

Changing Status of Individual Under International Law

Parul Sarvar

Research Scholar, Department of Laws, Panjab University, Chandigarh (India)

1. Introduction

In traditional international law the individual was regarded as an object, that is to say he enjoyed no rights and was burdened by no duties. It was a common belief of 18th and 19th century that international law worked itself out upon the individual, using his home state for the purpose. Under traditional international law state and only states are the subjects of international law. In turn a state exists when the following elements are presents : a people, territory, a government and sovereignty.¹ Soon after the First World War international concern for rights of individual under the home of human rights found expression in the covenant of league of nations. The Second World War marked a turning point in the development of international concern for human rights. The excess of the Fascist regime in Italy and the Nazi regime in Germany and the horrifying massacre by the Hitler regime of millions of Jews and Poles in Germany shocked public opinion throughout the world. It is significant to note that the preamble of the charter of United Nations begins with the words, "We the people of the United Nations" rather than the traditional words, "The High Contracting Parties". This new and benign trend is deliberate and pregnant with meaning. The Charter of United Nations has recognised the anxieties of modern man and has laid great stress on the importance of international cooperation for the promotion of the economic and social welfare of the people of the world.

Now it is beyond doubt that there occurred a change in the status of individual after the formation of United Nation and conclusion of other human rights conventions under United Nations. Hence, individual is not only the object of international law but also is a subject of international law and is directly protected by it and in some cases can seek his own remedy.² The regional conventions i.e. The European Convention on Human right and the American Convention on Human Rights brought a vital change in the states of individual under international law. By empowering individual with the weapon of right to individual petition have individual can approach international tribunals even against his own state if his rights are violated.

2. Position of individuals under the united nations charter

All positive laws are made by human being for human beings which necessitates the respect for the human being, as an individual rather than an object to be dealt with at will. The position of the individual in international laws is becoming increasingly important in this last quarter of 20th Century. This

was the Second World War, which prepared public opinion for evolutionary development in international law relating to human rights. The devastating effects of Second World War compelled all great statesman and right thinking man of the world agreed on certain broad conclusions which could establish peace and security of the mankind. World War II brought into the focus the relationship between world peace and human rights. Human rights ideology postulates human dignity and recognition that every human being, irrespective of race, sex, religion, colour or circumstances, is born equal and entitled to the rights as a human being. Atlantic charter had also cherished the hope for a peace with assures freedom to all individuals from fear and want.³ Some sentiments were incorporated by reference in the Declaration of the United Nations on Jan 1, 1942. This declaration was signed by the representative of 26 countries then at war at Washington confirmed the principles of Atlantic.

Relevant Provisions of the United Nations Charter

The provisions concerning human rights run throughout the United Nations charter "like a Golden Thread."

The main purpose of the United Nations is the promotion of economic cooperation and the promotion of the rights of the individuals. The third specific reference to human rights and fundamental freedoms is in Art. 13 of the charter. Art. 13 of the charter provides that the General Assembly shall initiate studies and make recommendations for the purpose of assisting in the realization of human rights.

Legal Character of Human Rights Provisions of the United Nations Charter

The charter did not in any way impose on the members of the United Nations a legal obligation to respect human rights and fundamental freedom. Hans Kelson also expressed the view that, "The charter does not imposed upon members a strict obligation to grant to their subjects the rights and freedom mentioned in the preamble or in the tent of the charter. According to Art. 56 "All members pledge themselves to take joint and separate action in cooperation with the organisation for the achievement of the purpose set forth in Art. 55." The cumulative legal result of all these pronouncements cannot be ignored. Quincy Wright oppressed the view that Art. 55 of the charter imposes an obligation upon the United Nations as a collective entity to promote universal respect for and observation of human rights while Art. 50 imposes or obligation upon its members to take joint and separate action, in separation with the organisation for the achievement of universal respect for, and observance of human rights.

¹ L. Oppenheim, *International Law*, . Lauterpacht (ed.), Vol. I, 1955, 8th edn., London, pp. 118-19.

