Study 1: The Trial of Adolf Eichmann (1961)²⁸

Adolf Eichmann, a high-ranking Nazi officer and one of the primary architects of the Holocaust, was instrumental in organizing the mass deportation of Jews to extermination camps during World War II. After the war, Eichmann fled to Argentina, where he lived under an assumed identity until Israeli intelligence agents captured him in 1960 and brought him to Israel for trial. His trial, conducted under the *Nazis and Nazi Collaborators (Punishment) Law, 1950*²⁹, marked a watershed moment in the evolution of international law, particularly in recognizing individuals as subjects of international legal accountability. Eichmann faced charges of crimes against humanity, war crimes, and genocide, which highlighted the principle that individuals can be held responsible for violating international law, even if acting under the authority of a state or following orders. This principle, which was first articulated during the Nuremberg Trials, was reinforced during Eichmann's trial, rejecting the defense of "superior orders" or the shield of state sovereignty. The trial also emphasized the concept of universal jurisdiction, under which states can prosecute individuals for grave international crimes regardless of where the crimes occurred or the nationality of the perpetrator or victims. This set a significant precedent, paving the way for modern international tribunals, such as those for Rwanda and the former Yugoslavia, which similarly prosecuted individuals for heinous crimes. The Eichmann trial demonstrated that the enforcement of international norms depends on holding individuals accountable, sending a clear message that no person, regardless of their rank or position, is above the law. It also underscored the transformative role of international law in transcending state borders to address the most egregious violations of human rights and humanitarian principles, ensuring that justice prevails even in the aftermath of unprecedented atrocities.

Case Study 2: Aung San Suu Kyi and the Rohingya Genocide Case at the ICJ (2019)³⁰

The case of Aung San Suu Kyi and the Rohingya genocide at the International Court of Justice (ICJ) in 2019 highlights critical developments in the interplay between state responsibility and individual accountability in international law. Suu Kyi, Myanmar's de facto leader, defended her country against accusations of genocide against the Rohingya Muslim minority, brought by The Gambia under the Convention on the Prevention and Punishment of the Crime of

²⁸ Attorney-General of the Government of Israel v Adolf Eichmann (Israel District Court, 1961) 36 ILR 5.

²⁹ Nazis and Nazi Collaborators (Punishment) Law, 1950 (Law No. 5710-1950).

³⁰ The Gambia v Myanmar (Application of the Convention on the Prevention and Punishment of the Crime of Genocide) (Provisional Measures) [2020] ICJ Rep 3.

Genocide (1948)³¹. This marked a significant moment in international legal history, as it underscored the principle that states have an obligation to prevent and punish genocidal acts while also reflecting the growing scrutiny of individual leaders for their roles in state policies. By appearing before the ICJ, Suu Kyi became a central figure in the global spotlight, symbolizing how individual leaders can no longer evade accountability when their actions—or inactions—enable or justify gross violations of international law. Although the ICJ proceedings primarily address Myanmar as a state, Suu Kyi's defense of the government's actions emphasized the evolving intersection between state and individual responsibility in cases involving egregious human rights abuses. The case reaffirmed that states bear responsibility for acts of genocide but also highlighted the role of individual leaders in enabling or perpetuating such atrocities, signaling a shift toward increased accountability for those in positions of power. Furthermore, the case demonstrated that international legal mechanisms are increasingly focused on the actions of individuals within state roles, challenging the traditional immunity often enjoyed by political leaders. While the case remains ongoing, it has already provided a pivotal lesson: leaders who facilitate or fail to prevent violations of international law cannot remain immune to legal and moral scrutiny. This reinforces the principle that individual accountability is becoming an integral component of the enforcement of international legal standards.

CONCLUSION AND RECOMMENDATIONS

The evolving status of the individual as a subject of international law underscores a significant shift in the legal framework traditionally dominated by states. Historically, international law treated individuals as passive objects of state decisions, with limited or no direct rights or obligations under its provisions. However, the 20th century witnessed transformative changes, particularly through human rights instruments, international criminal law, and mechanisms like the International Criminal Court (ICC). These developments affirm that individuals are not only bearers of rights but also holders of international obligations, as evidenced by cases of accountability for war crimes, genocide, and crimes against humanity. While these advancements highlight progress, challenges persist, such as inconsistent enforcement mechanisms, selective application, and the dominance of state-centric priorities. These issues

³¹ Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, [Convention on the Prevention and Punishment of the Crime of Genocide](#) > accessed 8 January 2025

undermine the broader realization of the individual's role in shaping and benefiting from international law.

To address these challenges, several recommendations emerge. First, it is essential to enhance the universality and impartiality of enforcement mechanisms, ensuring that individuals are held accountable irrespective of their nationality or political status. Strengthening international institutions like the ICC and supporting regional human rights systems can bridge gaps in jurisdiction and enforcement. Second, there should be greater emphasis on integrating international law into domestic legal systems to ensure individuals can directly claim their rights and be held accountable for their obligations. This requires capacity-building for national legal institutions and alignment of domestic laws with international standards. Third, the principle of complementarity in international law must be reinforced, ensuring a balance between respecting state sovereignty and protecting individuals' rights. Lastly, academic and legal discourse should continue to explore the theoretical and practical implications of recognizing individuals as subjects of international law, encouraging further dialogue and innovative solutions to emerging issues such as cybercrime, climate justice, and corporate accountability for human rights violations.

In conclusion, while the recognition of individuals as subjects of international law represents a paradigm shift, it also brings challenges that require nuanced solutions. A comprehensive approach, combining robust enforcement, domestic integration, and theoretical advancement, is essential to ensure that the individual's role in international law is not only acknowledged but effectively operationalized. As international law continues to evolve, the individual's empowerment within this framework holds the potential to advance global justice, accountability, and the universal respect for human dignity.