



Subjects of international law

Public International Law: Alternative Seminar



The Initial Paradigm

- Only states are subjects of international law



Evolution

- International organization (20th century)



Individual

- Subject v beneficiary
- Direct versus derivate rights theories



The content of the concept of individual

- The Reparation of Injuries case before the ICJ (1949):
 - No exhaustive list of subjects of international law
- Natural Persons
- Artificial persons (HR, investment protection)



The relationship between international and national subjectivity

- ▶ Subjectivity versus capacity?
- ▶ Both natural and artificial persons were first subjects under a domestic law
- ▶ Is there any link between national and international subjectivity?



Diplomatic protection

- ▶ Natural person – protected by the state of nationality (The Nottebohm case)
- ▶ Artificial person – protected by the state of registration (The Barcelona Traction Case)
- ▶ Both persons embedded in a national law



The specific problem of *nasciturus*

- ▶ Is nasciturs subject of international rights?
- ▶ What are the consequences of positive or negative answer?
- ▶ What can we gather from Vo versus France?




The specific problem of partnership

- ▶ Should a partnership (and its functional equivalents) be considered subjects of international law?
- ▶ Should a partnership be considered to meet criteria of “juridical person” under an investment treaty?
- ▶ What is the consequence of positive/negative answer to this question for the jurisdiction of the investment tribunal?



Wirtgen et al. v. The CR

- Investor is normally either natural or legal person
- Respondent: whether KG is „juridical person“ under the BIT is governed by German law (renvoi to domestic law)
- Claimant: „Juridical person“ under the BIT has an autonomous meaning
- Interpretation as per art. 31 and 32 Vienna Convention on the Law of Treaties:
- Good faith; ordinary meaning; context; object and purpose, etc.



The line of thought by the Arbitral Tribunal

- Inclusio unius (other provisions of the BIT refer expressly to domestic law)
- A “generic meaning” (all-encompassing) of “juridical person” under the BIT
- German law provides attributes of KG, but whether such entity falls within the concept of “juridical person” under the BIT is a matter of autonomous interpretation (qualification?)
- JP must have similar attributes as a natural person
- Object and purpose: “favourable conditions”
- Reciprocity : the laws of The Czech Republic deem KG legal person



It depends...

- ▶ Dualism versus monism
- ▶ “Autonomous” versus “derived” subjectivity
- ▶ Interpretation of the treaty conferring rights on an entity is important (VCLT)



Beyond...

- Environmental personhood:
 - Animals
 - Rivers
- Robots



➤ Thank you.