

The Right to Reparation Under International Law: Is That an Individual Right or the Right Granted Only to the States?

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Abstract

The issue of being a subject of international law (IL) raises a question about responsibility and correspondingly reparation. States as primary subjects of IL are acknowledged as responsible for a violation of an international obligation. Thereupon, they sue or to be sued as a consequence of a violation in question, and claim reparation. What if individuals as potential subjects of IL? Do individuals have the right to reparation? This question can be investigated by looking at specific regimes in IL. Current developments in international humanitarian law and in human rights law allow individuals to make a claim for reparation in international platform. This progress makes individuals right holders as well as responsible in IL.

Keywords: Reparation, responsibility, states, individuals, international law.

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Introduction

The matter of responsibility which is one of the essential elements of international law comes into question when a state violates an international obligation.¹ The responsibility in international law is called ‘state responsibility’ since only states are accepted as subjects of international law, but individuals and international organisations are also related to the international responsibility.² On the other hand, some argue that individuals and domestic corporations are ‘objects’ rather than subjects of international law.³ Therefore, the question of responsibility in international law holds controversy in itself depending on the subject of international law. A state which is injured by an act taken by another state has the right to reparation under the law of the state responsibility.⁴ The term reparation which refers an obligation of ‘re-establishing the status quo ante’ has been encountered in many cases heard by crucial judicial organs such as the ‘international court’, ‘investment tribunals’ ‘international human rights courts and committees’.⁵

This paper argues that the right to reparation for individuals in IL had not been the case and it had been granted to states which are the main subjects of IL. However, despite the fact that international legal documents adopted by the UN, which are related to the matter of responsibility and reparation, directly show address states, the right to reparation for individuals has become a very crucial concept in some specific regimes like in international humanitarian law and in human rights law particularly regional human rights mechanisms. Individuals like states can find an opportunity to file a legal action against states for reparation. They may also be liable because of a violation of an international obligation in the same way as states too.

In this context, the question of responsibility and reparation in IL will be defined at first step. The importance and position of the right to reparation for individuals in the specific regimes such as; international humanitarian law and human rights law will then be evaluated to show how much individuals have the right to reparation in IL.

I. Responsibility in International Law

¹ James Crawford, *Browlie's Principles of Public International Law* (8th edn, OUP 2012) 540

² Sir R Jennings and Sir A Watts (eds), *Oppenheim's International Law* (9th edn, Longman 1992) 500

³ Anthony Aust, *Handbook of International Law* (2nd edn, Cambridge University Press 2010) 12

⁴ Ivan A Shearer, *Starke's International Law* (11th edn, Butterwoths 1994) 264

⁵ James Crawford, *State Responsibility: The General Part* (Cambridge University Press 2013) 481

The International Law Commission (ILC) established by the UN General Assembly in order for the codification and development of IL,⁶ adopted the draft articles called ‘Responsibility of States for Internationally Wrongful Acts’⁷ (ARSIWA) in 2001.⁸ The first article of this regulation states that ‘every internationally wrongful act of a State entails the international responsibility of that State.’⁹ It is obvious that the ARSIWA results in the continuation of the debate as to the subjects of IL by giving place to only states in the first place. Furthermore, the responsibility of a state can be in question when an international obligation exists between the two states and the violation of this obligation stems from the actions or inactions of the responsible state, and these actions or inactions cause damage of the other state.¹⁰ It is therefore important that actions and omissions can be the reasons for the responsibility. In this regard, the circumstances in which the state responsibility is in question are those: The ‘breach of a treaty’, the ‘violation of the territory of another state’ and ‘damage to state property’.¹¹ However, under some specific circumstances the state responsibility does not occur and the state concerned is exempt from the responsibility. Chapter five of the ARSIWA make a mention of these special occasions, which are ‘consent’, ‘self-defence’, ‘force majeure’ and ‘countermeasures’, precluding wrongfulness.¹²