² H. Lauterpacht, *International Law and Human Rights*, Stevens and Sons Limited, London, 1950.

³ Document of American Freedom Relations

Principle Organs of the United Nations concerning Rights of Individuals

There are six organs of United Nations to further the purpose and principles of United Nations charter. The activities of these organs in this fields are supplementary to each other. Art. 10 to 17 of the United Nations charter refers to the powers and functions of general assembly. The General Assembly consists of all the members states of the United Nations each of which has one vote. Members state of the United Nations must be peace loving. The denial of human rights might lead to the breach of international peace and security. On December 16, 1971 General Assembly adopted a resolution by which it declared that the Indian Ocean be designated for all time as a zone of peace. Under Art. 13(1)(b) of the charter the General Assembly has two principal obligations in matters of human rights: 'to initiate studies' and 'to make recommendation' for the purpose of assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, religion. When rights of individuals are violated so serious that they constitute a threat to the peace would certainly come within the jurisdiction of the security council under chapter VII of the United Nations Charter.

Under Art. 62 of the charter the economic and social council has been authorised to make recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all.

The council may prepare draft conventions for submission to General Assembly, all international conference and set up commissions for the protection of right of individuals. The establishment of the commission was recommended in the report of the preparatory commission of the United Nations.⁴ Article 68 of the United Nations charter provides that "The Economic and Social council shall set up commission in economic and social fields and for the promotion of human rights and such other commissions as may be required for the performance of its functions."

Composition and Membership of the Commission

The council decided that members of the commission would like its own members, be states. The commission consisted of a nucleus of nine members appointed by the council in their individual capacity. The full commission should consist of 18 members selected by it and appointed by the government.⁵ In 1980 there were 11 members from African states, 9 from Asian, 8 from Latin American states, 10 from Western European and other states and 6 from socialist states of Eastern Europe.⁶

The International Court of Justice

Chapter XIV of the UN charter deals with the International court of justice. International court of justice is the principal judicial organ of the UN. Article 93 of the UN charter provided that all members of the United Nations are ipso facto parties to the statute of the international court of Justice. The advisory opinion on the interpretation of Peace Treaties of

March 1950 and of July 1950, were requested by the General Assembly of its continuing interest.

In December 1979 in the case concerning United States Diplomatic and Consular staff in Tehran, the Court made an order in which it indicated provisional measures which should be taken by the government of Islamic Republic Iran pending the court's final decision in the case. In *Anglo Norwegian Fisheries case*⁷ the world court classified the law relating to delimitation of fishers zone and the method of measurement of territorial sea. In *Nuclear Trust Case*⁸ the court by granting an injunction restraining France from conducting planned nuclear tests, made it clear by implication that a state is not authorized to do anything within its territory if it affects the health and will being of other states.

3. Position of individuals as aliens

In the territory of a state two types of individuals can be expected to reside. The large numbers of them are nationals of that state which are part and parcel of the country. On the other hand, due to fast developing transportation means, foreigners can also be expected to reside on the territory of a state. When aliens and their assets are stationed on state territory, the problem of the responsibility of state naturally arises. But it cannot be denied that every sovereign state has a right to admit or include from its territory subject and aliens, unless it has entered into any 'engagement or a treaty on the subject' The reception of aliens is a matter of discretion and every state is competent to exclude aliens from its territory. This discretion and competency flow from the territorial supremacy of every state over its territory.⁹

Once an alien has been admitted into a state, the question arises as to how he is to be treated. An alien entering the territory of a state becomes subject to its laws in the same way as citizens of that state. Since the alien is subject to the laws of the admitting state, "the alien can only be expected quality of treatment. Under the local laws because he submits to local conditions, with benefits and burdens and because to give the alien a special status would be contrary to the principle of territorial jurisdiction and equality."¹⁰ If an alien is allowed to enter a state, it is the duty of the latter to protect that alien. It is no ensure that since the state concerned cannot protect its own nationals it is not bound to protect aliens. In ancient times, the aliens were considered as enemies. As the Roman Empire expanded, aliens were gradually accorded protection under the *jus gentium*, a few made applicable to foreigners as well as citizens, as distinguished from the *jus civile* which applied conclusively to Roman Citizens.¹¹ With the historical development there has developed a unique customary international law for the special protection of aliens. One of these standards is described as the doctrine of 'National Treatment' or 'Equality of Treatment' and another standard is described as that of a 'Minimum International Standard'. First doctrine provides that aliens should receive equal and only

