

Transcendence and Development: The Concept of Community of Human Destiny to the Traditional Subject Theory of International Law

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Abstract: The traditional subject theory of international law takes the nation-state as the center, and constructs a binary or ternary structure system with the sovereign state as the basic unit, intergovernmental international organizations as the derivative subject, and individuals as the limited object. This subject theory under the Westphalian system, with the deep evolution of globalization, is faced with structural dilemmas such as the lack of “global commons” governance, the rise of non-state actors, and the lack of a protection mechanism for human common interests. As an important ideological resource for China to participate in global governance, the concept of “community of human destiny” is not only a political vision, but also contains a profound reconstruction of the subject theory of international law. This paper holds that the concept of “community of human destiny” breaks through the logical limitation of traditional reciprocal justice between countries by establishing “human” as an integral value attribution, introducing the dimension of “relational subject” into the structure of international law, and realizing the paradigm leap from “coexistence law” to “cooperative symbiosis law.” This concept is not a simple denial of the national subject, but a higher-order legal interest form of “community,” which imposes normative constraints on “obligations to the world” and “common concerns of mankind” on the basis of recognizing national sovereignty, thus completing the transcendence and development of traditional international law at the subjective level.

Keywords: Community of human destiny; Subject of international law; National sovereignty; Obligation to the world; Global governance

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1. Introduction

Since the Peace Treaty of Westphalia in 1648, international law has been built on a solid cornerstone: sovereign States are the primary and almost unique subject of international law. Through the absoluteness of the concept of sovereignty, the exclusiveness of territorial jurisdiction, and the principle of “national

consent,” this system has successfully constructed a clear picture with coordination among countries as the core. In this traditional narrative, the subject of international law is strictly defined as a national entity with the ability of territory, people, government, and foreign exchanges. Even after World War II, intergovernmental international organizations gradually acquired derivative legal personality, and individuals also gained a certain degree of procedural subject status in the field of human rights law and international criminal law, but in essence, the state is always the ultimate monopolist of international law-making, legal interpretation, and enforcement.

However, in the 21st century, human society is experiencing an unprecedented “embedded survival.” Issues such as climate change, large-scale infectious diseases, cyberspace security, utilization of outer space resources, and ethical risks of artificial intelligence can no longer be separated by the territorial boundaries of nation-States. These global challenges have given birth to a new legal interest—“the common interest of mankind,” which transcends the sum of the interests of individual countries. In this context, the traditional subject theory of international law reveals a profound structural dilemma: when the living environment of “human beings” as a whole is damaged, who has the right to make claims as a qualified subject? When the country itself becomes a potential producer of human disasters (such as the risk of nuclear war and ecological extinction), can international law with national consent as the core achieve self-redemption?

The concept of “community of human destiny” is a response to this structural crisis. It is not only a grand narrative in the field of international relations, but also a revolutionary challenge and possibility of reconstruction to the basic theory of international law, especially the subject theory. This paper attempts to demonstrate that the concept of “community of human destiny” has broken the atomization barrier of traditional subject theory and introduced a cognitive paradigm of “relational subject” through the legal confirmation of the overall value of “human,” thus realizing the transcendence and development of traditional theory while retaining the positive function of state subject.

2. Structural characteristics and limitations of traditional subject theory of international law

To understand the transcendence of the concept of “community of human destiny,” it is necessary to dissect the deep logic of the traditional subject theory of international law.

2.1. Subject presupposition of atomization: Closed structure under sovereign absolutism

Traditional international law is deeply influenced by Hobbesian hypothesis of the natural state, and regards the international community as a collection of Leviathan-like national individuals. Under this presupposition, the country is simplified as a “black box,” and its internal political structure, cultural identity, and national well-being are absorbed by the sovereign shell. The function of international law is only to coordinate the external collisions of these atoms and prevent them from being destroyed by conflicts. This atomization presupposition leads to the strict exclusivity of subject qualification: only political entities that can claim and safeguard “sovereignty” can have tickets to participate in international legal life.

The immediate consequence of such a closed structure is the extreme linearization of legal relationships. Rights and obligations flow only bidirectionally or multidirectionally between two or more countries, forming a responsibility model based on “bilateralism.” As shown in the International Law Commission’s Articles on State Responsibility, traditional international law struggles to address the absence of a subject

in the fulfillment mechanism of “obligations owed to the international community as a whole” ^[1]. When a country violates the global commons, every nation theoretically has the right to protest, but there is no defined “human representative” to act as the plaintiff in legal proceedings.

