Public International Law

(Lecture 3)

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International Organisation

Definition

One of the promising developments of the 20th century in inter-State relations has been the proliferation of International organisation. For the first time in the history, organisations of a nearly universal type have emerged in different fields. International organisations are created on the basis of international agreements (charter, statutes or other constituent instruments) for certain specific tasks, and therefore, they are the association of States for the performance of specific functions. It is to be noted that they do not supersede or dictate the States, and therefore, they do not acquire the character of international government. They have separate personality, and as such, are the subjects of International Law.

Tunkin has defined international organisation as an association of states established on the basis of a treaty in accordance with International Law in order to achieve specific objectives. It possesses a system of organs and rights and duties that are distinct from those of member States.

The above definition contains the following elements:

- International organisations are the associations of State; and therefore sometimes they are also known as inter-governmental organisations (IGOs) whose members are official government delegations of States.

United Nations (UN) is an instance of such organisation. In addition to such organisation, there is another category of international organisation which are called no-governmental organisation (NGOs). They are known as private international associations and consist of private groups of religion, scientific, cultural, philanthropic, technical, or economic orientation. They do not involve direct government participation. Examples of NGOs are the International Chamber of Commerce, the Inter-Parliamentary Union, the World Veterans Federation, Federation of Trade Unions, the Women's International Democratic Federation and the International Red-cross.

- International organisation are set up by the States through treaties which are the constituent instrument and character of the international organisation. It was clearly stated in the advisory opinion of the international Court of Justice in the legality of the use by state of nuclear weapons in armed conflict, that the constituent instrument of international organisation or also treaties of particular type.

- International organisations are established for specific purposes. The purposes of an international organisations are important in establishing its legitimacy. There cannot be any organisation without any purpose.

- International organisations possess international personality by virtue of having distinct rights and duties. Sometimes they proclaim their personality in their constitutions or at-least assert capacity in law for autonomous action. In Reparation case it was made clear that the United Nations Organisation possesses rights and duties distinct from the rights and duties of its members, and as such it possesses international personality and is therefore a subject of International Law.

- International organisations are created in accordance with the rules of International Law. It implies that their activities are generally confined within the generally recognised principles and norms of International Law.

Kinds

International organisations may be classified in different ways. For instance, they may be divided in accordance to the intended duration, i.e, ad hoc, provisional or permanent organisations, or in accordance to the nature of their powers, that is, judicial, conciliatory, governmental administrative, co-ordinative of legislative organisations, or in accordance to the character of their objectives, y single purpose or multi-purpose organisations, or according to the geographical scope, i.e., universal (global) or regional organisations.

After taking into account of all the above factors, particularly the basis of membership and purposes, international organisations may be divided into following four categories

1. **General Membership and General Purpose Organisations :** Such organisations are global in scope and are open to all the States embrace the whole range of activities of the international community : political, economic social, cultural and technical. They serve a variety of functions, such as peace and security, socio-economic cooperation, protection of human rights, growth and exchange of cultural, educational and scientific activities. Examples of such organisation are the League of Nations, the United Nations Organisation.

2. **General Membership and Limited Purpose Organisations** : Such organisations are also known as functional organisations because they are devoted to a specific function, but they are open to all the States of the international community. Examples of such organisation are the special agencies of the United Nations such as

International Bank for Reconstruction Development, International Labour Organisation, World Health Organisation.

3. **Limited-Membership and General Purpose Organisations :** Such organisations are open to the States of a particular region and therefore, they are known as regional organisations. They are created for a wide range of security, political, and socio-economic functions and responsibilities Examples of such organisations are the Organisation of American States (OAS) the Organisation of African Unity (OAU), and the Arab League.

4. **Limited Membership and Limited Purpose Organisations:** There are organisations which are open to the States of a particular region and which are set up to perform specific or limited functions. Examples of such organisations are the North Atlantic Treaty Organisation (NATO) and the Warsaw Treaty Organisation (the Warsaw Pact).

The Status of Individuals in International Legal Order

Individual, in a legal sense, is a broader term and in international law, individuals include human beings, foundations, and legal commercial enterprises. Though not all individuals have the same rights, it is considered in a broader sense. Before 1945, international law could recognise individuals as a subject but still didn't provide rights and duties as a direct individual. In an overview, International law did not consider Individuals other than in an abstract sense for centuries and the reason was that international laws are laws between states, and individuals are the citizens of states, therefore, individuals were seen as objects rather than subjects. They were not

considered competent to have rights and duties under international law. However, after the first and second World wars, the international community contemplated the need and possibility of recognising an individual's legal responsibility under international law and to make them subjects of international law in some respect. Even today, individuals are seen as only partial subjects of international law as states still remain the dominant subject of international law.

