

Rights and Duties of Individuals: Administration and Enforcement under International Law

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Abstract

Individuals, from being considered as the ‘objects’ of international law, devoid of any international legal personality, are assuming importance with the expansion in scope of international law thereby becoming the forbearers of newly found rights and duties under it, while the enforcement mechanism related to the same remains quite blurred due to limited access rule, exhaustion of local remedies rule and the jurisdictional problems of international law courts. In the light of recent developments in the realm of international law like Kulbhushan’s case, Iraq’s action on American spies and other relevant cases, the paper will outline the rationale behind demand for greater stake to individuals, also the basis of State’s reluctance in giving direct access to individuals to approach international forums, the problem of denunciation and ultimately what limit on much needed individual empowerment at the transnational level should be fixed to strike a proper balance between sovereignty of a nation and the rights of its individuals.

Keywords: *Individuals, International Law, Enforcement, Rights and Obligations, Denunciation.*

INTRODUCTION

Since the last few centuries, international law has witnessed tremendous growth - from the prime concern for peace and security to undertaking majority of anthropocentric or individualistic issues like education, woman, child, abolition of slavery, labour welfare,

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IPR issues, etc. There was a time when international law was concerned only with rights and duties of States who shared territorial boundaries with each other or who were engaged in trade through sea-routes but now the scenario has changed, the world with the advent of industrialization and globalization has become largely inter-dependent and international law has assumed greater significance with each passing day. With this development, the individuals, who were earlier considered to be only the objects of international law have assumed number of rights and duties under international law. Individuals from across the world are regularly interacting with each other, with international organizations and in a limited sense with the States too. The participation of individuals at all frontiers of international law and governance is not going unnoticed.

With individuals being recognized as subjects of international law, it is a right time for authorities at the international level to recognize the rights of individuals and give them a proper forum to claim their rights. Rosalyn Higgins, Former ICJ President has also supported this view. But this is not as simple as it seems, the international law is yet largely a soft law and is still evolving with a very weak enforcement system. State sovereignty also adds to this problem as the States are usually hesitant in accepting individuals as claimants at the international level. Another major hindrance is absence of any international supervisory authority that oversees the compliance of the decision in favor of individuals. As long as these problems persist, it is very difficult for individuals to acquire a significant position at the international level as part of the international legal framework.

INDIVIDUALS AS SUBJECT OF INTERNATIONAL LAW

Any entity which possesses international legal personality is eligible to be called as a subject of international law. Being subject of international law means that the entity possesses some rights and duties under it which can be enforced against him. The traditional positivist doctrine considers only the States to be the subjects of international law and the individuals as merely the objects.¹ Browlie in his book '*Principles of International Law*' stated that "There is no general rule that the individual cannot be a 'subject of international law', and in particular contexts he appears as a legal person on the international plane".² Some States often interpret the status of individual as someone capable of being punished under international law but incapable of possessing rights. The reason behind this approach is estimated to be the fear of states that they would lose control over their own nationals.³

1 H.O. Agarwal, *International Law & Human Rights* (21st Ed., 2016)

2 21 Andrew Clapham, *The Role of Individual in International Law*, EJIL 25 25-30 (2010)

3 Michael Akehurst, *A Modern Introduction to International Law* 73 (6thed, 1990)

With advancement of international law and the changing perceptions of States towards individuals, now individuals are also recognized as a subject of international law for a variety of purposes. The ICJ also in the *LaGrand* case⁴ has reiterated the same view. At the extreme end, some jurists like Kelson, Scelle and Westlake opined that in the ultimate analysis, only the individuals are the subjects of international law.

RIGHTS OF INDIVIDUALS UNDER INTERNATIONAL LAW

Background of individuals' rights

Earlier diplomatic privileges and immunities were granted to foreign diplomats, ambassadors and agents by the States across the world, as a part of their foreign policies governing international relations. This trend is still continued today both as part of treaties and customary international law.

Modern era of international law starts from UN Charter, which was adopted after WWII in 1945. The prime focus was maintaining peace and security but The Charter, in its preamble, undertakes to reaffirm faith in fundamental human rights, in the dignity and worth of human person and also in the equal rights of men and women across the world. Article 55 and 56 clearly state that UN shall promote the respect for human rights and the States will take necessary steps to cooperate with the organization to achieve its said purpose. The preamble of the UN Charter starts with 'We the peoples of the UN' and not with 'We the State Parties of the UN'. The intention is clear, UN Charter, the Magna Carta of the international law, was not created merely for regulating the relations between States but for ensuring the dignity of the human person also.

