CHAPTER SEVEN

SUBJECTS OF THE LAW

1. INTRODUCTION

What constitutes subjects within public international law and Islamic international law is a significant question. Although both systems rely heavily on the legal status of their subjects, their legal characterizations vary considerably. It must generally be asserted that the legal concept of subjects in the system of international law is different from that of Islamic international law. This is because under Islamic law subjects are an integral part of the system and the system is an integral part of its basic subjects. However, subjects of international law have to be recognised, created or accepted within the system.

2. EVALUATION

Under Islamic law individuals are the main recognised subjects of the law while in the system of international law states are considered the main recognised subjects. The reason for this being that in the system of international law states are the masters of the law while in Islamic law, the nature of individuals is above the law and the jurisdiction of the spiritual existence of man above the latter. Although we do not deny that certain aspects of the system of international law also relate to natural law, this

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1 “Islam believed … in the universality of the Divine call with which Muhammad was commissioned. It was this conviction which led the Muslims to aspire at a world order, but we must distinguish between the domination of a nation based on race or language and between the nation aspiring to establish on earth the kingdom of God, where His word alone (the Quran in this case) should reign supreme. Obviously for Islam it makes not the slightest difference whether the ruler is an Arab or a Negro provided he is a Muslim. The Muslims considered as their own enemies only the enemies of God … They wanted to conquer the world not to plunder it, but peacefully to subjugate it to the religion of ‘submission to the Will of God,’ religion of which they were not the monopolisers but which was open to all the nations to embrace and become equals. In a word, the Muslim aim was to spread Islamic civilization and to realise a universal Polity

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has not been the original aim of contemporary international law regarding its subjects. Even international human rights constituting an integral part of international law, is not capable of application because of the limited position of the individual’s characterization under national and international law. While some claims may arise concerning the strong movements for the accepting individuals as one of the basic subjects of international law, this is still in its beginning with the reservation that individuals are recognised as being the direct subjects of human rights law and international criminal law.\(^2\)

The aim of international human rights law is to create equality between individuals, reduce inequalities before the law and prevent unjustified activities by states. Islamic international law has, however, a different characteristic. The practical enforcement of the law under Islamic law is in the hands of individuals, while in the system of international law, it is under state authority. The former is self-conductive while the latter is not. Nevertheless, great movements have been started between European states, the United States, Latin American, African and Asian states and other states in the world for the practical protection of individuals and their unavoidable rights against the unlawful acts of states. The Islamic nations have indeed been very slow in the application of the principles of human rights and their violations are therefore very frequent.

2.1. States

States in the system of public international law are recognised as being the main subjects and have therefore occupied especial position within the system. They have traditionally been the only primary subjects having rights and duties in international relations. They have therefore been capable of concluding international treaties and submitting claims to international entities.

The legal characterization of states is also of essential importance in Islamic international law but they are not necessarily considered primary subjects of the law. One of the essential reasons for this is that individuals are the most essential reason for the existence of Islamic law while states are the most essential reason for the existence of public interna-

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2 See infra part on international criminal law.