

International Law

Part-2

Q2.

A. Introduction:

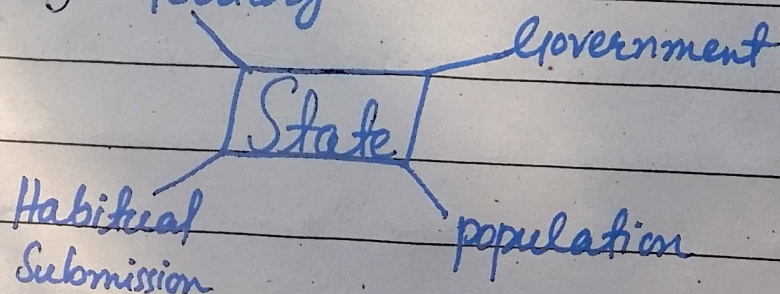
The concepts of de facto and de jure provides a state rights, privileges and obligations. However, in legal terms, these both concepts are different from each other. The de facto recognition of state refers to the state's rights, obligations and privileges in terms of practice not by means of legal terms. On the other hand, the de jure recognitions of state refers to the state's rights, obligations, privileges in practice as well as on legal terms. The state's recognition as de facto provides state less rights, obligations and other privileges as compared to the de jure recognition of state because the states have de facto recognition are not supposed to be the part of any international organisation including not being a member of UN and on the other side the states

having de jure recognition are the part of UN, and other legal international organisations and treaties. And verily they can raise and voice up their concerns through these multilateral international organisation.

B. States obtaining de facto recognition, the rights, privileges and obligations are less but when it is recognised de jure, it gets absolute rights, liabilities and privileges.

1. States obtaining de facto recognition:

The state can be defined as having:



The four things are necessary for any state, to be recognised. Any state or an entity having these characteristics of a state is practicing all duties

35

of a state without legally recognised by international community, is termed as states having de facto recognition. In de facto recognition such entities can have government, constitution, population, territory etc. but still do not possess the absolute rights of state.

For example: Kashmir

Azad Jammu and Kashmir has all the pre-requisites of state including:

- ① population
- ② constitution
- ③ territory
- ④ government

But still it has no absolute rights because it is not a state in legal terms. It is not a member of United Nations (UN), neither it can take part in treaties and nor in regional organisations. In fact, it can still practice the pre-requisites of being state, but these pre-requisites are not enough to self-sustain.

2. States obtaining de jure recognition.

States obtaining de jure recognition can have absolute rights, obligations, privileges as they are recognised legally by international community by means of international law. These states ^{not only} can practice their duties and other habitual submissions but also can have bilateral trade, multilateral treaties, membership in regional organisations etc. These states have true means of pre-requisites of being state; in fact and in law, due to which they possess membership of United Nations too. Through these absolute rights, they can trade internationally, they can do their practices internally.

C. Conclusion:

States having/obtaining de facto recognition have comparatively less rights, obligations and privileges than states having/obtaining de jure recognition because in de jure recognition states are not only in practice, are the states, but also in terms of legal they are called and recognised as states.

Q. State Succession:

International Law: (Part-2)

A. Introduction:

State Succession is defined as the branch of international law that deals with legal consequences of change of sovereignty over territory. In state succession, both public international law and private international law are involved. There are certain principles of state succession, certain rights and obligations of state in case of succession.

B. Rights and Obligations of the State in case of succession:

According to Akehurst's Modern International Law, state succession law is law of chaos, having confusion and complications.

1. Treaties:

According to Vienna Convention on the Law of Treaties, it is mentioned regard-

ing the law of state succession with respect to this convention that 'only boundary treaties are binding to succeeding states.'

Forexample Treaty of Durand Line between Pakistan and Afghanistan.

This boundary line of Durand line currently existing between Pakistan and Afghanistan is hundreds of years ago old. At that there was a subcontinent not Pakistan.

When Pakistan came into being, Pakistan, according to state succession law with respect to treaties, must have to follow that durand line boundary line, being succeeding state. No objections over this was found, as Pakistan can not argue over this legally.

2. Not all treaties in International law can have same nature.

So, the for the treaties like human right declarations, etc. the succeeding state has to certify to the relevant international organisation on their own. Similarly

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for memberships in international organization (UNO), the succeeding state has to independently re-apply or certify on their own.

There can be national debts or loans remaining, so, after state succession who will pay it? There is no clear cut evidence or proof of this question, available anywhere. However, a good way to resolve this confusion is to have bilateral agreement and decide mutually in that the terms and conditions, divide the debt and the mechanic of paying the debts.

3. State's Property:

There is no any objective formula, or any legal basis that can define or guide with respect to international law regarding the immovable property of state. However, a good way to solve this issue can be through Bilateral Agreement / Suggestion. These can be suggestions to follow if not binding agreements.

C. Conclusion:

State succession in international law is no doubt a confusing and complicated concept. However, through existing rules, obligations, existing principles, states can peacefully and respectfully succeed. Most importantly, if the states come across any unclear issue that is not directly defined in international law, the states can undergo bilateral agreement, bilateral suggestion which would be a good way to solve the issues.

Q6. Variety of ways for pacific settlements of disputes in International Law:

A. Introduction:

There are variety of ways for pacific settlements of disputes in International law. The dispute can be between states, between individuals of different states, between groups of people from different states or between international organisations. However, there is not a single or central court system in international law. International Court of Justice undoubted, is a prominent element of United Nations, but it is located in Hague (Netherlands) and ICJ does not have its benches in different states, in fact this is against the peculiar nature of ICJ. Also, no any sovereign state can easily surrender itself in front of any court in international law. So, there are other judicial forums to mentioned in

85

specific treaties, certain judicial mechanisms are also provided in relevant treaties, on which states have already surrendered themselves and have ratified it.

B. Ways and means of resolving international disputes:

All the variety of ways and means to solve the international disputes are penned down in **UN Charter:**

1. Article 1:

It is about the situation that needs to be avoided in case if the situation causes threats to peace and to suppress the possibility of aggression and to create a situation where disputes can be settled

2. Article 2:

All the member states shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.

3. Article 14:

The United Nations General Assembly may

recommend measures for peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the friendly relations among states

4. Article 33: (Power of United Nations Security Council by UN)

The parties disputes that are likely to endanger the maintenance of international peace and security shall first of all seek a solution by:

- ① Negotiation
- ② Enquiry
- ③ Mediation
- ④ Conciliation
- ⑤ Arbitration
- ⑥ Judicial settlement
- ⑦ Resort to regional agencies
- ⑧ other peaceful means of their own

UNSC will then call upon the parties for their consent, choice of framework, choice of solution and mean of resolution, in order to solve their disputes

Conclusion:

The variety of ways to solve the international disputes are comprehensively described in United Nations Charter, that the conflicting states can easily follow.