⁴ Report of the preparatory commission of the United Nations. Dec. 23, 1945, chapter III Sec. 4, paras 15-16.

⁵ Resolution 9(II) and 12 (II) June 21, 1946.

⁶ Karel Vasak, op.cit., p. 244.

⁷ 1951 ICJ Rep.

⁸ ICJ Rep. 1973.

⁹ L. Oppenheim, *Inter law*. Vol. I, 8th Edition, pp. 675-76.

¹⁰ Ian Brownlie, *Principles of Public International Law*, 1973.

¹¹ A. Roth, *The Minimum Standard of International Law Applied to Aliens*, 1949.

equal treatment with nationals and second says there are certain minimum in human treatment that can not be violated in relation to aliens.¹² European Convention and American Convention on human rights are two regional human rights conventions which relate with aliens also. These conventions afford in protection to aliens as well as nationals.

International Covenant on civil and political rights again employs, in general formulate that "Everyone shall have the rights to..."¹³ and that "No one shall be..."¹⁴

Like the power to refuse admission, state can expel aliens as and when it desires. This right of states to expel aliens is generally recognized. This right must not be abused by proceeding in any arbitrary manner. "The powers to expel and the manner of expulsion are, however two distinct matters. Expulsion must be effected in as reasonable manner and without unnecessary injury to the alien effected. An alien should not be departed to a country or territory where his person or freedom would be threatened on account of his race, religion or political views. He should not be exposed to unnecessarily indignity."¹⁵

4. Position of individual as refugees

To be a refugee is not a blessed status rather it indicates the sufferings of individuals at the hands of fellow individuals occupying high positions as rulers. To begin with they start with an uncertain future which depends upon the whims of receiving state. But ultimately they acquire certain rights under International Law. In other words, refugees are those person who are denied at home the essential liberties of life consequently, they will pull up their roots and look elsewhere for freedom. The history of refugees goes as far back as the known history of mankind itself. Acc. to the Bible Adam and Eve were driven out of Eden and become thereby the first 'Refugees'. Up through the ages human beings have fled from their homeland to escape the wrath of tyrants, conquerors and other oppressors.¹⁶

Under the auspices of the League of Nations, much work has been done to protect the refugees. The provisions of the Versailles Treaty of place of 28 June 1919, was the signal for the evolution of international rules for the treatment of refugees.

A group of category approach to the definition of 'Refugee' was adopted by the Treaties and Arrangements under the League of Nations. That some one was outside the protection of the govt. of that state were sufficient and necessary condition for example a Russian refugees was defined in 1926 to include any person of Russian origin who does not enjoy or who no longer enjoys the protection of the govt. of the union of the socialist Soviet Republics and who has not acquired another nationality.¹⁷ An International refugee is by definition

an alien but he is not an ordinary alien.¹⁸ The relationship of the ordinary alien with the authentic of his country of his nationality are normal. The difference between the ordinary Migrants and the Political Refugee is that whereas the former is capable of having a normal relationship with the authorities of his home country. The latter has no relation with the authorities of his home country.¹⁹ During the period between the two world wars as well as in the post-war period, people have left thus home countries or refused to return there. The treatment given to them have differed from category to category from one receiving country to another country and from time to time, but at some time or other persons belonging to any of the categories mentioned above the non-submissive those fearing persecution the forcibly exiled, and the political offenders have recognized as political refugees.²⁰