However, the two world wars resulted in mass casualties and gross human right violations which frightened almost all the nations and the world community could only think of preventing the happening of similar events in future. So, in 1948, Geneva Conventions were framed regulating the laws of war, if it ever happens in future. Talking of which, Professor Dunn, once beautifully argued that even the rules of warfare were made primarily to regulate the conduct of individuals and not the sovereign states in carrying out war with each other.⁵ His opinion may be appreciated in the sense that ultimately only individual authorities and army men take all decisions regarding war, States play no role in the

4 *LaGrand Case (Germany v. United States)*, 466 (ICJ, 2001)

5 Frederick S. Dunn and Alwyn V. Freeman, *The International Rights of Individuals*, 35 *Camb. Univ. Pr.* 14 15 (1941)

battle field. After WWII also, it was only the individuals who were held responsible for the loss, casualties, crimes against peace and humanity and crimes of aggression by way of Nuremberg and Tokyo Trials. We had special tribunals also in Rwanda, Yugoslavia, East Timor and Sierra Leone for the punishment of individuals accused of serious crimes. All these events helped in setting up of a permanent forum called International Criminal Court in 2002 for adjudication of cases relating to individual criminal responsibility making individuals directly liable for the international crimes they have committed.⁶

Human Rights

Human rights (hereinafter HR) guaranteed to individuals under UN Charter and various HR instruments, are pre-emptory norms of international law. They may be in the form of either collective or individual rights. Collective rights include right to self determination, right of indigenous people, right to development, right to clean and healthy environment, etc. HR instruments like UDHR (Universal Declaration of Human Rights), ICCPR (International Covenant on Civil and Political Rights) and ICESCR (International Covenant on Economic Social and Cultural Rights) enlist a number of rights exclusively for individuals like right to life, privacy, food, shelter, work etc which can be enforced by individuals as such.

International Labour Organization

Under *Statute of International Labour Organization (ILO)* also, Art. II (a) of the Declaration on aims and purposes of the ILO reaffirms that 'all human beings irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in the conditions of freedom and dignity, of economic security and equal opportunity. Thus, welfare of individual is of paramount consideration.

Other Significant Conventions

Other conventions which elaborate on rights of individuals include *International Convention on Elimination of All Forms of Racial Discrimination* which gives right to the victims to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination from the municipal courts. One drawback which this

6 See also, Edoardo Greppi, The evolution of individual criminal responsibility under international law *International Review of the Red Cross* (1999) <https://www.icrc.org/eng/resources/documents/article/other/57jq2x.htm> (last accessed 01-08-19)

convention has is that the victim must be a subject of the State where discrimination has occurred. Non-citizens are thus not entitled to any remedy under the Convention. The states have to submit a report of their compliance with the said convention to an international authority which makes them accountable (at least on papers). Similar rights are recognized in the *Apartheid Convention* that declares Apartheid to be a crime against humanity.⁷ The Convention u/A III fixes the liability on individuals, members of organizations and institutions and State representatives who commit or are in any way involved in commission of crime of apartheid.

Individuals can bring claims before international forums on the basis of their nationality and so nationality seems to be a precondition. Nationality of a person is determined by birth, marriage, registration, descent and naturalization. In international law, the nationality of a woman remains unaffected by the celebration or dissolution of her marriage.⁸ International law also protects the rights of individuals devoid of any nationality i.e. Stateless persons under *Convention relating to the Status of Stateless Persons, 1954*. A report titled 'Stateless in numbers: 2018' published by UNHRC highlighted that almost 3.9 million people are stateless globally; be it US-Mexico border, Indo-Myanmar border, across Russian Federation, etc. The crimes committed against them goes largely under-reported with most listings arguing their disappearances. The same report also talked about increasing number of refugees who have got protection under *Convention relating to the International Status of Refugees, 1933*. Despite the existence of such instruments, the conditions of these forcibly ejected people has not improved at all, their future remaining dark. Nations don't want to accept them, sometimes, to escape an extra burden on their resources (UK) or they want to maintain their ethnicity (Myanmar) or that they are already overpopulated (India) or they are afraid of immigrants (USA). Whatever the reason may be, this discarded population needs representation and protection which is possible only if they have some rights and definite standing before the international forums.

