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DEBATING "BEYOND HUMAN RIGHTS" SYMPOSIUM

## Beyond Individual Criminal Responsibility?

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Anne Peters' most recent opus *'Beyond Human Rights: The Legal Status of the Individual in International Law'* constitutes an outstanding and ground-breaking piece of scholarship that radically re-positions the individual within the grid system of international law and consistently supplements her previous work on global constitutionalism: The book hence establishes a new frame of reference for analysing the individual's status under international law as – instead of exclusively focussing on human rights as the 'pivotal and completely undisputed element of the international legal status of the individual' (at 27) – it manages to shift the focal point to those 'low-threshold' individual rights and obligations that so far have not attained

the status of fully-fledged human rights law. This line-up serves as the starting point in developing the volume's main objective: to put forward a legally sound and systematized account of what international law has to say about the status of the individual in the early 21<sup>st</sup> century.

### **The character of international legal personality**

As one of the main elements in this endeavour, Peters highlights the figure of international legal personality: According to her conception, this legal institution applies directly to the individual and comprises both a 'positive' and 'negative' component, i.e. it endows the individual with concrete rights and imposes certain obligations. Instead of unduly focussing on the positive dimension, the book henceforth dwells on the 'downside' of the individual's international legal capacity, namely its obligations under international law at both the primary (addressing its individual obligations) and secondary level (pertaining to individual international responsibility). Peters argues that it is particularly the latter aspect that up to now has neither received sufficient momentum nor attained universal acceptance within international legal discourses. In this respect, both the book in general and this facet of international responsibility in particular correlate with a sweeping debate in contemporary international law, which aims at deconstructing the multidimensionality of international responsibility and identifying mutually affecting streams of individual and joint action.

Taking this as the initial point, Peters engages in a doctrinal *tour de force*, during which she exposes how broad-based individual international responsibility could be established while recurring to the principle of individual criminal

responsibility for international crimes. This legal facility is thus utilized as a proxy so as to arrive at her core argument, namely that there is no compelling reason to restrict individual international responsibility to the realm of criminal law and that the imposition of primary obligations as well as their respective fulfilment would in fact be rendered pointless if not backed up by secondary responsibilities. Here, Peters rightly postulates that already for logical reason, it is indispensable that international legal capacity – perceived as the ability to bear certain obligations – goes hand in hand with international responsibility.

This reasoning hence constitutes both a veritable step in attempting to re-shape the nature of individual international responsibility beyond criminal law as well as to position it within a multidimensional conception of international responsibility on a broader scale. Moreover, if one is to accept the possibility that violations of primary duties can *generally* trigger individual responsibility directly under international law and therefore in the sense of non-criminal responsibility, this would effectively facilitate the process of turning the individual into a prime subject of international law (see also at 150). As Peters mentions *en passant*, the concrete gain to be expected from such a far-reaching modification, i.e. the facility to impose on individuals the duty (at least theoretically) to also compensate victims for violations of international law, however, still needs to be spelled out in more detail and balanced against abiding state responsibilities: At the end of the day, it's not about playing off the individual against the state or letting states go off the hook entirely, but to effectively promote the role of the individual so as to move towards a duality of responsibility.

### **Beyond individual criminal responsibility (?)**

After explicating this principal sympathy, Peters finally hints at potential gateways from which to further expand the scope of individual international responsibility and to strive towards the just described duality of responsibility: Amongst several already existing linkages in contemporary international law, Peters most convincingly refers to the International Law Commission's Draft Articles on State Responsibility (ASR), which postulate in Article 58 that '... these articles [should be] without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State'. Although clearly geared towards individual responsibility in connection to an official capacity, Peters is right to assume that, by virtue of an *argumentum e contrario*, this does not necessarily rule out discrete individual international responsibility *per se*. This sympathy can be further substantiated in view of the commentary to Art 58 ASR, explicating that, in general, '...it is not excluded that developments may occur in the field of individual civil responsibility'. Based thereon, Peters concludes that there is no compelling reason to assume that the individual cannot have international responsibility in a broader dimension. Accordingly, the next and logical step in this 'process of humanizing international law' (at 149) would be to arrive at a formal, though not necessarily codified consolidation of individual international responsibility, thereby likewise emphasizing the individual's principal rights and its primary as well as secondary obligations.

'*Beyond Human Rights*' is a remarkable contribution and deserves commendation for mainly three reasons: Firstly, for its bravery as Peters proposes a radical shift of perspective for international law and a true pivot towards the individual. This substantial re-configuration of reasoning about the human being within international law hence breaks with

traditional approaches and may serve as a benchmark for a whole new generation of upcoming scholars.

Secondly, the book strikes by virtue of its clarity: It develops the underlying thesis in a distinct and straightforward manner, thus carefully distinguishing between *de lege lata* and *de lege ferenda*. This treatise is thus not a forced (re-) positioning of the individual at the centre of international law, but an organically developed and well-reasoned argument, firmly rooted in contemporary international law.

Finally, 'Beyond Human Rights' is a subtle eulogy on the underlying modernizing force of international criminal law: Here, this still nascent realm of public international law serves as the nexus to reconsider individual international responsibility, hence transcending traditional patterns of legal reasoning and thereby placing the individual in the front seat of 21<sup>st</sup> century international law.

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