The Legal Status of Refugees in the Country of Asylum

Once the refugee has been admitted in the country of asylum, the inevitable question of his rights and duties arises. In customary international law was not viewed in the content of human rights. Individuals have no rights, no status in customary law. Their insecure and unprotected position led to a situation which made it necessary to take some measures that would give them same basic right to which they are entitled as human beings. By the effect of Second World War resulted in the creation of the United Nations relief and Rehabilitation Administration by 4 States on Nov. 9, 1946. It was first major agency for the protection of the status of refugees and displaced persons. International refugee org. which was established by the United Nation General Assembly as a non-permanent body charged with responsibility for all aspects of problem concerned the uprooted people.²¹

The Convention 1951 provides various economic and social rights to refugees. These deals mainly with employment, housing, education, public relief, the right to benefit from labour legislation and social security, the right to acquire movable and immovable property and the rights regarding intellectual property.

As a refugee normally unable to obtain administrative assistance of the authentic of his home country for the issue of documents and certificates Article 25 of the 195 Convention deals with the administrative assistance is to be given to refugees. The contracting states obliged to issue identity papers to any refugee in their territory who does not possess valid travel documents.²² For the protection of refugees outside the Countries of first asylum, the Convention stipulates Article 30. Article 30 lays down. "a contracting state shall in conformity with its law and regulation, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purpose of resettlement."

The right of refugee to receive compensation from the state of nationality as such is not recognized in the 1951 convention. Article 24 of the 1951 Convention provides, "The

¹² *Ibid.*, p. 443.

¹³ Art. 19(1) and Art. 9(1), 18(1), 19(2), 22(1) holds opinion without interference.

¹⁴ Art. 11 and also Art. 15(1), 17(1), 18(2).

¹⁵ J.G. Starke, An Introduction to International Law, 8th Edition.

¹⁶ Atle Grahl. Madsen. The status of Refugees in Inter. Law. Vol. 1, 1966, p. 9.

¹⁷ Guy S. Goodwin. Gill, The Refugee in International Laws, 1983, p. 2.

¹⁸ Atle Grahl-Madsen, *op. cit.*, p.75.

¹⁹ *Ibid.*, p. 76

²⁰ Atle Guahl, Madsen Vol. I, 1966, p. 85, The Status of Refugees in International Law.

²¹ U.N. General Assembly Resolution 62(1) 1946.

²² Article 27, *Ibid.*

right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be effected by the fact that the residence of the beneficiary is outside the territory of the contracting state."

Loss and denial of Refugee Status

Most recent international instruments not only define refugees, but also provide for the circumstances in which refugee status shall terminate.²³ Article 14 of the Universal Declaration of Human Rights prohibits invocation of the right of asylum in the case of prosecution genuinely arising from non-political crimes or from acts contrary to the purpose and principles of the United Nations." Both UNHCR status and the 1951 Convention provide for loss of refugee status where the individual, by his or his own actions. Refugee status may be lost by voluntary re-establishment in the Country of origin.²⁴ Under United Nations in 1977 a Conference on Territorial Asylum was held which provided that asylum should not be refused by a contracting state solely on the ground that it could be sought from another state.

5. Position of individuals under international convention

Generally, the rights of individuals and their duties inter se and with respect to state is a subject of municipal Law. But sometimes even in a democratically elected government when it finds power slipping from its hands violate human rights. It requires recognition and protection of rights of individuals or regional and international level to check the violations of human rights by native state. Hence, on international and regional level certain conventions have been concluded so as to give affect to rights of individuals. The scope of this chapter is to discuss critically the rights provided and protected by important international and regional conventions.

