



PUBLIC INTERNATIONAL LAW

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Subjects Of International Law-

- The word 'subject' literally means 'under rule, jurisdiction or control'.
- It is an object, which is subject to control and governance.
- In other words, subject is an object (living or non-living) over which law confers certain rights and duties.

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- **Municipal law or state law provides for certain rights and duties to individuals in the state, so individuals are called subjects of state law.**
 - **Similarly, International Law is concerned with the rights and duties of the nations or states.**

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- There are three theories as to the subjects of International Law as explained below-
 - States alone are the subjects of International Law
 - Individuals alone are the subjects of International Law

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- States are the main subjects of International Law but to a lesser extent individuals and certain non-state entities are also subjects of International Law.

States Alone Are The Subjects Of International Law

- According to this theory, states alone are the subjects of International Law.
- The supporters of this theory opined that international law regulates the conduct of states and states alone are the subjects of international law.

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- Prof. L. Oppenheim, strong supporter of this theory holds that, since the law of nations is primarily a law between states, states are, to that extent, the only subjects of the law of nations.

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- Percy E. Corbett opined that, states are the only subjects of international law and individuals are only incumbents of rights and duties at international law in so far as they are objects and not subjects.

Criticism

- This theory is subject to criticism on the ground that it failed to explain the cases of slaves and pirates.
- Under international law, slaves have been conferred some rights by the community of states.
- Similarly, pirates are treated as the enemies of mankind and states may punish them for piracy.

Individuals Alone Are The Subjects Of International Law-

- According to this theory, the duties and rights of states are only the rights and duties of men who compose them. According to this theory, state does not mean mud but men.
- Prof. Kelsen is the chief exponent of this theory; he is of the opinion that, in international law, the duties of the states are ultimately the duties of the individuals.

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- There is no difference between international law and state/municipal law. Both laws are made to apply to individuals.

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- The Nuremberg Tribunal, too, has held that international law imposing duties and liabilities upon individuals as well as upon states has long been recognized.
 - Individuals can be punished for violation of international law. Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.

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- The orthodox view of the positivists that the states alone are the subjects of international law did not find support in the 20th century.

Criticism-

- Kelsen's view appears to be logically sound.
- But so far as the practice of the states is concerned it is seen that the primary concern of the international law is with the rights and duties of the states.

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- From time to time certain treaties have been entered into which have conferred certain rights upon individuals.
 - Although the Statute of the International Court of Justice adheres to the traditional view that only states can be parties to international proceedings.

States, Individuals And Certain Non-State Entities Are The Subjects Of International Law-

- The third view not only combines the first and second views but goes a step ahead to include international organizations and certain other non-state entities as subjects of international law.

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- This theory appears to be far better than the first two views. Following arguments may be put forward in support of this view:
 - · At present, there are several treaties, which conferred on individuals certain rights and duties. For example, International Covenants on Human Rights.

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- The Permanent Court of International Justice in Danzing Railways Official Case [PCIJ (1928) Services B, No. 15] laid down that, in any treaty, the intention of the parties is to confer on some individuals, certain rights, then international law will recognize such rights and enforce them.

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- · In 1949, General Convention on the Prisoners of War conferred on the prisoners, certain rights.
 - · The Nuremberg and Tokyo Tribunals propounded the principle that international law may impose obligations directly upon the individuals.
 - As observed by the Nuremberg Tribunal, “crimes against international law are committed by men, not by abstract entities and only by punishing individuals who commit such crimes can the provisions of international law be enforced”.

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- The Genocide Convention of 1948 has imposed certain duties directly upon the individuals. According to this Convention, persons guilty of crime of genocide may be punished, no matter whether they are the heads of the state, high officials or ordinary individuals.

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- By virtue of new trend or movement developed in the international field, certain rights are conferred on individuals even against the states. The best example on this point is, The European Convention on Human Rights, 1950.

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- It is now generally agreed that international organizations are also subjects of international law. In this connection the advisory opinion of the International Court of Justice in the case of “Reparation for Injuries Suffered in the Services of United Nations” may be cited. In this case the ICJ decided that the United Nations is an international person under international law.

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- By subjects of international law it is meant that those entities which possess international personality. In other words subjects of international law are those entities that have rights duties and obligations under international law and which have capacity to possess such right, duties and obligations by bringing international claims.

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- In past the matter was not much debatable because according to the contemporary circumstances and scope of international law only the states were qualified for international personality, but in near past along with the increasing scope of international law many other entities have been given international personality.

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- Now, the question arises; whether they may be treated as subjects of international law or not? And also if they were given the international personality then what shall be the criteria for ascertaining the qualification of their being the subjects of international law. So, there are different theories as regard to the above debate. The most prominent theories may be discussed as under:

Realist Theory: –

- According to the followers of this theory the only subject of the international law are the Nation States. They rely that Nation States are the only entities for whose conduct the international law came into existence.

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- The Nation States, irrespective to the individuals composing them, are distinct and separate entity capable to have rights, duties and obligations and can possess the capacity to maintain their right under international law. So, the Nation States are the ultimate subjects of International law.

Fictional Theory: –

- According to the supporters of this theory the only subjects of international law are the individuals. For the reason, that both the legal orders are for the conduct of human being and for their good well.

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- And the Nation States are nothing except the aggregate of the individuals. Though the rules of international law relate expressly to the Nation States but actually the States are the fiction for the individuals composing them. Due to this reason individuals are the ultimate subjects of International law.

Functional Theory: –

- Both the Realist and Fictional theories adopted the extreme course of opinions. But Functional theory tends to meet both the extremist theories at a road of new approach.

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- According to this theory, neither states nor individuals are the only subjects. They both are the subjects of modern international law.
 - Because states, being primary and active subjects of international law, have recognized rights, duties, and obligations under international law and are capable of maintaining the same by bringing international claims.

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- At the other hand in the modern international law individuals have also granted certain rights, duties and obligation under international law and maintain the same by bringing direct international claims.

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- Even, not only states and individuals are the subjects of international law but several other entities have been granted international personality and became the subjects of the international law. This is because of the increasing scope of international law.

Thank You!