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The affirmation of general principles and the subjects of international public law in the 21st century*

A afirmação dos princípios gerais e os sujeitos do Direito Internacional público no século XXI

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Abstract:

Individuals as subjects of public international law (PIL) is a key issue in the current legal debate. This article highlights the contributions of Hans Kelsen and Antônio Augusto Cançado Trindade to this debate. For Kelsen, the individual would be considered a subject of international law when there were international treaties that created administrative bodies to which individuals, citizens of the States Parties, could appeal if their States violated one of the articles of those treaties against them. It is what happens in the current international regime for human rights protection. For Cançado Trindade, the general principles guide the norms and rules that bind in public international law. In the 21st century, states, international organizations, and individuals are subjects of PIL. The affirmation of the seven general principles of the PIL has a consecutive logic of consolidation of these three great subjects.
Key-Words: Public International Law; General Principles; Subjects; Estates; International Organizations; Individuals.

Resumo:

O artigo objetiva explicitar a estreita relação existente entre a afirmação dos princípios gerais do Direito Internacional Público (DIP) e os seus sujeitos contemporâneos: os Estados, as organizações internacionais e os indivíduos. Para tanto, vale-se de análise documental, utilizando textos históricos (Declaração dos Direitos do Homem e do Cidadão, Carta da ONU, Declaração Universal dos Direitos Humanos), documentos oficiais (tratados internacionais, opiniões consultivas, sentenças de casos contenciosos) e doutrina reconhecida. Esta última especialmente enrobustecida pela revisão bibliográfica entre Hans Kelsen e Antônio Augusto Cançado Trindade. O estudo conclui, a partir da afirmação inconteste dos três grandes sujeitos contemporâneos do DIP, concomitantemente ao processo de consolidação dos sete princípios gerais que edificam essa rama do direito a partir da segunda metade do século XX. Portanto, é uma lógica consecutiva entre a existência destes e a solidificação daqueles que marca definitivamente o DIP da atualidade.
Palavras-chave: *Direito Internacional Público. Princípios Gerais. Sujeitos. Estados. Organizações Internacionais. Indivíduos.*

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1 Introduction

The hypothesis of this article is the existence of a close connection between the affirmation of the general principles and the consolidation of the current subjects of Public International Law (IPL). To prove it, this study is based on historical data, conventional (international treaties) and extra-conventional (recognized doctrines, general principles, resolutions of international organizations and others) sources of the DIP.

Classical IPD was based on an international society with an interstate structure, in which states were its only subjects. This order had the purpose of regulating relations between States and the distribution of their competences. It was a right conceived by States and for States, and the international society of that time, therefore, was statocentric.

The constant interaction between the States has led to the emergence of the need to create new subjects of IPD, thus helping their anxieties and desires for an international scenario of lasting peace, with harmonious and sustainable development among them. Thus, the modern DIP observed the consolidation of international organizations as a subject.

Within the scope of international organizations, international human rights treaties are signed that elevate individuals to the status of subjects of the IPL, as they start to sue their countries before the international bodies responsible for supervising compliance with these multilateral treaties. In the light of this procedural capacity, individuals are affirmed as subjects of contemporary DIP. In this context, international society moves from an exclusively statocentric environment to a scenario in which individuals are at the center of its concern. A plurality of actors in international relations is consolidated, creating a current environment of international community. In the twenty-first century, the subjects of the DIP are States, international organizations and individuals.

This text discusses the current subjects of the DIP in the light of their historical and legal affirmations in international society. To this end, it methodologically uses documentary analysis, with a focus on historical texts (Declaration of the Rights of Man and of the Citizen, Charter of the United Nations [UN], Universal Declaration of Human Rights), official documents (international treaties, advisory opinions, sentences of contentious cases) and recognized doctrine, with the doctrinal revision between Hans Kelsen and Antônio Augusto Cançado Trindade being the cornerstone of the latter. Indeed, in the twenty-first century, the indisputable and full existence of multiple human rights jurisdictions attests to the international subjectivity of the individual in the IPD. It is a Kelsenian conception that meets the

contemporary argumentative perspective of Cançado Trindade in the matter. He teaches that it was the State created by the human being to serve him in his social organization and not vice versa. Thus, the present study sheds light on these statements through historical data and sources from the IPD. It is an investigation capable of casting doubt, however reigning in relation to the subjectivity of the individual in the IPD. Hence its practical importance and relevant academic contribution.