2.2. The expansion of instrumental rationality: the limited evolution from coexistence law to cooperative law

In the second half of the 20th century, with the rise of the specialized agencies of the United Nations, international law experienced the evolution from “coexistence law” to “cooperation law.” International organizations have acquired derived international legal personality, and multinational corporations and non-governmental organizations have also begun to play a role in soft law governance. However, this evolution does not touch the core logic of the subject theory. The subject qualification of international organizations comes from the authorization of member States, and its legal personality is instrumental, aiming at achieving the specific cooperation goals between countries more efficiently.

This instrumental rationality leads to the traditional subject theory not being able to accommodate the concept of community in the sense of teleology. In the traditional framework, the international community is called “international community,” but this is more a sociological description than a legal concept. Although the International Court of Justice distinguished between the obligation of a country to another country and the obligation to the international community as a whole in the Barcelona Traction case, it still had to resort to the individual litigation of the injured country or the interested country at the specific implementation level. In other words, there is no “community” beyond the state as the final subject of right ownership and accountability in law and technology.

2.3. Fracture between individual and whole: Fragmentation of human interests

Although modern international law recognizes the subjective status of individuals under human rights law and allows individuals to file complaints with the Human Rights Council and other institutions, this recognition is extremely limited and instrumental, “The status of individuals as subjects of international law has long been a subject of debate in the international legal community, and no consensus has yet been reached” ^[2]. Individuals cannot act as spokesmen for the interests of all mankind, but can only seek relief for the specific violations they have suffered. This means that the concept of “human” is completely fragmented in law-it is either a national under the protection of the country of nationality or a beneficiary under a specific human rights convention, but it has never acquired legal personality as a whole.

This kind of fracture is especially fatal when facing the problem of long-arm space-time effect. The problem of intergenerational equity is a clear example: the behavior of contemporary people has an impact on the unborn future generations, and the future generations do not have the subjective qualification in the sense of traditional international law at all, so they cannot resist the over-exploitation of fossil energy by contemporary people in the current legal procedures. The time dimension of traditional subject theory is confined to “the present” and cannot handle the intergenerational common responsibility.

3. Relational turn under the concept of “community of human destiny”

The concept of “community of human destiny” provides theoretical resources for breaking the above dilemma. It is not simply to establish a world government, but to inject “relationship” and “integrity” into the

subject connotation by reconstructing the cognitive paradigm of the subject of international law.

3.1. “Human” as value ownership: From abstract concept to the germination of legal subjectivity

The core category of “the community of human destiny” lies in “human beings.” Unlike traditional international law, which only regards “human” as a biological species or a sociological aggregate, this concept tries to give it a normative legal connotation. In traditional international law, although the concept of “common inheritance of property by mankind” has appeared, its subject (who represents mankind) is absent. In the institutional design of “Area” in the United Nations Convention on the Law of the Sea, the International Seabed Authority represents a kind of human trusteeship mechanism, but its power is limited to the management of mineral resources and is subject to the political game of big countries ^[3].

The promotion of the concept of “the community of human destiny” has promoted the transformation of “human beings” from value symbols to potential legal subjects. This transformation is realized by establishing the highest criterion of “common interests of mankind.” In the field of climate change, although the Paris Agreement still relies on the independent contribution of the state, its preamble repeatedly mentions the right to survival of “human beings”, which is actually injecting “human beings” into the legal text as a hidden subject ^[4]. In response to the pandemic, the proposal of “human health community” is to aggregate the life rights and interests of cross-species and cross-domain into a whole legal interest. This legal interest no longer belongs to the territorial jurisdiction of any single country, but belongs to all mankind. “The common interests of all mankind are neither the interests of a single country nor the simple sum of the interests of all countries in the international community” ^[5]. When this common legal interest is threatened, the obligation to the world finds its subject ownership-although this process has not yet completed the institutionalized judicial construction, in the sense of norm generation, human beings have begun to sprout as the ultimate subject of interest ownership.

3.2. Beyond reciprocal justice: Intersubjective reconstruction of obligations to the world

Traditional obligations between countries are based on the logic of “consideration,” that is, reciprocity. Trade concessions, diplomatic immunity, and extradition treaties are all based on bilateral reciprocity. However, the concept of “community of human destiny” advocates the symbiotic justice of “helping each other in the same boat.” This view of justice is directly mapped to the transformation of international law obligations, that is, the universality of “obligations to the world.”

Obligation to the world: “it specifically includes the obligation to protect ‘supranational interests’ and ‘obligations to the international community as a whole’”, and its legal interests are so fundamental (such as prohibiting aggression, genocide, and protecting basic human rights) that all countries have legal interests to fulfill them ^[6]. Under the traditional theory, the performance mechanism of obligations to the world faces a main problem: The Barcelona Traction case established the concept, but did not solve the procedure. Who has the right to sue from the standpoint of the “international community”?

