



UNIVERSITÀ
DI SIENA 1240

FUNDAMENTALS OF INTERNATIONAL LAW

Master's Degree Course in International Sciences (LM-52)

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Topic Two

Subjects of International Law

Subjectivity in International Law

- Subjectivity = ownership of legal personality
- Subjects of IL as the *addresses* of rights and obligations
- Subjects of IL as *creators* of rights and obligations
- International subjectivity implies domestic legal personality

States as Subjects *Par Excellence*

- States are the principal subjects of IL
- Social aggregates exercising internal and external sovereignty
- States as bearers of rights and obligations stemming from IL



The Principle of Effectiveness

1. Independent and stable government
2. Territory with settled borders within which jurisdiction is exercised
3. Permanent population residing in the territory and ruled by that government

1+2+3 = independent statehood

- Political (and not legal) relevance of recognition (e.g. Kosovo)



The Concept of State-Organization

- Whole governmental structure = all state organs
 - Central government structures (legislative, executive, judiciary)
 - Municipalities and local entities
- No legal relevance of the state-community
- The Holy See can be considered a State



Creation of New States

- Incorporation (GDR into GFR)
- Fusion or unification (United Arab Republic)
- Secession or separation (Eritrea from Ethiopia)
- Dismemberment or dissolution (Czechoslovakia)
- Radical change of government (Soviet regime)

Parastatal Entities Lacking International Personality

- Member states of federal states (US)
- Puppet governments (WWII)
- Governments in exile and National Liberation Committees (PLO)
- Insurgent governments and parties (Somalia)



International Organizations

- Association of states and other IOs created by multilateral treaties, that may establish organs endowed with certain powers
- Different subjectivity than that of states (ICJ, *Reparation for Injuries*, 1949):
 - Derived
 - Functional
 - Distinct from domestic law personality
- International legal personality (ICJ, *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, 1980)



Non-State Entities: Individuals

- Initially only relevant to IL when in a foreign country (e.g. diplomatic protection)
- International scrutiny on individuals after the WWII
- Human rights law, international criminal law, international economic law, etc.
- Partial and passive subjectivity



Non-State Entities: Minorities and Peoples

- Attribution of certain rights in conventional law (right to self-determination, development, peace, etc.)
- No proper international legal personality
- Principle of (external) self-determination of peoples

Non-State Entities: Non Governmental Organizations

- Great expertise in specific sectors
- Domestic but not international legal personality
- Contribution and participation in international negotiations and adjudication