2 International law as true law

The DIP is a true right because it orders the reciprocal conduct of the States and shows the essential elements of a legal order. It is a coercive order because it reserves the use of force to the international community and thus establishes its monopoly. This means that violent interference in the sphere of interests of a subject to order must be considered as illegality or as a sanction (Kelsen, 1996, p. 81). The DIP has a material field of unlimited validity and, therefore, it is impossible to define it by its object, that is, by the matter that its rules regulate (Kelsen, 1953, p. 16). The norms of a dynamic system must be created through the will of individuals authorized to create them by some higher norm. For the "foundation for the validity of a norm is always a norm, not a fact" (Kelsen, 2000b, p. 162-165). In this sense, the power to create norms is delegated from one authority to another authority: the first is the higher authority and the second is the lower one. The fundamental norm of a dynamic system is the basic rule according to which the norms of the system must be created. A norm is part of a dynamic system if it has been created in a way that is ultimately determined by the fundamental norm (Kelsen, 2000b, p. 165).

Thus, the question arises: who would be the superior authority and the inferior authority from the perspective of the DIP? To answer this question, Kelsen (2000b, p. 464) predicates that the norms of the so-called general international law are central norms, valid for a territory that comprises the territories of all the States that actually exist, and the territory in which the States can potentially exist. The legal systems of the States are local norms of this system. Whereas, in the territory of the State, the territorial sphere of validity of a national legal order is limited by provisions of the IPL, the territorial sphere of validity of the international legal order is not legally limited. The DIP is valid wherever its norms are to be applied, and the centrality of these is a key issue. Thus, since the material field of the validity of the DIP is unlimited, it will be impossible to define it by its object, by the matter that its norms regulate

(Kelsen, 1953, p.16), since the validity and binding force of all legal norms, from a hierarchical perspective, derive from other higher norms until they reach the fundamental norm (Kelsen, 1926, p. 22-23).

Jurista Trindade (2017, p. 184) argues that general principles "inspire not only the interpretation of legal norms, but also their own elaboration process. They reflect the *opinio juris*, which, in turn, is at the basis of the formation of law". For him, general principles are the basis of any right. This doctrine, then, validates the importance of the affirmation and consolidation of the general principles of IPD for the firmament of its current three great subjects.

3 The general principles of public international law

On October 24, 1648, the Peace of Westphalia was celebrated, marked by the signing of two peace treaties, Münster and Osnabrück, which put an end to the Thirty Years' War, a dispute between Catholics and Protestants fought in Central Europe, mainly in the Holy Roman Empire, and the Eighty Years' War between Spain and the Netherlands. Although religion is striking as the initial trigger for these conflicts, factors such as territorial expansion and the search for political hegemony in the region were also crucial for their prolongation. The Peace of Westphalia symbolized a set of innovative agreements based on the sovereignty of the nation-state, since it patented its powers against local princes, repudiating any submission to a higher authority of a religious character outside its territory. In this way, a classical international system was consolidated, whose representative entities were vested in a single central government that exercised sovereignty over a relatively constant population within a defined territory (Pearson and Rochester, 2000, p. 38-39). Such historical contexts and state characteristics consolidate the first great general principle of the IPD: sovereign equality among states.

Once it is agreed that states are equally sovereign, they have the right to resolve their internal issues individually before international society intervenes in them. Based on this consensual understanding, the affirmation of the second general principle of the DIP is a direct consequence of the assertion of the first, that is, non-interference or non-interference in the internal affairs of other States.

International society continues to experience historical acts and facts of special relevance for its institutional refinement and evolution. In this regard, it is important to highlight, for the

purposes of affirming the general principles and contemporary subjects of the DIP, the French Revolution. This historical icon is the date of July 14, 1789 due to the storming of the Bastille and deserves special mention because of the affirmation of its three great principles (fraternity, equality and liberty). Also, the beheading of Louis XIV of France, the monarch symbol of the ideology of "I am the State", threw an important cognitive dimension for individuals in international society, symbolized by the following question: "if we are all fraternal, equal and free, why should there be anyone superior to us?". Already influenced by the ideas of Monstesquieu and his *On the Spirit of Laws* (Montesquieu, 2010, p. 40-62), inspiring the Declaration of the Rights of Man and of the Citizen approved by the French National Constituent Assembly on 26/08/1789, embodied by the immediate consequences of the French Revolution, modern States culminated the classical international system, which was in force between 1648 and 1789, making way for a modern international system (Pearson and Rochester, 2000, p. 38-47).