The concept of “the community of human destiny” provides a relational solution. It shows that the national subject is not only an independent sovereign unit, but also a key node in the common network of mankind. In this network, nodes (countries) and the whole (human beings) are mutually constituted. When a country commits crimes against humanity, it not only harms the direct victims and their countries

of nationality, but also tears the network structure of “human community.” Therefore, any country or international organization with corresponding capabilities takes actions (such as universal jurisdiction and responsibility to protect) not only on the basis of political indignation, but also on the basis of “status” as a member of the community. In essence, this is to double the subject identity of the country: it is not only the subject of its own interests, but also the subject of entrusted management of the common interests of mankind in some situations. This theory of relational subject transcends the traditional concept of absolute exclusiveness and provides a legal basis for intervention and cooperation based on community interests.

3.3. Cooperation rather than dependence: Empowerment of non-state actors

Under the framework of “the community of human destiny,” the main position of non-state actors has been qualitatively improved. Under the traditional cooperation law, international organizations are only tools of member States. In response to the challenges of all mankind, the concept of community requires multi-governance based on problem orientation. When the World Health Organization responded to the COVID-19 epidemic, its legal power was still influenced by the state, but its professional authority and subjective consciousness representing the common interests of human beings in epidemic prevention were significantly enhanced.

Similarly, individuals, not only as victims, but also as carriers of human conscience, have gained a certain degree of universal representation in environmental public interest litigation. For example, in the domestic judicial practice of some countries, the courts began to recognize contemporary people as guardians of litigation for “unborn future generations.” This kind of judicial innovation, which regards individuals as agents of human community across time and space, is a miniature reflection of the concept of “community of human destiny” at the legal and technical level. It proves that on the topic of safeguarding the core interests of all mankind, the determination of the subject is no longer completely dependent on nationality or national boundaries, but depends on its substantive relevance to the interests of the community.

4. Transformation and compatibility of the concept of community of human destiny to the theory of national sovereignty

What needs special emphasis is that the concept of “community of human destiny” transcends the traditional subject theory, which is by no means a total denial of the sovereignty of the nation-state, but a deep transformation to adapt to the logic of human co-existence. This is a sublation rather than abandonment.

4.1. Sovereignty as a member of the community: From independent right to participatory responsibility

The traditional sovereignty theory emphasizes the exclusive right to be the highest internally and independent externally. From the perspective of the community, sovereignty has been given a new connotation: sovereignty is not only a barrier for countries to avoid external interference, but also a qualification and responsibility for countries to participate in building a human community. This kind of “participatory sovereignty” holds that only when a country actively participates in the process of protecting the global commons and safeguarding the common interests of mankind can its sovereignty truly achieve integrity.

For example, the principle of “equality of sovereignty” in the Charter of the United Nations, in the context of “community of human destiny,” puts more emphasis on equal right to participate and right to

speak. If a country evades its global responsibility to deal with climate change because of its lack of ability or will, its sovereign exercise will constitute an extraterritorial violation of the right to exist of other countries and even all mankind. At this time, the community's investigation of responsibility is not interference in internal affairs, but the common bottom line that safeguarding sovereignty should bear. This theoretical transformation has solved the dilemma of traditional international law on the "responsibility to protect": sovereignty is no longer opposed to human rights, but regarded as the political basis and legal carrier for realizing "the common rights of mankind." "The future of human rights must be based on international cooperation, shared responsibility and shared values" [7].

4.2. Common concern of mankind: Reshaping the dimension of sovereign space

Traditional international law divides the earth's surface into territory and terra nullius or commons. A country has the sovereign right to develop resources within its territory, which has always been regarded as the cornerstone of international economic law. However, the concept of "community of human destiny" has changed the absoluteness of this spatial division by establishing the concept of "common concerns of mankind."

Although tropical rainforests are located in the sovereign territory of Brazil or Congo (DRC), they are also regarded as "common concerns" related to the survival of all mankind because of their functions as global carbon sinks. In such matters, the exercise of sovereignty of the host country is substantially restricted: it no longer has absolute freedom to destroy forests at will, but bears the legal responsibility of hosting this natural asset for all mankind. When the international community provides funds and technical assistance, it is no longer just based on moral charity, but on the legal interests of protecting the common assets of itself and all mankind. This practice of bringing sovereign territory into the network of common interests of mankind blurs the rigid boundary between "domestic jurisdiction matters" and "international concerns" in traditional international law, and constructs a three-dimensional sovereignty picture based on functionalism.