Another important point as to the state responsibility is ‘the attribution of conduct to a state’ tackled under the second chapter of the ARSIWA.¹³ Article 4 of the ARSIWA clearly states the fact that actions taken by organs of a state, regardless of their position are attributed to that state.¹⁴ From this fact, the acts of all units or departments including security units like police, army or judicial units are incorporated into the state responsibility.¹⁵ However, the actions taken by private individuals do not give rise to the state responsibility since private individuals are not state officials, yet states might be liable for the failure of the prevention of those actions.¹⁶ As it is seen, the ARSIWA does mainly consider the state with regard to the responsibility in IL. Moreover, there are two theories

⁶ ‘International Law Commission’ (The UN) <<http://www.unelections.org/?q=node/69>> accessed 20 May 2014

⁷ Responsibility of States for Internationally Wrongful Acts 2001

⁸ James Crawford and Simon Olleson, ‘The Nature and Forms of International Responsibility’ in Malcolm D Evans, *International Law* (2nd edn, OUP 2006) 452

⁹ See (n 7), Art 1

¹⁰ Malcolm N Shaw, *International Law* (6th edn, Cambridge University Press 2008) 781

¹¹ Ibid 785

¹² See (n 7), ch V

¹³ Ibid, ch II

¹⁴ Ibid, Art 4

¹⁵ Martin Dixon, *Textbook on International Law* (7th edn, OUP 2013) 258

¹⁶ Shaw (n 10) 789

relating to the matter of responsibility namely Objective and Subjective theory.¹⁷ The former argues the state responsibility in the strict sense and it is commonly approved, whereas the latter necessitates establishment of a factor of intention, fault or negligence by states or their agents.¹⁸ As can be seen in the ARSIWA and some other legal documents which will be seen in later sections, states are responsible as a result of a breach of an international obligation established between two or more states, and one of states is held responsible while the other(s) is/are sufferer. Therefore, reparation of damage depending on the responsibility question is an important issue in IL. However, due to the fact that the position and responsibility of individuals as subjects of IL are not as clear as states, the matter of reparation may show an alteration in IL.

II. The Right to Reparation in International Law

Every breach of an international obligation under the law of state responsibility necessitates reparations.¹⁹ The *Chorzow Factory* is an essential case for the determination of reparations in IL.²⁰ In this case, the Permanent Court of International Justice had defined reparation as an important principle eradicating bad results of an illegal act.²¹ The concept of reparation has been depicted by academics in different ways. For instance, Vattel argues that ‘complete reparation’ is a right for every state when a loss occurs.²² Eagleton claims that restoration which means returning the situation to original condition is the best way of reparation.²³ On the other hand, Rombouts and Parmentier assert that reparation is not something returning the situation to a previous condition, it ought to cure and permit the ones affected by injury to overcome the past and future harm.²⁴ Reparation is also a vital piece of ‘enforcement’ which helps to reduce violation rates in the future by its deterring nature as pointed out by Gillard.²⁵

The matter of reparation is mentioned under Article 34, 35, 36 and 37 of the ARSIWA with its various forms namely ‘restitution’, ‘compensation’, ‘satisfaction’.²⁶ Restitution is regarded as the

¹⁷ Ibid 783

¹⁸ Ibid 783

¹⁹ Donald F Donovan and Anthea Roberts, ‘Notes and Comments The Emerging Recognition of Universal Civil Jurisdiction’ (2006) 100 AJIL 142, 153

²⁰ Dinah Shelton, ‘Righting Wrongs: Reparations in the Articles on State Responsibility’ (2002) 96 AJIL 833, 836

²¹ *Case Concerning the Factory at Chorzów (Germany v Poland) (1927) P.C.I.J., Ser. A, No. 9.*

²² Dinah Shelton, *Remedies in International Human Rights Law* (2nd edn, OUP 2005) 51

²³ Ibid 52

²⁴ Jo-Anne Wemmers, ‘Victim Reparation and the International Criminal Court’ (2009) 16 International Review of Victimology 123, 124

²⁵ Emanuella-Chiara Gillard, ‘Reparation for Violations of International Humanitarian Law’ (2003) 85 IRRC 529,530