If modern states are equally sovereign, if in them, as a result of their sovereignty, there can be no interference in their internal affairs, the use of force as a legitimate tool for the settlement of disputes between states is rejected. For this reason, the prohibition of the use of force is affirmed as the third great general principle of the IPD. For, if force is prohibited, how will states resolve disputes among themselves? As a direct consequence of the affirmation of this third principle, the peaceful settlement of disputes between States is enshrined as the fourth great general principle of the DIP; and it is thus clear that the primacy of international law over force is one of the pillars of contemporary international law and an imperative of *jus cogens* (Trindade, 2017, p.450).

However, the affirmation of the general principles of the DIP was not premeditated and did not happen without mishaps. These were challenged daily. The French Revolution catapulted Napoleon Bonaparte, who initiated an era of nationalism that would continue into the bowels of the twentieth century. Napoleonic French nationalism, humanized in a massive army of young French people and in the mobilization of the French nation as a support for its military activities abroad, challenged and violated sovereignty, internal affairs, violating borders and the prohibition of the use of force in Europe and elsewhere. Thus, and as a timely reaction, representatives of the great European powers met at the Congress of Vienna, a diplomatic conference held in the Austrian capital between September 1814 and June 1815, with the aim of reconstructing and redefining European borders as their configurations prior to the French Revolution. The final act of the Congress took place on June 9, 1815. Nine days

later, on June 18, 1815, Napoleon would be defeated by the Duke of Wellington at Waterloo, Belgium. The European Concert was inaugurated, that is, the balance of power that had existed in Europe since the end of the Napoleonic Wars and that lasted until the outbreak of the First World War in 1914 (Alija Garabito, 2001, p. 69-82). This scenario led to the acceleration and affirmation of the fifth great general principle of the IPD: international cooperation. Finally, the idea that States should cooperate with each other so that international society could experience an environment of lasting peace and sustainable development was silenced in international society.

However, German *realpolitik*[1] emerged with vigor after the European Concert, which irreversibly withered, substantiating the so-called era of European Armed Peace, whose alliances, despite being designed on inevitable peace objectives, led the European continent to a period of violence and fear. International politics, therefore, implies the interaction of both conflict and cooperation (Cava Mesa, 2001, p. 222). And the truth is that the Germans were never happy with the border results of the Congress of Vienna. And from the perspective of individual states, in which alliances are primarily instruments of national security policy, World War I (IGM) broke out. A war whose reasons were fundamentally concentrated in disputes for power and territorial reconquest.

The Peace of Versailles, signed on June 28, 1919, put an end to World War I (IGM) and created the League of Nations, a new and unprecedented international organization with a universal vocation, whose central objective was to guarantee and create the conditions for lasting peace among nations (Pastor Ridruejo, 2021, p. 737-738). These conditions were short-lived, as in 1939 World War II broke out.

An even more negligible characteristic marks an important difference between WWII and WWI in the affirmation of the general principles of the IPD; in addition to the dispute for power and territory, the fact that Germany mobilized its entire citizens for a world war on the argument of the superiority of the Aryan race over the others. Notoriously, the self-proclamation of the superiority of an alleged race to the detriment of others in the same human species, the Jewish holocaust is a direct derivation of this abject thought.

The Nazi-fascist atrocities committed during WWII made the heads of state and government of the main victorious powers – even during the outcome of that war – prospect the future and think about the existence – after the end of that terrible and infamous war conflict – not only of a new international organization that would replace the League of Nations, as

[1] Which in Portuguese means: realistic politics.

well as an international treaty that would give States a standard of moral and ethical behavior that is common to the minimum of their relations with their citizens. From these ideals were born the United Nations (UN) and the Universal Declaration of Human Rights (UDHR). This and the international treaty that created it (the UN Charter) enshrine human rights as the sixth great general principle of the IPL.