The advisory opinion given by the Permanent Court of Justice (PCIJ) in the case of **Jurisdiction of the Courts of Danzig** (Pecuniary Claims of Danzig Railway Officials who have Passed into the Polish Service, against the Polish Railways Administration), Advisory Opinion, (1928) PCIJ Series B no 15, ICGJ 282 (PCIJ 1928), 3rd March 1928. Permanent Court of International Justice where the court held that an exception to the general traditional rule that individuals are not subjects of International Law can subsist only where the intention of parties was to only adopt a treaty which creates for rights and obligations for the individuals which are capable enough of being enforced by municipal courts. The PCIJ also emphasised that such intention must have been expressed and not inferred from the treaty as it is an exception to a general rule. It is taken as that the court had contemplated the possibility of a treaty creating an exception to the general rule which maintains that individuals are not subjects of International Law.

The General Assembly of the United Nations in 1946 allowed them to become part of the International Law. Bearing individual responsibility, the Assembly also stated in 1946 that genocide was a crime under International Law which was also reaffirmed in the Genocide Convention, 1948. This position was also reiterated by article 3 of the Draft Code of Crimes against Peace and Security of Mankind which grants individual responsibility for crimes and punishment according to the gravity of the crime.

After the Second World War, International law became also bothered with individuals in the field of human rights and the fundamental freedoms. The Charter of the U.N started this trend in 1945 by calling upon member states to observe human rights and fundamental freedoms for individuals and peoples. In the Reparation for Injuries Suffered in the Service of the United Nations, 1949 I.C.J. 174, the court held that international rights and duties are an integral part and basis of being an international personality. It was also held that the United Nations Organization was the subject of international law, where it is able to sue for the vindication of its interests. After which, several conventions have ended up to define fundamental freedoms and

human rights which individuals and peoples are entitled to and to ensure their respect and protection. These conventions also include the International Covenant on Civil and Political Rights of 1966 and the International Covenant on Economic, Social and Cultural Rights of 1966.

In summary, it would not be wrong to say that the role of individuals has significantly increased and they are being recognised as participants and subjects of this law. This has occurred mainly through the evolution of and Humanitarian and Human rights laws coming together with the evolution of the Traditional International Law. Individuals now have a sort of legal personality under International Law; they are granted with certain rights and certain obligations directly under International Law. International Law is now applicable to relations of States with individuals and to certain interrelations between individuals themselves where such relations involve matters of international concern.

Other International Actors: Non-State Actors and International Regulations of their Activities

It has been some decades since the idea of NSAs made its entrance into the sphere of international law. The idea has been the subject of controversy. According to one definition suggested by Andrew Clapham: The concept of non-state actors is generally understood as including any entity that is not actually a state, often used to refer to armed groups, terrorists, civil society, religious groups or corporations.

In order to have legal personality, an entity must possess rights as well as obligations within a legal system. If therefore we are to regard NSAs as having legal personality, it should come to be recognized that international law confers rights and imposes obligations upon them. There are international instruments which have enumerated various rights and obligations for NSAs, depending on the content and intent of the instrument.10 International law seems, therefore, to be in the process of recognizing the significance of NSAs. That paves the path for recognizing their formal, legal personality. However, there are debates and worries about the consequences of such recognition of legal personality: There is a fear that one "legitimizes" actors by giving them human rights obligations and implies a power which they may themselves erode, rather than enhancing, human freedom and autonomy. One of the significant reasons for not endowing NSAs with legal personality in traditional state-centered international law is that the states would be reluctant to share their powers and authorities with NSAs. Furthermore, there is a fear of legitimizing the NSAs' unlawful actions by recognizing their legal status and personality. This may in turn lead to the legitimization of their use of violence. The strength of this argument depends on the nature of the NSA with which one is concerned. For example, one important increasing role of civil society NSAs is their monitoring of human rights treatment by states and government authorities around the world. For instance, in the case of a complaint against the president of Congo, some human rights NSAs applied to the French courts against the president of Congo for committing crimes against

humanity. When the case was finally referred to International Criminal Court (ICC), it was decided by the ICC that the alleged crimes against humanity were not substantiated and thus the request was denied. However, the interesting point was that neither the French courts nor the ICC rejected the request of NSAs based on their standing rules of procedure.

