The Influence of the Concept of International Legal Personality in the Drafting of the Statute of the Permanent Court of International Justice

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In 1920, when the Advisory Committee of Jurists was appointed by the Council of the League of Nations to be responsible for the development of a Permanent Court of International Justice (PCIJ), it was conventional wisdom among scholars that only states could possess international legal personality. It would therefore seem safe to assume that the limited role of individuals under the adopted Statute of the Permanent Court of International Justice was a direct result of the orthodox ‘states-only’ conception, which by definition barred individuals from being subjects of international law. As the present article aims to show, this assumption falls apart upon closer scrutiny of the discussions of the Advisory Committee of Jurists in relation to two separate issues involving individuals: 1) The procedural role of the individual before the Permanent Court of International Justice, and 2) the establishment of a High Court of International Justice with jurisdiction over international crimes. Rather than doctrinal quandaries relating to the concept of international legal personality, the conclusions of the vast majority of members of the Advisory Committee appear to have turned upon whether they perceived the particular issue to require a solution from international law, or whether they believed it could be adequately solved through domestic law.

1 Introduction

As every student of international law knows, the International Court of Justice (ICJ), like its predecessor, can only hear cases between
states. But what is perhaps less commonly known is that the Advisory Committee of Jurists actually discussed the possibility of extending the competence of the PCIJ to litigation involving individuals. Moreover, the Advisory Committee considered a proposal for a High Court of International Justice with jurisdiction to try ‘crimes against the universal law of nations’. This article examines the Committee’s debates on these two issues with particular emphasis on the influence of the concept of international legal personality.

Notably, the focus of the article is not on the legal personality of human beings vis-à-vis other actors on the international stage. Rather, the aim is to illustrate the limited influence of the overall concept of international legal personality on treaty-making processes with the example of the individual as the ultimate non-state actor. The rationale for choosing the PCIJ Statute as a case study is that it was adopted at a time when the ‘states-only’ conception of international legal personality was widely accepted. Challenges, including the idea that the individual is the ultimate subject of international law, gradually emerged in the inter-war period. But in 1920 it seems to have been common ground among scholars that states alone were international legal persons. Moreover, the PCIJ Statute is a valuable example because it does not belong to a special field of international law, such as international human rights law, which may be considered as forming an exception to a general rule.

The article is structured as follows: At the outset, section 2 will provide a brief account for the origin of the notion of international legal personality followed by an explanation for the ‘states-only’ conception dominating the

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1 Article 34 of the PCIJ Statute reads: “Only States or Members of the League of Nations can be parties in cases before the Court.” The ICJ Statute contains a parallel provision in Article 36(1): “Only States may be parties in cases before the Court.”


3 Ibid., p. 498.

4 Under what may be termed the ‘individualistic’ conception of international legal personality, a number of scholars, including Georges Scelle, James Leslie Brierly and Nicolas Politis, argued that the individual human being should be placed at the centre of the international legal system. See, for example, Georges Scelle, Précis de Droit des Gens, Principes et Systématique, Vol. I (Paris: Librairie du Recueil Sirey, 1932), p. 42. See also James Leslie Brierly ‘Règles Générales du Droit de la Paix’ Recueil des Cours de l’Académie de droit international de La Haye, Vol. 58 (1936-IV), pp. 5–242. See further, Janne E. Nijman, The Concept of International Legal Personality – An Inquiry into the History and Theory of International Law (The Hague: TMC Asser Press, 2004), pp. 134 et seq and pp. 222 et seq.