Hence, the world that emerged from World War II is rebuilt on seven pillars that are consecrated as the general principles of contemporary international relations and the current DIP. These were even listed in the second article of the UN Charter: sovereign equality among countries; non-interference in the internal affairs of countries; the good faith fulfillment of international obligations; the prohibition of the use of force between countries (except for exceptions such as self-defense and its authorization by the Security Council, a main body of the UN); the peaceful settlement of disputes between countries; international cooperation; and, the affirmation of human rights. These are enshrined in the preservation of future generations from the scourge of war and in the reaffirmation of faith in fundamental rights, dignity and the value of the human being, aiming to promote social progress and better living conditions in a broader planetary freedom (UN, 2021, p. 4-7).

These are the guiding principles of the binding norms and rules in the DIP of the twenty-first century. These, without the former, would serve no purpose. There is no doubt that the general principles are at a higher level than the norms and rules of positive international law (Cançado Trindade, 2017, p. 192-193).

4 Subjects of public international law

The United Nations was created during the *San Francisco* Conference, held between April 25 and June 26, 1945, in the United States of America (USA). The Charter of the United Nations (UN Charter or Charter of *San Francisco*) was signed on June 26, 1945 and entered into force on October 24 of that same year. It was then ratified by the Union of Soviet Socialist Republics (USSR), the USA, China, the United Kingdom and France – the five powers – and by most of the founding countries of the UN participating in the Conference. The provisions of the San Francisco Charter do not allow for a clear and precise definition of human rights. It is limited to mentioning the promotion and/or development of these rights, considered as one of the goals of the UN, along with its other major objective: the maintenance of international peace and security. The practice of the UN Charter, together with that of the UDHR, allows us to

conceive of human rights as the affirmation of the human person before the State (Leão, 2009, p. 34).

The primary and historical relevance of the Charter of *San Francisco* for the DIP jumps in the positivity of the general principles that govern friendly relations between States. These are illuminated throughout its first and second articles, with the UN Charter being the first major universal international official document that records them in such an explicit way, thus presenting them as the general principles of contemporary IPL. According to Annan (2013, p. 43), this Charter is a moving document that makes explicit a vision of the world order based on law and not on force. Thus, already in the second decade of the 21st century, the reading of Articles 13 and 55, items "a" and "c" of the UN Charter, read together with Article 56, enshrines the broad interpretation that the international protection of human rights should be considered as a matter linked to the interests of the international community.

Even before the International Court of Justice (ICJ),[2] the highest judicial body of the United Nations, human beings have been gradually taking a leading role in the merits of their decisions. As noted in its judgment of July 13, 2009, on the *Dispute Relating to Navigation and Related Rights* (Costa Rica *vs*. Nicaragua), the ICJ upheld the customary right of subsistence fishing (paras. 143-144) of the inhabitants of both banks of the *San Juan River*. In the words of Judge Cançado Trindade (2015, p. 141), "such subsistence fishing was never objected to by the respondent State. Finally, those who fish for subsistence are not states, but human beings affected by poverty." In the judgment of April 20, 2010 in the case of *the Papeleras* – a controversy between Argentina and Uruguay – the ICJ, in examining the arguments and evidence presented by the parties regarding the environmental protection of the Uruguay River, considered aspects pertaining to the affected populations. Thus, according to Judge Cançado Trindade (2015, p. 141-142), the ICJ went beyond "the purely interstate dimension, taking into account the imperatives of human health and the well-being of peoples, the role of civil society in environmental protection, as well as the emergence of objective obligations (without reciprocal advantages for States, that is, in addition to reciprocity) in environmental protection, for the benefit of present and future generations".

Since the proclamation of the UDHR on December 10, 1948, all countries in the world have an international code to decide how to behave and how to judge others. It is a code that not only applies universally, but also contains precepts that have value in areas not previously taken into account by the constitutions of Western states. Unlike in other times, international

[2] It is empowered by the UN Charter and its Statute to settle disputes only between States.

standards today prohibit any "inhuman or degrading treatment." There was a time when the denunciations cited certain governments that only neglected the civil and political rights of the population; today, they can be accused of violating international norms that provide, for example, the right to food, the right to adequate housing, the right to a healthy environment, among many other economic, social and cultural rights (Cassese, 1993, p. 7-57). At the beginning of the twenty-first century, the principle of affirmation of human dignity prevails, in the light of equality and non-discrimination among all human beings (Leão, 2015, p. 509-529).