ICJ, Reparation for Injuries Suffered in the Service of the United Nations

As a consequence of the assassination in September 1948, in Jerusalem, of Count Folke Bernadotte, the United Nations Mediator in Palestine, and other members of the United Nations Mission to Palestine, the General Assembly asked the Court whether the United Nations had the capacity to bring an international claim against the State responsible with a view to obtaining reparation for damage caused to the Organisation and to the victim. If this question were answered in the affirmative, it

was further asked in what manner the action taken by the United Nations could be reconciled with such rights as might be possessed by the State of which the victim was a national. In its Advisory Opinion of 11 April 1949, the Court held that the Organization was intended to exercise functions and rights which could only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon the international plane. It followed that the Organization had the capacity to bring a claim and to give it the character of an international action for reparation for the damage that had been caused to it. The Court further declared that the Organization can claim reparation not only in respect of damage caused to itself, but also in respect of damage suffered by the victim or

persons entitled through him. Although, according to the traditional rule, diplomatic protection had to be exercised by the national State, the Organization should be regarded in international law as possessing the powers which, even if they are not expressly stated in the Charter, are conferred upon the Organization as being essential to the discharge of its functions. The Organization may require to entrust its agents with important missions in disturbed parts of the world. In such cases, it is necessary that the agents should receive suitable support and protection. The Court therefore found that the Organization has the capacity to claim appropriate reparation, including also reparation for damage suffered by the victim or by persons entitled through him. The risk of possible competition between the Organization and the victim's national State could be eliminated either by means of a general convention or by a particular agreement in any individual case.

The Individual and the International Legal System

International organisations, are capable of performing many legal functions in the domain of international law. One of them is **Treaty making powers**. Although such a power is not given expressly in the treaties by which they are created, the power vested in them in impliedly by the interpretation of provisions of the Constitution. For instance, article 104 of the charter of United Nations obliged obligate each member of the United Nations to accord to be organisation within its territory; "Such legal capacity as me when necessary for the exercise of its function ". The meaning of the above provisions was elaborated by the Convention on the Privileges and Immunities of the United Nations of 1946 as follows :"The United Nations shall possess juridical personality. It shall have the capacity (a) to contract; (b) to acquire and dispose of immovable and movable property; (c) to institute legal proceedings."

The capacity to espouse claims depends on the existence of legal personality in the interpretation of the constituent instrument in light of the purposes functions of the particular organization. United Nations can claim the compensation is clear from the Advisory opinion of the International Court of justice in Reparation case whose facts are as follows. On September 17, 1948, Count Bernadotte, a Swedish national was killed, allegedly by a private gang of erorists, in the new city of Jerusalum. The new city was then in Israeli possession. Count Bernadotte was the Chief United Nations Truce Negotiator in he area. In the course of deciding what action to take in respect of his death, the United Nations General Assembly sought the advice of the ICJ. The Court held that the United Nations was a legal person with a capacity to bring claims against both members and non-member States for direct injuries to the Organisation. The Court held that:

-It cannot be doubted that the Organisation has the capacity to bring an international claim against one of its Members which has caused injury to it by a breach of its international obligations towards it. It is clear that the Organisation has the capacity

to bring to claim for this damage. In the light of the opinion of the ICJ, the General Assembly authorized Secretary-General to seek reparation from Israel in connection with the death o the Count Bernadotte. In 1950, Israel paid the sum requested by the Secretary-General as reparation for the damages borne by the United Nay