Rights created by treaties

The validity of treaties establishing rights directly in favour of individuals has been recognized by Permanent Court International Justice (PCIJ) in *Danzig case*.⁹ In this case, the Court opined that though treaties usually create rights between states only but they may

7 Convention on the Suppression and Punishment of the Crime of Apartheid, 1973

8 Convention on the Nationality of Married Women, 1957, Art. 1

9 Jurisdiction of the Courts of Danzig, Advisory Opinion, (P.C.I.J., 1928)

do so in favour of individuals if they wish.¹⁰ The enforceability of rights of individuals created under treaties is still at the stage of infancy. Sometimes treaties create international rights to be enforceable in national and international courts, while the exact mechanism for doing so, hasn't been laid down anywhere.

Case Study of Kulbhushan Jadhav's 2019 Case¹¹

Pakistan claimed that Kulbhushan Jadhav was working for India as a spy in Balochistan Province and so the Pakistani army kidnapped Jadhav from Iran in 2016 and after conducting a military trial, gave directions to execute him in 2017. India, on the other hand, claimed that Jadhav is a normal civilian and so he deserves consular access (both India and Pakistan being signatories of Vienna Convention on Consular Relations, 1963) which Pakistan has unfairly denied. Thereafter, India approach ICJ in 2017 asking for stay on Jadhav's execution and grant of consular access to him and also asked for a re-trial of Jadhav in Supreme Court of Pakistan. ICJ finally disposing of the matter in 2019, ruled in India's favour by 15:1 (the only dissenting opinion coming from Justice Jilani who was from Pakistan's side) suspending the execution and describing India's demand for consular access as legitimate. But despite this, India still has to rely on Pakistan's goodwill, which can, at any time refuse to comply to ICJ's decision. Even if Pakistan agrees to give consular access, it might deny any privacy to Jadhav and the consulate, also, all their conversations can be recorded and used against them. Recently, Pakistan has denied a second consular access to India, unilaterally!¹²

Such instances and uncertainties are very common at the international level and it is this reason, which makes it extremely necessary to build up a strong enforcement mechanism in favour of execution of individuals' rights. There is also a need to determine the fundamental rights of individuals at the international level which will operate as *jus cogens* and thus help in effective administration of international level.

Denunciation

Denunciation is the State's power to withdraw its consent at any time from the

10 Julie Cassidy, *Emergence of The Individual as An International Juristic Entity: Enforcement of International Human Rights* 9 Deakin L. R. 534, 552-553 (2004)

11 Kulbhushan Jadhav Case (India v. Pakistan, 17 July 2019) <https://www.icj-cij.org/en/case/168>

12 Pakistan rules out 2nd consular access to Kulbhushan Jadhav, *The Economic Times* Sep 13, 2019 <https://economictimes.indiatimes.com/news/defence/pakistan-rules-out-2nd-consular-access-to-kulbhushan-jadhav/articleshow/71097170.cms> (last assessed 08-10-2019)

concerned treaty (bilateral or multilateral) without due regard to the rights of the individuals. In a report published in United Nations Treaty Series (UNTS) in 2010, it was found out that almost 60% of the international agreements contain an exit clause.¹³ The opting-out facility is available even in human rights treaties which are the most basic ones. The denunciation crisis has been taken quite seriously in recent times especially after US dropout of Paris Agreement in 2016 and Japan's opting out of International Whaling Commission in 2018 and it is a matter of debate at the international level but no effective steps have been taken so far.

DUTIES OR OBLIGATIONS OF INDIVIDUALS UNDER INTERNATIONAL LAW

Art. 29 of the UDHR explicitly states that every individual has duties to the community and it is only within the community that the free and full development of his personality is possible. In this way, it can be said that the human rights and fundamental freedoms guaranteed under UDHR and its collateral covenants are not absolute. They are subject to certain limitations in the form of duties that an individual owes to his community and also to other fellow individuals. These duties include observance of international law, observance of the duties towards community at large, not to engage in any activity that disturbs international peace and security and aid in the full realization of international obligations.

Individual criminal responsibility: As the international law developed, it was soon realized that States can't be punished in such a way so as to create a deterrent, the individuals behind the violent acts of genocide, crimes of aggression, crimes against humanity and peace have to be punished. This is known as individual criminal responsibility. To make individuals criminally responsible, an entirely new international framework had to be set up in the form of exclusive international tribunals with appropriate enforcement mechanisms. At the outset of WWII, we had Nuremburg and Tokyo Trials, while after that, ICTY (International Criminal Tribunal for Yugoslavia) and ICTR (International Criminal Tribunal for Rwanda) had been set up with the similar purpose (as already discussed above). But these were not the first attempts made in this regard to punish the individuals. They have been held liable for various international crimes like piracy, aircraft hijacking, espionage, etc. even before the full development of international criminal law.