Convention on the prevention and Punishment of The Crime of Genocide, 1948

The term "Genocide" was coined by Lemkin a private individual whose efforts played a large role in promoting the United Nations work on genocide. The term 'Genocide' half Greek and half Latin- was invented to describe the techniques of mass murder that had been perfected by and during the World War II, Genocide is the worst crime that can be perpetrated against minorities. The United Nations Convention on the prevention and punishment of the Crime and Genocide was opened for signature on Dec, 1948 and Came into force on 12th January 1949.²⁵

The International Convention on the elimination of all forms of Racial discrimination of Dec 21, 1965

The United Nations declaration on the Elimination of all forms of Racial Discrimination was proclaimed in November 26, 1963.²⁶ On the same day the General Assembly requested the Economic and social council to have the commission on Human Rights give absolutely priority to the preparation of the Racial Discrimination Convention.²⁷ Article 1 of the Convention

Consists of the definition of 'Racial Discrimination' to mean "any distinction exclusion, restriction on preference based on race, colour, descent or national or ethnic origin which has the purpose of or exercise, on an equal footing of human rights and fundamental freedoms in the political, economic, social cultural or any other field of public life."²⁸

Universal Declaration of Human Rights

At the San Francisco conference which adopted the charter of the United Nations and opened it for signature and ratification in 1945. The preparatory commission of the United Nations and its executive committee which met immediately after the closing session of the conference, recommended that the economic and social council should establish a commission on Human Rights.²⁹ In February 1946, the ECOSOC established the Commission on Human Rights,³⁰ with power to deal with any matter concerning human rights. The Universal Declaration of Human Rights consists of 30 Articles, besides the preamble. These articles covering both civil and political rights and economic, social and cultural rights. Article 1, 2 and 3 express the three main ideas of eighteenth century philosophy fraternity (Article 1). Article 4 deals with slavery and servitude. Article 5 provides prohibition of torture and inhuman treatment or punishment, article 6 deals with right to equality before the law, Article 7 provides for with all are equal before law and are entitled without any discrimination to equal protection of the Law, Article 8 deals with every one has the right to an effective remedy by competent national Tribunals for acts violating the rights granted by Constitutional or law, Article 9 deals with arbitrary arrest, detention or exile, Article 10 deals with the right to a fair and public hearing by an independent and impartial tribunal, Article 11 deals with the right to be presumed innocent until proved guilty according to the law and with non-retroactivity of the Law, Article 12 provides forbid interference with a man's privacy family, home or correspondence, Article 13 affirms the right to freedom of movement and residence, and the right to leave one's country.

The International Conventions on Human Rights

The second session of the Commission on Human Rights held in 1947. The Commission decided that the international Bill of Rights should consist of a declaration, a convention, Measures of implementation. In 1950, the General Assembly recommended the inclusion of the economic social and cultural Rights in the covenant. In 1952, the General Assembly, on the recommendation of Economic and Social Council, decided that the two covenants should be drawn up and directed to the commission on Human rights to prepare two drafts, one dealing with civil and political rights, and other with economic, social and cultural rights.

Convention on the status of Stateless Person, 1954

A person not having a nationality under the law of any state is called stateless, of at side, apolide or heimatlos. A person may either be stateless at birth, as a result of the fact that he does not acquire a nationality at birth according to the

²³ Grahl-Madsen, The Status Refugee in International Law 1966, p. 367.

²⁴ Sle Statute, Para 6(d), Convention, Article 1c(4) IRO.

²⁵ Nehemiah Robinson "The Genocide Convention", New York, 1960.

²⁶ General Assembly Resolution 1904 (XVIII)

²⁷ General Assembly Resolution 1906 (XVIII).

²⁸ Ian, Brownlie, Basic documents on Human Rights, p. 151.

²⁹ Dr. Satish Chandra, Individual in Petition in International Law, p. 40.

³⁰ ECOSOC Resolution 115, February 16, 1946.

law of any state, or he may become stateless subsequent to birth by losing his nationality without acquiring another.³¹