²⁶ See (n 7), Art 34, 35, 36, 37

first remedy in terms of reparation.²⁷ Although restitution is favourite form of reparation, the application of this form is sometimes impossible due to the irreparable nature of the situation.²⁸ The monetary compensation is the most common form of reparation.²⁹ In this sense, Grotius remarks the importance of monetary compensation by stating common utilization of money for everything which is valuable.³⁰ Satisfaction as the last form of reparation corresponds to the damages which cannot be financially assessed.³¹ In short, the forms of reparation can be classified as moral and material reparations. The former also called ‘symbolic’ reparation tries help the ones injured to be morally satisfied by the way of ‘official apologies’, ‘rehabilitation’, ‘creation of memorials’ and some similar methods whereas the latter consists of pecuniary compensation, medical care, restoration of right of possession and putting on a salary.³²

Moreover, despite the fact that reparation is an effective means for the elimination or reduction of the effects of international wrongful acts, there should be balance between the loss occurred and compensation demanded. At this point, the principle of proportionality should be taken into consideration when both moral and material reparations are in question.³³ Likewise, there is one more principle called ‘causality’ which requires a close nexus between direct damages and wrongful act, and indirect damages should be excluded for the sake of proportionality and reparations.³⁴

The ARSIWA as legal instrument of the UN primarily considers the state responsibility and the right to reparation of states as seen in the above explanations. What is more, the applications of reparation made by states have been held by the International Court of Justice (ICJ) and the forms of reparation indicated in the previous paragraphs have been generally awarded to states. For example, the *Temple of Preah Vihear*³⁵ held by the ICJ was the case stemming from dispute between Cambodia and Thailand, and restitution was granted in this case.³⁶ The *Corfu Channel*³⁷ is

²⁷ FA Mann, ‘The Consequences of an International Wrong in International and National Law’ (1976) 48 British Yearbook of International Law 1,2

²⁸ Octavia Amezcua-Noriega, ‘Reparation Principles under International Law and Their Possible Application by the International Criminal Court: Some Reflections’ (University of Essex, 2011)
<http://www.essex.ac.uk/tjn/documents/paper_1_general_principles_large.pdf> accessed 22 May 2014

²⁹ FA Mann (n 27) 2

³⁰ Dinah Shelton (n 22) 54

³¹ James Crawford (n 5) 527

³² Jared L Watkins, ‘The Right to Reparations in International Human Rights Law and the Case of Bahrain’ (2009) 34 Brooklyn J. Int’l L. 559,563

³³ Octavia Amezcua-Noriega (n 28)

³⁴ Ibid

³⁵ *Temple of Preah Vihear (Cambodia v Thailand)*, (1962) I.C.J. Rep. 6

³⁶ Dinah Shelton (n 22) 53

another inter-state case which was ended in compensation by the ICJ. Similarly, the *Rainbow Warrior*³⁷ case is also inter-state case which the ICJ had decided satisfaction.

However, the position of individuals is not attached particular importance by contrast with the states in terms of the right to reparation in IL. The ARSIWA makes mention of individual rights under the state responsibility under article 33(2).³⁹ In this respect, the protection of the nationals of a state is a duty of the state concerned and this state may bring a claim against other states on behalf of its nationals.⁴⁰ This protection of states' nationals is called 'diplomatic protection' which generally covers 'consular actions', 'negotiation', 'mediation', 'judicial and arbitral proceedings', 'reprisals', 'a retort', 'severance of diplomatic relations' and 'economic pressures' in IL.⁴¹ Diplomatic protection is also defined in the ILC's Draft Articles on Diplomatic Protection.⁴² Similarly, this draft article remarks that states make a claim on reparation in the name of their nationals.⁴³ For instance, the *Diallo*⁴⁴ was a case in which diplomatic protection was in question on behalf of a private person. In a nutshell, the traces of the discussion about the position of individuals as subjects of IL can be seen in the ILC's articles. In this direction, it is clear that the approach that the ILC has adopted is not completely consistent as argued by Gaja.⁴⁵

In sum, right and liability are interdependent notions. States are, therefore, the direct respondents in IL as particularly indicated in the ARSIWA and draft articles on diplomatic protection within the context of reparations. Accordingly, individuals are generally protected under the state diplomatic shields although they have the right to reparation in some specific circumstances which will be dealt with in the next sections.