13 Laurence R Helfer, Terminating Treaties 635-641 https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5338&context=faculty_scholarship (last accessed 01-07-19)

Other obligations: Apart from the obligations of individuals mentioned above, there are certain duties mentioned under specific conventions. Under Art. 2 of both the Stateless Persons Convention and the Refugee Convention, the individuals are obligated to abide by the laws and regulations of the country where they are found. They are also to take measures for maintenance of public order. Individuals have also to refrain from engaging in acts of torture, both physical and mental, under the torture convention.¹⁴ Individuals, along with states also have a duty to protect and preserve the human environment.¹⁵

THE ENFORCEMENT MECHANISM

There has always been a tussle between jurists regarding the importance of enforceability of international law. For some jurists like Lauterpacht, enforceability of rights is not essential for a juristic personality under international law while for Kelsen, enforceability is a must.¹⁶

International Law is heavily criticized for its weak enforcement mechanism. Justice Holmes, regarding an unenforceable right observed in ‘The Western Maid’ that “Legal obligations that exist but cannot be enforced are ghosts that are seen in the law but that are elusive to the grasp”.¹⁷ However, Art. 25 of the American Convention of Human Rights, 1969 ensures the right of judicial protection to everyone for the breach of their fundamental rights before a competent court or tribunal. Under clause 2, it obligates State Parties to facilitate the possibility of judicial remedy and take all the necessary steps in this regard. Despite this, the individuals lack procedural capacity to claim before the international forums directly in most of the cases. In some cases, they have been allowed to make a claim via an international institution.

Individuals’ rights and duties may be enforced at the international level in four ways:

Enforcement directly through courts

Historically, individuals’ enforcement of rights through international forums was based on *Limited Access Rule* and *Exhaustion of Local Remedies Rule*. Individuals have been

14 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

15 Declaration of the United Nations Conference on the Human Environment, 1972, popularly known as Stockholm Declaration, Principle 1 and 19

16 *Supra note* 11 at 547

17 *Supra note* 13 at 1091

denied direct access to the court but in certain exceptional circumstances they are allowed to approach international tribunals for the enforcement of their rights (This is known as **Limited Access Rule**). For instance, under Art. 297 and 304 of Treaty of Versailles 1919 and the Polish German Convention 1922, individuals were allowed to access Mixed Arbitral Tribunals set up under these instruments.¹⁸ Upper Silesian Convention went a step and allowed their individuals to claim their vested rights before an international tribunal not only against a foreign government but also against their own government.¹⁹ Direct access was also provided to individuals by Central American Court of Justice and International Prize Court. It must not be forgotten that even UN employees can directly approach UN Administrative Tribunal for claiming their employment and conditions of service related rights.

Earlier, individuals for their protection as minorities could bring claims directly under the League of Nations under their Mandate System.²⁰ In 1919, the Mandate System was launched which provided that the conquered territories will operate under the guardianship of the League of Nations while the territories under limited capacity could carry on their administration.²¹ Similar trend was carried forward in the UN Charter via trusteeship council²² and the protection of HR. Under Art. 87, the trusteeship council may directly accept petition from the inhabitants of trust territories and examine them in consultation with administrating authority. Individuals of dependent states and victims of apartheid may also file petitions which are dealt by Special Committees set up for this purpose only under the UN System.

Likewise, in 1951, European Coal and Steel Community was created and after that European Economic Community and then European Atomic Energy Community popularly known as EURATOM were created in 1957 which gave rights to individuals to directly appeal to the Courts of Justice of the Communities from the decisions of the organs of the communities. The European Convention on Human rights was the first international instrument to give specific legal content to HRs and combine this with the establishment of machinery for supervision and enforcement.²³ European Convention focuses more on

18 J.G. Starke, Introduction to International Law 62 (9th Ed., 1984)

19 Marek St. Korowicz, The Problem of the International Personality of Individuals 50 The AJIL 533, 533 (1956)

20 *Supra note* 11 at 554

21 Taina Tuori, From League of Nations Mandates to Decolonization: A History of the Language of Rights in International Law 1, 37-69 (2016) <https://helda.helsinki.fi/bitstream/handle/10138/169119/FromLeag.pdf?sequence=1> (last accessed 04-08-18)