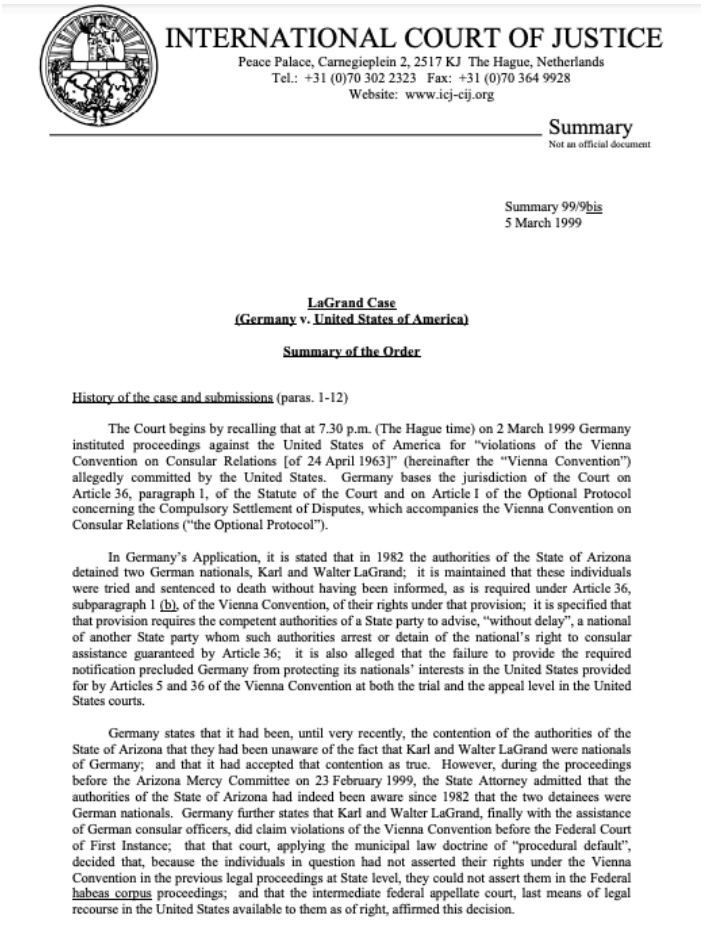
Functional Protection Some international organisations have a legal capacity to perform functions in the territory of each contracting party. For instance, International Civil Aviation Organisation enjoys in the territory of each contracting legal capacity as may be necessary for the performance of its functions le damage caused to the interests of the Organisation itself, to its administrative its property and assets, and to Interests of which it is the As far as protection under the United Nations Charter is concerned, it is to be machinery, to noted that the Charter does not provide it expressly. However, in the Reparation case it was stated : Under International Law, the Organisation must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties. The Court further said that in order that the agent may perform his duties satisfactorily, he must feel that protection is assured to him by Organisation, and that he may count on it. To ensure the independence of te agent, and, consequently, the independent action of the Organisation itself essential that in performing his he need not have to rely on any other protection than that of the Organisation. However, this is subject to a condition that is, full legal personality is compatible with the Constitution and laws of the State concerned. guardian

At present, international legal theory and international legal practice recognise the proposition that international organisations are subjects of international responsibility in the event of a violation of International Law by its organs. A number of treaties concerning the exploration and use of outer space have laid down that international organisation and its member States are liable for damage caused by activities carried out by that international organisation in outer space. Such treaties, for instance, are Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Celestial Bodies (1966); Agreement on the

Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched into Outer Space (1968); and Convention on International Liability for Damage Caused by Space Objects (1972).

On the status and legal functions of international organisations advisory opinion given by the International Court of Justice in Reparation for Injuries Suffered in the Service of the United Nations is relevant.

ICJ, LaGrand Case (Germany v. U.S.A.)



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Summary
Not an official document

Summary 99/9bis
5 March 1999

LaGrand Case
(Germany v. United States of America)

Summary of the Order

History of the case and submissions (paras. 1-12)

The Court begins by recalling that at 7.30 p.m. (The Hague time) on 2 March 1999 Germany instituted proceedings against the United States of America for "violations of the Vienna Convention on Consular Relations [of 24 April 1963]" (hereinafter the "Vienna Convention") allegedly committed by the United States. Germany bases the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes, which accompanies the Vienna Convention on Consular Relations ("the Optional Protocol").

In Germany's Application, it is stated that in 1982 the authorities of the State of Arizona detained two German nationals, Karl and Walter LaGrand; it is maintained that these individuals were tried and sentenced to death without having been informed, as is required under Article 36, subparagraph 1 (b), of the Vienna Convention, of their rights under that provision; it is specified that that provision requires the competent authorities of a State party to advise, "without delay", a national of another State party whom such authorities arrest or detain of the national's right to consular assistance guaranteed by Article 36; it is also alleged that the failure to provide the required notification precluded Germany from protecting its nationals' interests in the United States provided for by Articles 5 and 36 of the Vienna Convention at both the trial and the appeal level in the United States courts.

Germany states that it had been, until very recently, the contention of the authorities of the State of Arizona that they had been unaware of the fact that Karl and Walter LaGrand were nationals of Germany; and that it had accepted that contention as true. However, during the proceedings before the Arizona Mercy Committee on 23 February 1999, the State Attorney admitted that the authorities of the State of Arizona had indeed been aware since 1982 that the two detainees were German nationals. Germany further states that Karl and Walter LaGrand, finally with the assistance of German consular officers, did claim violations of the Vienna Convention before the Federal Court of First Instance; that that court, applying the municipal law doctrine of "procedural default", decided that, because the individuals in question had not asserted their rights under the Vienna Convention in the previous legal proceedings at State level, they could not assert them in the Federal habeas corpus proceedings; and that the intermediate federal appellate court, last means of legal recourse in the United States available to them as of right, affirmed this decision.