A. Reparations in International Humanitarian Law

The responsibility as a consequence of an international wrongful act pertains to states in IL and a state injured can naturally make a reparation claim to the others which cause damage. However, even though the issue of responsibility and reparation are explicitly established in theory and

³⁷ *Corfu Channel (The United Kingdom v Albania)*, (1948) I.C.J. Reps. 15

³⁸ *Rainbow Warrior (New Zealand v France) (Arbitration Tribunal)*, (1990) 82 ILR 499

³⁹ See (n 7), Art 33

⁴⁰ Shaw (n 10) 809

⁴¹ Ibid 809

⁴² The Draft Articles on Diplomatic Protection 2006

⁴³ Ibid

⁴⁴ *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*, (2007) I.C.J.

⁴⁵ Giorgio Gaja, 'The Position of Individuals in International Law: An ILC Perspective' (2010) 21 EJIL 11

practice, there is still a room about individual victims of violations in the realm of humanitarian law as well as human rights law.⁴⁶ In this respect, there is an important point that should be identified that who has the right to reparations, are only states or individuals entitled to the reparation, or should there be a particular international mechanism for the application of individuals?⁴⁷

The instruments which deal with the violations international humanitarian law are keeping silent when it comes to the holders of the right of reparations and only compensation is shown the address.⁴⁸ However, in the case of *Wall*⁴⁹ advisory opinion and *Armed Activities*⁵⁰, the right to reparations of individuals as a consequence of a violation of international humanitarian and human rights law appears to be recognised by the ICJ.⁵¹ Considering the fact that individual claims are not dealt with by the ICJ, the above decisions seem to be important in terms of reparations.⁵² In spite of these exceptions, individuals generally have problems in making a claim on reparations in IL due to the question of not being primary subject of IL.⁵³ Similarly, the claims made by individuals encounter a ‘peace settlement’ or the principle of ‘sovereign immunity’, or the ‘non-self-executing’ feature of reparation rights in IL.⁵⁴ The fact that the right to reparation is not self-executing in International Humanitarian Law can be seen in the case of *Jurisdictional Immunities of the State (Germany v. Italy)*⁵⁵ which was heard by the ICJ.⁵⁶

As one may remember, the right to reparation stems from having rights and responsibilities in IL and thus states which are firmly responsible for internationally wrongful acts as clearly clarified in the relevant agreements. Accordingly, the recognition of individual responsibility can be an indication of the right to reparation of individuals in IL as well. At this point, even though the instruments of International Humanitarian Law do not explicitly express the individual responsibility in terms of making reparations,⁵⁷ the three international criminal courts have death

⁴⁶ Emanuella-Chiara Gillard (n 25) 530

⁴⁷ Ibid 535

⁴⁸ Ibid 536

⁴⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] I.C.J. Rep 136

⁵⁰ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)* (2002), I.C.J.

⁵¹ Gentian Zyberi, ‘The International Court of Justice and Applied Forms of Reparation for International Human Rights and Humanitarian Law Violations’ (2011) 7 Utrecht L. Rev. 204, 214,215

⁵² Ibid 215

⁵³ Emanuella-Chiara Gillard (n 25) 536

⁵⁴ Ibid 537

⁵⁵ *Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening)* (2012) I.C.J. 143

⁵⁶ Julien Piacibello, ‘Ad Hoc Reparation Mechanisms’ (2013) 35 Houston Journal of International Law 81,83

⁵⁷ Emanuella-Chiara Gillard (n 25) 545

with the matter of individual responsibility to make reparation.⁵⁸ These tribunals are the International Criminal Court (ICC), International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR).⁵⁹ Criminal responsibility is the only area of responsibility for individuals under IL,⁶⁰ therefore these criminal tribunals are related to the responsibility of individuals. Firstly, the ICC which deals with serious crimes such as ‘genocide’, ‘crimes against humanity’ and ‘war crimes’⁶¹ is known as the first international court which gives victim rights.⁶² Article 75 of the Rome Statute of the ICC gives a place to ‘reparations to victims’.⁶³ Secondly, the statute of the ICTY⁶⁴ is another document which refers to the responsibility of individuals, yet the document solely mentions restitution.⁶⁵ Lastly, the statute of the ICTR has similar provisions with the ICTY in terms of individual responsibility.⁶⁶ Despite the fact that the ICC’s approach is clear in terms of victims’ rights, the others are not as effective as the ICC in the same respect.⁶⁷