22 UN Charter, Art. 87

23 3 Study Stories of Human Rights 933 (Digumarti Bhaskara Rao, 2001)

improving the status of individuals at the international level and developing the methods of ensuring proper remedies to the individuals for the breach of their rights.²⁴ Sometimes it is done through national application and enforcement.²⁵ However, the individuals can't directly approach the Court, they have to follow a proper channel of Commission's conciliation and report submission to the State. Once this is done, the Commission or the State may refer the case to the European Court of Human Rights. The Charter for Organization of American States (OAS) also recognizes basic rights and freedoms of individuals and prohibits all kind of discrimination against them but fails to set out any kind of enforcement mechanism. Later came American Convention on Human Rights in 1969, which provided for a Commission and a Court that resemble European System.

Individuals can claim in their own right before International Centre for the Settlement of Investment Disputes (ICSID). ICSID has jurisdiction to settle disputes between State and private entities but not between States only or private entities only. Sometimes individuals' rights and duties under international law may also be enforced by national courts using the *Principle of Universal Jurisdiction*. Under this principle, any State may try and punish the offender accused of serious violations of international law if the accused is found in its territory. For instance, *Ferrini*²⁶, *Pinochet*²⁷, *Gaddafi*²⁸ and *Jones*²⁹ cases.

Exhaustion of Local Remedies Rule: Another constraint in enforcement

To international forums and Committees, municipal remedies or recourses have to be exhausted. This results in huge delays and ultimately the justice, if ever done to individuals, becomes meaningless.

Jurisdiction of International Courts

The jurisdiction or scope of international courts and tribunals is rather limited and mostly confined to specific subjects. Most of the international forums have consensual jurisdiction i.e. jurisdiction depending upon the consent of States including ICJ.. Due to this problem, a lot of individuals' claims go unaddressed as they fail to invoke the jurisdiction of the international forums.

24 European Convention on Human Rights, Art. 25

25 *Supra note* 23 at 934

26 *Ferrini v Federal Republic of Germany* 99 AJIL 242, 245-248 (2005)

27 *R. ex parte Pinochet v Bartle and ors*, Appeal, 17 (UKHL, 1999)

28 *The Prosecutor v. Saif Al-Islam Gaddafi* ICC-01/11-01/11 <https://www.icc-cpi.int/libya/gaddafi>

29 *See, Jones v Saudi Arabia* 26 (UKHL, 2006)

Reasons for State's Reluctance

The States have been reluctant in giving direct access to individuals to approach international courts as they are afraid that it might infringe the sovereignty of the states and also the principle of non-interference in domestic affairs.³⁰ Another reason is multiplicity of proceedings as is already happening in Human Rights violations cases. States often put an argument that there is a risk that the State will become the claimant (by providing lawyer to the individual) and also the defendant at the same time.

Why individuals should have direct access?

Direct access is required because the municipal remedies are often slow, ineffective and there is a risk of unfair trial in the national courts. It is ironic that the State that violates an individual's human rights is entrusted to provide a machinery for justice. Recently in July 2019, Iraq has detained 17 Iraqi nationals alleging them to be US spies. An official statement has also been made intending their execution. This is a second such case after 2016 when ISIS executed 6 so-called spies in Iraq on charge of leaking military details.³¹ Similar thing is happening with the Kurds of Syria, who are falling prey of Turkish aggression.³² Who will give justice to them is a very big question and which court they should apply for justice. One can't expect a fair trial in such a situation and right to access international court for justice becomes a necessity of the time.³³

Direct enforcement will strengthen the international law regime and guide the States, International Organizations and even the local bodies on how to frame their domestic laws and protect their individuals. A single channel working for individuals' rights and duties is required.