The UDHR, already in its preamble, argues for the affirmation of the individual as a subject of Public International Law (IPL). It is a factual and jusphilosophical construction that substantiates an idea based on a sequential logic sustained by the contemporary subjects of the IPD: the States, the international organizations and the individuals (Cançado Trindade, 2006, p. 203-335). That is, States, through the conclusion of an international treaty, create international organizations, at the core of which and in the light of State sponsorship, facilitate the emergence of international human rights treaties, from which the individual emerges as a subject of IPL. Thus, they are capable of suing their States for violating the norms of an international human rights treaty. It is even a process that feeds back on each other, and, consequently, it would be possible to say that the preamble to the UDHR illustrates the political consecration of the passage from an international society with a statocentric bias to an international society that repositions the individual at the epicenter of its discussions (Leão, 2012, p. 113-114). In the international society of the twenty-first century, then, the international subjectivity of the individual is an institutionalized reality in the IPD.

With this repositioning, the great international documents and treaties on human rights emerge. Since the consolidation of the UN and the International Bill of Human Rights, all the national constitutions promulgated at the end have carried with them the norms, principles and values contained in these international instruments for the safeguarding of human dignity. In this way, most human rights were positive. It is worth mentioning that a large part of human rights was embodied in fundamental rights and that, in the light of the voluntarist rigor of the IPD, fundamental rights are human rights embodied in the norms of international treaties and the constitutions of States (Leão, 2009, p. 37).

States, still under a pragmatic and realistic view of human rights, are simultaneously those entities that not only violate human rights, but also those that protect them (Leão, 2009, p. 39). Thus, from the classical perspective of the IPD, they are the ones who create, legitimize and recognize not only the institutions, but also the laws that protect individuals from the

arbitrariness perpetuated by the States. In the international society of the 21st century, based on the combination of the State, the Rule of Law and a responsible Government for the sake of a stable balance, the State "concentrates and uses its power to generate respect for its laws on the part of the citizenry and to defend itself from hostile States and other threats. The rule of law and accountable government limit the power of the state, first of all by forcing it to use its power according to certain public and transparent rules, ensuring that it is subordinated to the will of the people" (Fukuyama, 2013, p. 31). It is important to highlight that it is the governments that negotiate and sign international human rights treaties, and that, once they have been concluded, they become commitments of States.

Human rights "constitute the modern attempt to introduce reason into the history of the world" (Cassese, 1993, p. 228). After the UDHR, "the protection of natural rights began to have legal effectiveness and universal value simultaneously. And the individual, from being the subject of a state community, has also become a subject of the international, potentially universal community" (Bobbio, 2000, p. 486). The UDHR is the "expression of the maximum awareness hitherto attained, in the juridical-political sphere, of the substantial unity of the human race" (Bobbio, 2000, p. 687). The affirmation of human rights as a general principle of the DIP and the proclamation of the UDHR are indelible characteristics of the passage from statocentrism to international relations built on human values, deeds and experiences.

Although his Christmas break is still from the 80s of the nineteenth century, his view of the subjects of international law is more avant-garde than that of many scholars of the subject in the twenty-first century. For him, in addition to States, international organizations and individuals also contract rights and obligations within the scope of the IPD, embodied in its subjects. Therefore, for Kelsen (2003a, p.95), the subjects of international law are States, international organizations and individuals. An example he offers as a direct obligation of individuals in view of the individual responsibility established by general international law is the rule regarding the peculiar acts of illegitimate war, sporadically called war crimes. This is because, according to him, the establishment of collective responsibility by international law is, nevertheless, a rule with important exceptions. There are norms of general international law by virtue of which the person against whom a sanction is to be directed is determined individually as the person who, by his or her own conduct, has violated international law. Thus, these norms establish individual responsibility (Kelsen, 2003a, p. 94).

Kelsen (2000b, p. 486) states that international law regulates the mutual conduct of States, which does not mean the imposition by international law of rights and duties only on States and

not on individuals. Therefore, the traditional opinion that the subjects of international law are only states and not individuals; as well as that international law, by its very nature, is incapable of binding and authorizing individuals is mistaken. Cançado Trindade (2017, p. 448), in turn, states that "the general principles of law have inspired not only the interpretation and application of its norms, but also its very formation, the legislative process itself". For Kelsen (2003a, p. 99), the acts of the State should be imputed to the States, and, consequently, the act of the State should be imputed to the State and not to the individual who performed it. The relationship of the State with its own agents or with its subjects must be observed in the light of national law. That is, an individual is not responsible for his act in the case of an act of the State if the act is not imputable to the individual, but only to the State, having performed it, personifying the State or representing it. And this is the current logic prevailing in international human rights law.