6. Individual's right to petition under international law and place of individual

The proceedings chapters lay much emphasis upon the incorporation of rights of individuals in international and regional conventions. But to provide rights without access to an international or regional tribunal for their implementation is a futile exercise. An effort has been made in this chapter to examine the machinery for enforcement of these rights which necessitates the individuals right to petition. The covenant on civil and Political Rights Consists of 53 Articles and divided into six parts. While in Part I, II and III various rights and freedoms are enumerated, other three parts devote with implementation procedure for effective realization of these rights along with the final classes. If any of these rights enumerated in the covenant have been violated, and after exhausting available domestic remedies, individual may submit written communications to the Human Rights Committee for consideration. The most distinctive feature of the European Convention on Human Rights is the optional procedure under Art. 25 whereby an individual claiming to be victim of a violation of one of the rights guaranteed by the convention may present a complaint against his own governments to the European Commission on Human Rights for investigation. Thus the individual is given direct access to an international Tribunal and is recognized as having the standard necessary to pursue his rights under international laws.³²

Art. 26 of the convention provides that "The commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which decision was taken". However, the incorporation of the clause", according to generally recognized rules of international law", introduces some limitations on the requirement that local remedies be exhausted. The basic rule is that the domestic remedies available to the individual must be adequate and effective, if they are to operate as a barrier to the international proceedings.³³

The American Convention was adopted in the Inter-American specified conference on Human held at San Jose, Costa Rica in Nov. 1969, and was signed on Nov. 22, 1969. The Convention came into force on July 11, 1978.³⁴ The convention provides various civil and political rights to individuals. If any of these rights have been violated and after exhausting available domestic remedies, individual may submit written communications to the Inter-American Commission on Human Rights for consideration. The primary and main function of the commission are to promote respect for and defence of human rights.³⁵ This is to be a step ahead to include international organisation, certain other non-state entities as subjects of international law. Remarkd by P.E.

³¹ Weis, P. Nationality and Statelessness in International Law, p. 166.

³² Kevin Boyle and H. Hannum, "Individual Applications under the European Convention on Human Rights, 1974.

³³ J.E.S. Fawcett, The Application of the European Convention on Human Rights, 1969.

³⁴ Ian Brownlie, Basic Documents on Human Rights, 1971, p. 106.

³⁵ Article 41 of the American Convention on Human Rights.

Corbet, "To me it has long meant that we are witnessing a transition of international legal development from a prolonged stage in which the predominant, not to say exclusive concern was the regulation of the conduct of State as distinct entities, to one in which equal attention is given to promoting the growth of a body of world law transcending states, and applicable on a footing of equality of individual, corporations, international organisation and states".

7. Suggestions and important international events

Promotion and Protection of rights of individuals can perhaps be more successfully sought through experiment on regional levels by selecting those geographical areas in which agreements on human rights issues can be easily reached owing to the common heritage of values, legal traditions and community of interest. The experiment and experience in Europe and America provide a model to a large degree of homogeneity and inter dependence among the status in a specific geographical regions. The trend of giving limited interpretation to 'domestic jurisdiction clause' has been continued and strengthened so as to enable the UN to take effective steps for the implementation of human rights provisions of the charter thereby strengthening the rights of individuals.

On August 1990 the Security council passed another resolution declaring as 'Null and avoid'. Latter on America declared a naval blockade against Iraq. Security council passed a number of resolutions relating to Gulf War. But the action taken by the Security Council so far had no effect upon Iraq. Rather President Saddam Hussein of Iraq adopted a very defiant attitude.

Iraq was clearly and without any shade of doubt guilty of aggression against Kuwait. The greatest damage caused by Iraq was the burning of hundreds of oil wells in Kuwait and spelling huge quantities of petroleum in the Seas thus causing irreparable damage to environment. On 12 December 1992, the United Nations General Assembly passed a resolution asking the Secretary-General to such vies of members states on equitable representation and increasing the membership of the Security Council.

There is no denying the fact that for any amendment of the charter, affirmative votes of five permanent members is essential. It is therefore necessary to build public opinion and to put pressure on the existing five permanent members and especially on the U.S. before in the present unipolar world much will depend on the attitude adopted by the U.S. the sole super power. India says that permanent seat without veto power would not be acceptable to her. But recently it seems that India may agree to a permanent seat of the Security Council, which is renewable, after the expiry of the terms.

There are many other international events are to be there which are clear the position of individual or many other issues.