30 Edvard I. Hambro and Edgar Turlington, *Individuals before International Tribunal* 35 Camb. Univ. Press 26 (1941)

31 Adam Withnall, Isis executes six 'spies' in Iraq accused of leaking militants' details Independent March 17, 2016 <https://www.independent.co.uk/news/world/middle-east/isis-new-video-executions-fallujah-iraq-six-spies-leaking-militants-files-details-a6936436.html> (last assessed 25-07-2019)

32 Why Is Turkey Fighting the Kurds in Syria? The New York Times Oct 9, 2019 <https://www.nytimes.com/2019/10/09/world/middleeast/kurds-turkey-syria.html> (last accessed 10-10-2019)

33 Shirzad Bozorgmehr et al., Iran detains 17 citizens accused of spying for the CIA CNN July 22, 2019 <https://edition.cnn.com/2019/07/22/middleeast/iran-cia-spies-detention-intl-hnk/index.html> (last assessed 25-07-2019)

Enforcement through State referrals

Sometimes the interest of individuals is being represented by States. This is an indirect form of enforcement of rights and duties of individuals. One of the best examples is protecting diplomatic privileges and immunities of foreign diplomats, ambassadors and agents. a diplomat may enjoy all the immunities and privileges as long as the State does not waive it. Any breach of diplomatic protection has to be claimed by the State only. In the matters of consular access also, the States bring the claim on behalf of the concerned individual before the international forums like in *La Grand Case*³⁴, *Kulbhushan Jadhav's Case*³⁵, *Beard Case*³⁶, etc. Similar provisions could be found in WTO Appellate Body and ITLOS. The problem with these indirect modes arises when an individual wants to bring a claim against his own State or when a State refuses to put forward or give permission to individual's claim.

Enforcement via political organ of an International Organization

ICJ in *Reparations Case*³⁷ asserted that the right to bring claims is intrinsic to legal personality. International organizations possess international legal personality meaning they are entitled to certain rights and duties and are also capable of bringing international claims.³⁸ They usually bring claims for their own rights³⁹ or rights of their own employees⁴⁰. Sometimes they also bring claims representing individuals not directly associated with them. They do so in furtherance of their objectives and purposes. For HR violations, individuals may submit their complaints to Human Rights Council, Special Rapporteur, Other Working Groups or Commission on Status of Women.⁴¹In most of the HR instruments like ICCPR, Convention on Torture, CEDAW, Convention on Racial Discrimination, etc, there are two criteria which have to be satisfied only after which an individual may approach an organization for representation. *First*, the State must be a party to the said convention and

34 *Supra note 5.*

35 *Kulbhushan Jadhav (India v. Pakistan) (ICJ,2019)*

36 *Director of Public Prosecution v Beard AC 479 (1920)*

37 *Reparation for injuries suffered in the service of the Nations, Advisory Opinion, 174 (ICJ, 1949)*

38 *Mr. Leonardo Diaz Gonzalez, Relation between States and International Organizations UN Doc A/CN.4/391 and Add.1.*

39 *Refer International Tin Council v. Amalgamated Inc, 524 NYS 2d 971 (1988); Arab Monetary Fund v. Hashim & Ors., 1 All ER 871 (1991)*

40 *Reparation for injuries suffered in the service of the Nations, Advisory Opinion, 174 (ICJ, 1949)*

41 *Individual Complaints Procedure under the United Nations Human Rights Treaties, Fact Sheet no. 7/ Rev. 2, UNOHCHR (2013) <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf> (last accessed 06-05-19)*

secondly, that the State should accept the competence of the committee set up under that Convention to examine the complaints filed by the individuals.⁴²

So again, the States exercise a major discretion in these cases. Individuals here also acquire a secondary position because they have to depend on States being a party to the said convention and also that it has admitted the Committee's competence. Under other HR instruments like European Convention for the Protection of Human Rights and Fundamental Freedoms, an individual couldn't directly approach the concerned court (European Court of Human Rights) but only through the commission set up for this purpose. This defect was removed by Protocol 11, made in 1998 that now gives access to individuals to approach the court directly.

Likewise, The International Labour Organisation (ILO) which concerns itself exclusively with rights of workers of organized and unorganized sectors, extends membership status to representatives of workers' and employers' organisations and it has in recent years given observer status to NGOs allowing them to have access to ILO documentation as well as meetings bringing in more transparency and accountability. Similarly, UNESCO gives NGOs consultative status and allows them to lodge complaints of alleged violations of rights that fall under the field of expertise of UNESCO without themselves having to be the victim.⁴³ NGOs like Amnesty International in *Soering Case*⁴⁴ have helped in filing applications and giving advice to European Courts for the effective disposal of cases.

Furthermore, Under the OAS (Organization of American States), the American Convention permits 'any non-governmental entity legally recognised in one or more member states' of the OAS to lodge petitions about any violations of the Convention. In practice, only few NGOs, like CEJIL (Centre for Justice and International Law) and Association for Human Rights in Peru (APRODEH), have become very influential because of their involvement in most of the cases where they are representative of the victims. They bring majority of cases to the Inter-American Commission and the Inter-American Court. This way, the NGOs have emerged in recent times as the guardian of individuals' rights at the international level.