5 The international subjectivity of individuals in the institutional contemporaneity of human rights

Currently, from the perspective of international human rights law, whether in the universal regime or in the regional regimes for the protection of the human person, the direct access of individuals to international courts is a reality. It is this procedural capacity of individuals that gives them international subjectivity in the IPD.

In light of the universal human rights system, within the framework of the UN system of human rights treaty bodies, the Human Rights Committee, which oversees compliance with the International Covenant on Civil and Political Rights (Salvioli, 2016, p.85-86), and the Committee on Economic, Social and Cultural Rights, which monitors the International Covenant on Economic Rights, (ICESCR), are already provided by their additional protocols in the receipt of individual complaints (Leão, 2016, p. 275).

At the regional levels, in the European system for the protection of human rights, as a direct consequence of the validity of Protocol No. 11 to the European Convention on Human Rights[3], individuals already have access to the European Court of Human Rights (Leão, 2009, p. 101-164). In the inter-American human rights system, after the new regulation of the Inter-American Court of Human Rights (IACHR) of 2000, in force since 2001, in the stages before

[3] In force since 11/01/1998. Through it, the Commission and the European Court of Human Rights were merged, creating a new European Court of Human Rights, a permanent international judicial body, based in Strasbourg, France. In this, individuals have direct procedural capacity, being able to access it without any intermediary.

this regional international judicial body, individuals already enjoy an active jurisdictional opportunity (Leão, 2009, p. 242).

The IACHR, in light of the American Convention on Human Rights (ACHR), has three main functions: contentious function (Art. 62), that is, to hear and render judgments on all cases related to the interpretation or application of the ACHR; advisory function (Art. 64), in short, to give an opinion on the interpretation of the ACHR or other human rights treaties within the jurisdiction of the American States; and, to order provisional protection measures (Art. 63.2), that is, to take the necessary measures so that in cases of extreme gravity and urgency, when necessary, to avoid irreparable damage to people.

In its 30 years of effective jurisdictional practice, the jurisprudence of the IACHR has enabled a true interaction between national and international bodies for the protection of human rights. Its decisions not only saved thousands of lives, but were also able to change national constitutions and enrich decisions of the legal systems of the States Parties to the ACHR, as well as influencing other courts and international human rights bodies. In other words, a concrete contribution to the affirmation of human dignity before the State in the international community of the 21st century.

Cançado Trindade (2011, p. 05-214) enshrined seven points of substantive law that make up the axis of the exercise of the judicial function of the Inter-American Court of Human Rights. They are: bases of the State's international responsibility; state crimes, aggravated international liability and exemplary reparations or "punitive damages"; the expansion of the material content of *jus cogens*; the material content and broad scope of the right to life; the right to life and the right to cultural identity; the international protection of migrants; and, the rule of law and the repudiation of courts of exception.

These seven issues, repeatedly addressed by the IACHR, support the phenomenon of jurisprudential interaction between it and other national and international bodies for the protection of human rights. In the first of these, there is the international responsibility of the State (the case "*The Last Temptation of Christ*"), without excluding the international responsibility of the State for fault or guilt in the face of aggravating circumstances (see, for example, all the cases resolved by the IACHR on massacres carried out by agents of States, such as members of the military forces). On the second point, it is clear that true state crimes have occurred, given their planning (at the highest level), premeditations, intentionalities and perpetrations by state agents. The sentences in the Mirna *Mack Chang* (25/11/2003), *Massacres of Ituango* (1/7/2006) and *La Cantuta* (29/11/2006) cases illustrate this issue. The third point

marks the affirmation of the absolute prohibition, fruit of *jus cogens*, of torture, in any and all circumstances, followed by the same prohibition of cruel, inhuman or degrading treatment. The judgments in the Cantoral *Benavides* (8/18/2000) and *Gómez Paquiyauri* (7/8/2004) cases attest to this stage. On the fourth point, the judgment on the merits of 11/19/1999, in the case of *Villagrán Morales et al.*, establishes a conception of the fundamental right to life that encompasses the conditions of a dignified life (Article 4.1 of the ACHR). On the fifth point, such varied aspects – such as a person's cultural, historical, religious, ideological, political, professional, social and family heritage – show that the fundamental right to life takes on a broad dimension when considering the right to cultural identity. The sentences in the cases of *the Yake Axa Indigenous Communities* (2005 and 2006) and *Sawhoyamaxa* (2006), and *the Serrano Cruz Sisters* (03/01/2005) thus attest to this.