4.3. De-instrumentalization of international organizations: Towards the guardian of human interests

From the perspective of the community of human destiny, the legal personality of the United Nations and other international organizations should not only be regarded as "the product of the contract between countries," but should be gradually recognized as "the institutional embryo of the human community." In a sense, the power of the Security Council in the field of maintaining international peace and security can be interpreted as the expression of the concentrated power of the human community on the issues of war and peace.

This theoretical orientation requires changes in the operational logic of international organizations. Its legitimacy no longer only comes from national authorization, but also from whether it can effectively represent the common interests of mankind. This requires reforming the internal power composition of international organizations, enhancing their inclusiveness and representation of vulnerable groups (including nature and future generations). When an international organization makes a request for compulsory rectification of a country's environmental policy based on scientific evaluation, it exercises a derived sovereign power based on the human community's right to exist, rather than simply interfering in internal affairs. This change from "tool" to "role" is a great leap in jurisprudence of the subject status of international organizations.

5. Subjective practice of international law in emerging fields

The evolution of theory is not imaginary; it has shown a clear empirical track in the frontier field of contemporary international law.

First, the principle of “common but differentiated responsibilities” in international environmental law. This principle is the perfect combination of the traditional relationship between equal subjects of countries and the responsibility relationship of the human community. “Common responsibility” embodies the indivisibility of human beings as a single subject of destiny, and any country has the obligation to maintain the earth’s ecosystem; “Differentiated responsibility” respects the differences of countries as the main bodies of historical development. The establishment of this principle in the United Nations Framework Convention on Climate Change and its Paris Agreement is a successful demonstration of the concept of “community of human destiny” at the level of legal norms. It creates a new way of subject connection: national subjects with different historical status and practical ability are rearranged and combined in the common obligation network for the invisible subject “human.”

Second, the principle of “common heritage of mankind” in the international seabed regional system. Although the commercialization of deep-sea mining is controversial, Article 136 of the United Nations Convention on the Law of the Sea clearly defines the Area and its resources as “the common heritage of mankind.” The International Seabed Authority exercises its power on behalf of all mankind and needs to give special consideration to the interests of developing countries and people who have not achieved independence when distributing benefits. This system design directly constructs a miniature model of “the transfer of the subject of international law”: the resources that might have belonged to individual countries through the principle of preemption or freedom of the high seas are legally permanently owned by all mankind, and any country can only develop them on the basis of the express or implied authority of all mankind. This is essentially the direct ownership of some property and resources by “human” as a legal subject.

Third, the establishment of crimes against humanity in international criminal law. The targets of crimes against humanity, war crimes, genocide and aggression have surpassed individual victims and countries of nationality, and directly point to the dignity and security of “mankind” as a whole. The preamble to the Rome Statute of the International Criminal Court declares that these crimes “threaten the peace, security and well-being of the world.” In such crimes, all mankind is the victim. Therefore, based on the principle of universal jurisdiction, any country has the right to arrest and prosecute criminals. This kind of jurisdiction is no longer based on the traditional territorial or nationality ties, but on the legal status of the offender as a “public enemy of mankind” because of his violation of the human community. This proves the existence of “human” as the subject of legal value protection from the dimension of criminal responsibility.

6. Conclusion

To sum up, the concept of “community of human destiny” is not a simple rhetorical superposition to the traditional subject theory of international law, but a profound philosophical change of legal subject. It accurately diagnosed the functional failure of the main body of the atomized state in response to the risk of globalization under the Westphalian system, and creatively proposed a reconstruction path based on “relational symbiosis.”

This transcendence and development is reflected in three dimensions: in terms of value attribution, it promotes “human beings” from the abstract concept of species to the ultimate value bearer and potential

interest attribution subject of international law, filling the vacancy of the subject in the governance of global commons and the performance of obligations to the world; In terms of structural characteristics, it breaks the closure of national sovereignty, reshapes the country into a relational subject embedded in the network of human communities, and imposes substantive legal constraints such as “common concerns of mankind”; In the direction of evolution, it empowers non-state actors such as international organizations, non-governmental organizations and even future generations, so that they can obtain limited but certain legal representation qualifications on specific issues of common interests of mankind.

The ultimate goal of this theory is not to build a cosmopolitan utopia that eliminates the dominant position of the country, but to advocate a “symbiotic international law system.” In this system, the sovereign state is still the backbone of the legal order, but it is no longer an absolute and self-sufficient Leviathan, but exists as the responsible person and guardian of the overall survival and development of mankind. Therefore, the subject picture of international law is evolving from an isolated and dotted constellation to a network with central value and connecting significance. The “community of human destiny” is the ideological program of this network, which urges international law to make a decisive leap of legal subjectivity towards the ultimate ideal of common prosperity and lasting development of mankind on the basis of adhering to the bottom line of peaceful coexistence.

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