In addition to the Criminal tribunals, the ‘quasi-judicial’ mechanisms are also important for individual claims. For instance, the Commission for Real Property Claims of Displaced Persons and Refugees and Kosovo Housing and Property Claims Commission.⁶⁸ Similarly, the Eritra-Ethiopia claims commission and the UN Compensation Commissions are also important mechanisms for individual claims.⁶⁹

Overall, due to the fact that there is no a ‘universal treaty-based’ mechanism, the questions of reparation and responsibility have been dealt with by different mechanisms and methods such as; ‘diplomatic protection’, ‘ad hoc international quasi-judicial’ mechanisms, ‘mixed claims tribunals’, ‘proceedings before national courts’ and ‘claims against individual violators’ as pointed out Gillard.⁷⁰ She also asserts that the matter of reparation to individual victims will be pursued through

⁵⁸ Ibid 545

⁵⁹ Ibid 545,546

⁶⁰ ‘International Criminal Law’ (Geneva Academy of International Humanitarian Law and Human Rights, 25 May 2014) <http://www.geneva-academy.ch/RULAC/international_criminal_law.php> accessed 25 May 2014

⁶¹ ‘ICC at a Glance’ (ICC) <http://www.icc-cpi.int/en_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx> accessed 25 May 2014

⁶² Jo-Anne Wemmers (n 24) 124

⁶³ The Rome Statute of the International Criminal Court 1998, Art 75

⁶⁴ The Statute of the International Criminal Tribunal for the Former Yugoslavia 1993, Art 24

⁶⁵ Emanuella-Chiara Gillard (n 25) 545

⁶⁶ Ibid 546

⁶⁷ Jo-Anne Wemmers (n 24) 124

⁶⁸ Julien Piacibello (n 56) 90

⁶⁹ Emanuella-Chiara Gillard (n 25) 540,541

⁷⁰ Ibid 549

‘ad hoc manner’ in international humanitarian law in the future.⁷¹ From this point of view, it can be said that in order to remove this uncertainties and discrepancies, the essence of the matter namely the recognition of subjects of international law can be standardised.

B. Reparations in International Human Rights Law

The law of the state responsibility was the first address when a violation of an international obligation was in question before the evolvement of the international human rights law.⁷² The law of state responsibility is actually still valid mechanism in case of a breach of international obligations in terms of human rights matters, and violation of an international obligation emanates from either a breach of treaty or customary IL in this regard.⁷³ The adoption of the idea of the right to reparation of individuals has been growingly progressing in IL particularly in international human rights law.⁷⁴ Indeed, the treaties relating to human rights are inter-state issues and ratified naturally by states. Since these treaties allow individuals to the right to make an application against one of parties to the treaty concerned, the right to reparation for individuals inherently exist in IL. Even though the right to reparation in IL is an inter-state right as a result of essential customary norms, international human rights law that is a specific subject of IL has reinterpreted these norms and established new norms in its way.⁷⁵

Moreover, remedies in international human rights area are vitally important points for violations of civil rights. A number of universal mechanisms in relation to the field of human rights law necessitate parties to provide an ‘effective remedy’ in the event of violations of inherent rights.⁷⁶ At this point, there are international instruments referring an effective remedy for violations of human rights⁷⁷ such as; Article 8 of the Universal Declaration of Human Rights (UDHR)⁷⁸, Article 2 of the International Covenant on Civil and Political Rights (ICCPR)⁷⁹, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)⁸⁰ and Article 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

⁷¹ Ibid 552

⁷² Dinah Shelton (n 22) 50

⁷³ Ibid 50

⁷⁴ Emanuella-Chiara Gillard (n 25) 536

⁷⁵ Octavia Amezcua-Noriega (n 28)

⁷⁶ Donald F Donovan and Anthea Roberts (n 19) 153

⁷⁷ Jared L Watkins (n 32) 570, 571

⁷⁸ The Universal Declaration of Human Rights 1948, Art 8

⁷⁹ The International Covenant on Civil and Political Rights 1966, Art 2

⁸⁰ The International Convention on the Elimination of All Forms of Racial Discrimination 1965, Art 6

(CAT)⁸¹. In addition, the UN General Assembly resolution 60/47 namely Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law⁸² is another prominent development in this context.