Advisory Opinion No. 16, of 1/1/1999, on the right to information and consular assistance in the context of the guarantees of due process, together with Advisory Opinion No. 18, of 9/17/2003, on the legal status and rights of undocumented migrants, support the sixth point affirming the fundamental human right to migrate, in the light of the principles of equality and non-discrimination (Cançado Trindade, 2006, p. 137-138). Finally, on the seventh point, cases such as *Loayza Tamayo* (9/17/1997) determine the inviolability of judicial guarantees, stating that the military justice system, under no circumstances, can judge civilians. To these previous seven, from the middle of the second decade of the twenty-first century, the emergence of an eighth pillar on which the IACHR focuses more precisely is highlighted: economic, social, cultural, and environmental rights (as an example, the sentence in the *Lagos del Campo* case of August 31, 2017, the first to declare a direct violation of a social right in the inter-American human rights jurisdiction, and Advisory Opinion No. 23 of 11/15/2017 on Environment and Human Rights).

Cançado Trindade (2011, p. 05-214) consolidated, in international jurisprudence, the idea that in a world marked by diversification (of peoples and cultures) and pluralism (of ideas and worldviews), a new *jus gentium* ensures the unity of *societas gentium*. This new *jus gentium* was defined by Francis of Vitoria as *quod naturalis ratio inter omnes gentes constituit, vocatur jus gentium*. That is, it could not derive from the "will" of its subjects of law (among which the national States were beginning to stand out), but was based, rather, on a *lex praeceptiva*, apprehended by human reason. The new IPD, then, is built from human reason. His importance in the affirmation of humanism and its consolidation in international law can be summarized in the light of Paragraph 12 of his concurring vote, in the exercise of his function as a full judge,

in Advisory Opinion No. 16 issued by the Inter-American Court of Human Rights (1999, para. 12):

> The profound transformations experienced by International Law in the last five decades, under the impact of the recognition of universal human rights, are widely known and recognized. The old state monopoly of the ownership of rights is no longer sustained, nor are the excesses of degenerate legal positivism, which excluded from the international order the final recipient of legal norms: the human being. Currently, there is a need to restore to the latter the central position – as a subject of both domestic and international law – from which it was unduly displaced, with disastrous consequences, evidenced in the successive abuses committed to its detriment in recent decades. All this occurred with the complacency of legal positivism, in its typical subservience to state authoritarianism.

The international subjectivity of the individual from the second half of the twenty-first century onwards was realized. For Cançado Trindade (2005, p. 43-44), the purely statocentric view of international law and international relations belongs to a humanistically mediocre and realistic past. The State was created by human beings to serve them in their social organization and not vice versa. It is not the function of the jurist simply to take note of the practice of the States, but to say what the law is. And this will always be impregnated with right reason (*est dictatum rectae rationis*). Cançado Trindade (2005, p. 53-54) teaches that:

> Positivists and "realists" pretended that the reality on which they worked was permanent and inevitable, but what really happened was that, perplexed by the changes, they had to move from one historical moment to another, entirely different one. As they tried to readjust to the new empirical "reality," they had to try again to apply the static schema to which they were accustomed. Resistant to change, they neglected to analyze the profound changes that led to the new "reality" on which they began to work, and again began to project their illusion of "inevitability" into the future and, sometimes, in desperation, into the past as well. Its basic mistake has been its minimization of the *principles*, which lie at the foundations of any legal system, national and international, and which inform and shape the norms and action according to the latter, in the search for the realization of justice. Whenever such minimization has prevailed, the results have been disastrous.

