

SUBJECTS OF INTERNATIONAL LAW

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REALIST THEORY:

According to one view 'states only are subjects of international law'. This is the traditional concept of International law wherein States alone, as sovereign political entities, were regarded as the subjects of International law.

The above view has been criticized mainly by modern International Law jurists on the ground that certain rights and obligations have been endowed to entities other than States by the rules of International law, and therefore, they also possess International personality.

FICTION THEORY

This theory is opposite to realist theory. According to it, individuals only are the subjects of International law like Municipal Law. Kelson is of the view that rules of Municipal Law as well as those of International law are meant for human beings. While the former is binding on them directly, the latter is binding indirectly, that is, through States. The theory is based on a fiction that rights and duties of the states are only the duties and rights of men who compose them, and therefore, it is ultimately individuals who are the subjects of International law.

The theory is called fictional theory since according to it the state has been regarded as a fiction.

FUNCTIONAL THEORY:

It is true that international law addresses most of the rights and duties to the states. However, in the last 50 years or so, substantial changes have taken place in it. There is proliferation of new participants in international relations. International organisations distinct from states, have been and rights and duties, in addition to state.

International organisations perform certain legal functions and they have distinct legal personality in international law separate from that of the members states.

The theory of recognising an entity as subject of international law on the basis of the capacity of rights and duties under it appears to be sound. A few jurists who had earlier taken the stand that state only and exclusively are the subjects of international law have shifted from their earlier view and have begun to state that states are primarily, but not exclusively the subjects of international law.

THANK YOU