42 Optional Protocol to the International Covenant on Civil and Political Rights, 1966 Art. 1 and 2

43 The Role of Non-State Entities, Icelandic human rights centre, <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-actors/the-role-of-non-state-entities> (last accessed 10-07-19)

44 *Soering v United Kingdom* 161 (ECHR,1989)

Through Arbitration or Conciliation proceedings provided under an agreement.

Despite unclear status of individuals with respect to filing individual petitions before international courts and tribunals, nothing affects States' rights to enter into an agreement with one another creating provisions in favour of the individuals whereby they may create a mechanism for settlement of disputes through extra-judicial means like arbitration, conciliation or mediation.

Individuals have a right to approach Permanent Court of Arbitration (PCA) for arbitration, mediation or examination of the facts.⁴⁵ The other international instruments like ILO instrument dealing with dispute prevention and settlement, the Voluntary Conciliation and Arbitration Recommendation, 1951, recommends that voluntary conciliation "should be made available to assist in the prevention and settlement of industrial disputes between employers and workers."⁴⁶ The United Nations recently set up an International Claims Commission for victims of the war between Iraq and Kuwait. These claims commissions afford instructive instances of alternative dispute resolution designed to yield salutary results if not to guarantee complete satisfaction of each and every claim submitted by individual victims or their relatives including reparations for environmental damage.⁴⁷ ADR mechanisms are often used for solving economic and business-related disputes at the international level that involve corporations as well as individuals.⁴⁸

CONCLUSION

It is undeniable that even the greatest of wars in history were the result of denial of rights to individuals at first which spread like wild fire and infected the whole community in no matter of time. The aggrieved community turned into large factions of dissatisfied population fighting for basic rights against their own State, then the neighbours and thereafter against the whole international community. We aim at securing world peace and making

45 International Dispute Resolution (2007) https://gnso.icann.org/sites/default/files/filefield_6409/intl-dispute-resolution-overview-june-2007.pdf (last accessed 21-07-19)

46 Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives, High-Level Tripartite Seminar on The Settlement of Labour Disputes Through Mediation, Conciliation, Arbitration And Labour Courts, Nicosia, Cyprus October 18th – 19th, (2007) http://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/documents/meetingdocument/wcms_366949.pdf (last accessed 21-07-19)

47 Sompong Sucharitkul, Mediation and Conciliation as Alternative Means of Settling International Disputes 5-6 <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1557&context=pubs> (last accessed 22-08-19)

48 Linda C. Reif, Conciliation as A Mechanism for The Resolution of International Economic and Business Disputes 14 Ford. ILJ 578 587 (1990)

this world a better place to live but we must not forget that this is possible only when we not only adhere to utilitarian principle propounded by Bentham but go beyond that and ensure rights to every single individual so that he may realize and develop his personality in the best possible manner. Professor Dunn in his article '*The International Rights of Individuals*' has pointed out, the denial of international status to the individual has caused government officials in claims cases to "gravely overemphasize the importance of the political relations of states at the expense of the activities of men as human beings". In the present times, it can be said that the individuals have come a long way in their struggle for acquisition of international rights and duties but enforcement remains a major battle to be fought.

Following suggestions for strengthening enforcement mechanism relating to rights and duties of individuals may be applied at the international level:

1. Too much discretion in the hands of the States (in the form of treaty denunciation, State referrals, acknowledgment of Committee's competence to undertake individuals' cases, etc) especially in Human Rights violation cases must be reduced.
 2. Individuals must be provided with proper legal aid to present their case before the international forum.
 3. The cases dealing with individuals must be decided in a time bound manner.
 4. The unnecessary and cumbersome procedures that causes delay (like admissibility stage and merit stage of individual complaint filing system) must be simplified. Procedures must be relaxed considering special circumstances like irreparable damage to the individual in the form of death or other financial/emotional loss (for instance in Kulbhushan Jadhav's execution case).
 5. Recourse must be identified as to where will the individual go if his request has been denied by the Committee at the admissibility stage itself.
 6. Deciding International forum must ensure that in the post decision stage the individual gets proper redressal in his home country (if the decision is against the home State) or by the foreign state (if the decision is against foreign territory).
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