Principles are the basis of any right. Contemporary IPD is built on the seven general principles consolidated in the Charter of the United Nations. And the sedimentation of these legitimizes the existence of the three great subjects of the DIP of this century: the States, the international organizations and the individuals. Cançado Trindade's view of law meets Kelsen's visionary perspective on the international subjectivity of the individual. It is understandable, then, that, in the twenty-first century, international relations and international law have an unbreakable link. The existence of the former depends on the consolidation of the latter. Also, the international subjectivity of the individual, especially at the beginning of the twenty-first century, is unquestionable and the denial of these ideas means the institutional bankruptcy of international society. Consequently, the purely statocentric view of International Relations belongs to a humanistically mediocre and realistic past.

Kelsen (2000b, p. 494) stated that individuals could have international rights only if there was an international court before which they could appeal as plaintiffs. In the twenty-first century, this statement is a reality. However, this only materialized in the second half of the twentieth century with the consolidation of a new international regime after the two world wars.

6 The international bill of human rights

The International Bill of Human Rights is a set of documents made up of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its protocols and additional documents.

After the Charter of *San Francisco* and the Universal Declaration of Human Rights, all the national constitutions proclaimed had, with greater or lesser intensity, the impact of their influences (Leão, 2016, p. 266). Regional international organizations – such as the Council of Europe, the Organization of American States and African Unity – exist in full coordination with the UN and the UDHR. Therefore, human rights are necessarily in the orbit of all these entities of Public International Law.

Thus, the existence of a true universal human rights regime is noted today, whose importance is based on the consolidation of this extensive body of globally accepted and legitimate international norms and bodies. These, regardless of any oversight mechanism, have contributed to empowering human rights defenders (Leão, 2010, p. 249-271) and restricting certain actions by governments. In fact, in a "quasi-just society there is a public acceptance of the same principles of justice" (Rawls, 2008, p. 483). In the 21st century, there is the affirmation of human rights, which are not only a general principle of Public International Law, but also one of the pillars of effective universal justice.

Finally, in view of the undeniable existence of international tribunals before which individuals can complain against their States because they have violated articles (norms) of international treaties to which they are parties against them, Kelsen's argument about the international subjectivity of the individual is concretized. Thus, in contemporary DIP, what confers international subjectivity to the individual is precisely his or her procedural capacity.

7 Conclusion

States, international organizations and individuals are subjects of Public International Law in the twenty-first century. The consolidation of these coincides with the affirmation of the general principles of the IPD. It can even be said that the subjects of the DIP are consolidated as the general principles are consecrated. Sovereign equality and non-interference in the internal affairs of countries illustrate the classic period of the IPD, where states were the subjects par excellence. From the moment that the prohibition of the use of force, the peaceful settlement of disputes and international cooperation are affirmed as general principles, international organizations are consolidated as subjects of IPD. And within the scope of these, multilateral international human rights treaties proliferate, a factor that elevates individuals to the condition of subjects of the DIP when they acquire the procedural capacity before the international bodies that supervise these treaties. There is, therefore, a consecutive relationship of causes and effects between the affirmation of the general principles and that of the subjects of IPD.

This consecutiveness can also be perceived due to the passage from statocentrism to anthropocentrism in international relations. The time when States were the classic subjects par excellence of the IPL, and that only they were capable of obtaining rights and obligations in international society, has gone down in history. Thus, with the emergence of new actors in the international scenario, there is the affirmation of the new subjects of the IPD. In this way, States cease to be the center of absolute attention of international society and individuals are now able to defend their dignity before States in the international bodies that supervise multilateral treaties concluded within the scope of international organizations. In this way, the international scenario that experiences a plurality of actors and, consequently, new subjects of IPD, can be identified as an international community.

There is no doubt that nowadays there are international treaties (e.g., the European Convention on Human Rights and the International Covenant on Civil and Political Rights) that create oversight bodies (the European Court of Human Rights and the Human Rights Committee) to which individuals, citizens of the States Parties, can resort in the event that their States violate one of the articles of these treaties in their contras. We have, then: Kelsen's prediction materialized; and the general principles began to guide the current norms and binding rules in Public International Law, materializing the logic of Cançado Trindade.

Finally, in the twenty-first century, to argue against the affirmation of the individual as a subject of the DIP is to go against its general principles, international human rights treaties, its

international supervisory bodies and the doctrine built by qualified jurists from different nations. Therefore, it is a direct affront to different sources of the DIP.

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