On 2 March 1999, the Federal Republic of Germany filed in the Registry of the Court an Application instituting proceedings against the United States of America in a dispute concerning alleged violations of the Vienna Convention on Consular Relations of 24 April 1963. Germany stated that, in 1982, the authorities of the State of Arizona had detained two German nationals, Karl and Walter LaGrand, who were tried and sentenced to death without having been informed of their rights, as is required under Article 36, paragraph 1 *(b)*, of the Vienna Convention. Germany also alleged that the failure to provide the required notification precluded Germany from protecting its nationals' interest provided for by Articles 5 and 36 of the Vienna Convention at both the trial and the appeal level in the United States courts. Germany asserted that although the two nationals, finally with the assistance of German consular officers, did claim violations of the Vienna Convention before the federal courts, the latter, applying the municipal law doctrine of "procedural default", decided that, because the individuals in question had not asserted their rights in the previous legal proceedings at State level, they could not assert them in the federal proceedings. In its Application, Germany based the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article I of the Optional Protocol of the Vienna Convention on Consular Relations.

Germany accompanied its Application by an urgent request for the indication of provisional measures, requesting the Court to indicate that the United States should take "all measures at its disposal to ensure that [one of its nationals, whose date of execution had been fixed at 3 March 1999] [was] not executed pending final judgment in the case . . .". On 3 March 1999, the Court delivered an Order for the indication of provisional measures calling upon the United States of America, among other things, to "take all measures at its disposal to ensure that [the German national] [was] not executed pending the final decision in [the] proceedings". However, the two German nationals were executed by the United States.

Public hearings in the case were held from 13 to 17 November 2000. In its Judgment of 27 June 2001, the Court began by outlining the history of the dispute and then examined certain objections of the United States of America to the Court's jurisdiction and to the admissibility of Germany's submissions. It found that it had jurisdiction to deal with all Germany's submissions and that they were admissible.

Ruling on the merits of the case, the Court observed that the United States did not deny that, in relation to Germany, it had violated Article 36, paragraph 1 *(b)*, of the Vienna Convention, which required the competent authorities of the United States to inform the LaGrands of their right to have the Consulate of Germany notified of their arrest. It added that, in the case concerned, that breach had led to the violation of paragraph 1 *(a)* and paragraph 1 *(c)* of that Article, which dealt respectively with mutual rights of communication and access of consular officers and their nationals, and the right of consular officers to visit their nationals in prison and to arrange for their legal representation. The Court further stated that the United States had not only breached its obligations to Germany as a State party to the Convention, but also that there had been a violation of the individual rights of the LaGrands under Article 36, paragraph 1, which rights could be relied on before the Court by their national State.

The Court then turned to Germany's submission that the United States, by applying rules of its domestic law, in particular the doctrine of "procedural default", had violated Article 36, paragraph 2, of the Convention. That provision required the United States to "enable full effect to be given to the purposes for which the rights accorded [under Article 36] [were] intended". The Court stated that, in itself, the procedural default rule did not violate Article 36. The problem arose, according to the Court, when the rule in question did not allow the detained individual to challenge a conviction and sentence by invoking the failure of the competent national authorities to comply with their obligations under Article 36, paragraph 1. The Court concluded that, in the present case, the procedural default rule had the effect of preventing Germany from assisting the LaGrands in a timely fashion as provided for by the Convention. Under those circumstances, the Court held that in the present case the rule referred to violated Article 36, paragraph 2.

With regard to the alleged violation by the United States of the Court's Order of 3 March 1999 indicating provisional measures, the Court pointed out that it was the first time it had been called upon to determine the legal effects of such orders made under Article 41 of its Statute — the interpretation of which had been the subject of extensive controversy in the literature. After interpreting Article 41, the Court found that such orders did have binding effect. In the present case, the Court concluded that its Order of 3 March 1999 "was not a mere exhortation" but "created a legal obligation for the United States". The Court then went on to consider the measures taken by the United States to implement the Order concerned and concluded that it had not complied with it.

With respect to Germany's request seeking an assurance that the United States would not repeat its unlawful acts, the Court took note of the fact that the latter had repeatedly stated in all phases of those proceedings that it was implementing a vast and detailed programme in order to ensure compliance, by its competent authorities, with Article 36 of the Convention and concluded that such a commitment must be

regarded as meeting the request made by Germany. Nevertheless, the Court added that if the United States, notwithstanding that commitment, were to fail again in its obligation of consular notification to the detriment of German nationals, an apology would not suffice in cases where the individuals concerned had been subjected to prolonged detention or convicted and sentenced to severe penalties. In the case of such a conviction and sentence, it would be incumbent upon the United States, by whatever means it chose, to allow the review and reconsideration of the conviction and sentence taking account of the violation of the rights set forth in the Convention.