On the other hand, a large number of ‘special regimes’ exist in the name of remedies instead of one particular universal regime, and in parallel with this situation the approach of different courts may show an alteration from one to another.⁸³ Furthermore, regional human rights tribunals such as, the European Convention on Human Rights (ECHR) and its court European Court of Human Rights⁸⁴, and Inter-American Convention on Human Rights (IACHR) and its court Inter-American Court of Human Rights (IACtHR)⁸⁵ are the ones that deal with individual claims. Article 41 of the ECHR⁸⁶ and Article 63 of the IACHR⁸⁷ give a place to remedies within this context. The two courts generally aim at the ‘re-establishment of the *status quo ante*’ and ‘full restitution’.⁸⁸ Compensation is another way of reparation decided by these regional human rights systems, however, it sometimes remains inadequate and can be financially heavy for the state concerned.⁸⁹ A violation of proprietary right of foreigners is a typical example that requires compensation, the *Loizidou v Turkey*⁹⁰ is one of the cases in this respect.

In brief, regional human rights bodies have, of course, undeniable importance within the context of the right to reparation of individuals and they have been trying to help individuals to satisfy their rights since their establishment. However, the fact that the states are real subjects of IL is once again encountered as an impediment for individual reparations because the above human rights systems are only valid within their jurisdictions and thus they do not cover everyone on earth. On the other hand, in spite of this, the populations that the regional human rights bodies include do constitute a vital majority of the entire population of the world, they may, therefore, affect IL in the future within this context.

⁸¹ The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Art 14

⁸² The UN General Assembly Resolution 60/47 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005

⁸³ Christine Gray, ‘Remedies in International Dispute Settlement’ in Cesare Romano and others (eds), *The Oxford Handbook of International Adjudication* (OUP 2013)

⁸⁴ The European Convention on Human Rights 1953

⁸⁵ The Inter-American Convention on Human Rights 1969

⁸⁶ See (n 84), Art 41

⁸⁷ See (n 85), Art 63

⁸⁸ Jared L Watkins (n 32) 572

⁸⁹ Christine Gray (n83) 26

⁹⁰ App no 15318/89 (ECtHR, 23 March 1995)

Conclusion

A violation of an international obligation naturally requires a responsibility which is generally valid for states as primary subjects of IL. As a result of this violation, the reparation is granted to states injured by acts of another states. It is, therefore, seen that responsibility and reparation are mainly recognised as inter-state matters. The legal documents adopted by the ILC show the formal validity of state responsibility in IL, and individual injuries are rehabilitated by states by means of diplomatic protection.

The purpose of this paper here is to investigate the right to reparation for individuals, whether they have this kinds of right, or under which circumstances they can claim their rights on their own. Even though the ICJ accepts the inter-state cases depending on state responsibility, there are also other tribunals such as the ICC which recognizes the responsibility of individuals under the name of criminal responsibility. This is important because the responsibility is the *raison d'être* of the right to reparation. In this context, individual responsibility and reparations can be seen in international human rights law. Additionally, human rights law is another specific field in which individual reparation can be shown. Together with the development of regional human rights mechanisms such as the ECHR and IACHR, individuals have started to gain the right to make reparation claims on their behalf. These regional regulations involve provisions about remedies which are important for individual claims.

In sum, the right to reparation for individuals are not universally accepted although there are regional developments in the name of individuals. However, humanitarian law and human rights law mechanisms show that individuals have somehow attained this right against states which are

primarily addressee of that right. What is more, no one can deny the fact that the population under the jurisdiction of these specific regimes are very important as compared with the population as a whole.

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