
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**INTERNATIONAL LAW: DE FACTO AND DE JURE AS MODES OF
RECOGNITION OF STATES**- S. Aditi Rao¹**ABSTRACT**

The international platform where all the sovereign states form a community is known as international community. These states must be recognised as sovereign states to be a part of community at international level and rights, duties and obligations could be joyfully enjoyed by them. Other states recognise newly formed sovereign nation as part of international law only when the newly formed states are recognised under internal law by United Nations. The state recognised under the international law are said to be independent state of the international community. Therefore, it can be implied that if any state has been recognised as an under the international law, they consider to have a diplomatic relation in the international community with the other existing states.

Presently there are 2 ways of recognition of states internationally i.e. de facto and de jure. De Facto is kind of practical recognition which is less official way to recognise a state or government. Also known as primary recognition before giving de jure recognition. The De Jure recognition is one of the formal ways recognising a state or government by legally acceptance of that as a particular state or government in the world community. This a final recognition to be declared as state globally.

For this type of recognition there are several legal and global laws to be abide by for such a formation as state. The other factors such as population, territory, government and judiciary are essential elements for the formation and recognition of state. There were several nations which either separated from already existing states to get recognised internationally as a new state. Example: Somaliland separated itself from Somalia in 1991, but is not seen as a separate state around the globe whereas works independently. It has its own governing bodies just like Ethiopia, Djibouti, etc. by establishing its diplomatic ties.

¹BBA LLB (Hons.)(ICFAI Law School, Hyderabad)

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

INTRODUCTION

There are many ways in which a new state is formed which are either rise from a state which is already existing or rise from an old state which is now appearing as a different name.

According to Black's Law Dictionary, "recognition" is defined as an action taken by the government to expressly or impliedly acknowledge the existence of the government in a new formed countries as "De Facto" or "De Jure". According to Article 1 of Montevideo Convention of 1933 "A state to be recognised as under International law should possess a permanent population with a defined territory, government and capacity to enter into relation with other states".²

For recognition of a newly formed state as a person there are certain essentials laid down in the Article 1 of the Montevideo Convention Conference, 1933 which are:

- There should have been a permanent population.
- For the control, the territory should be defined.
- That territory in which the population is existing should have a governing body.
- The particular entity or state should have capacity to enter into diplomatic and other relations with the existing states globally.

Whenever a new state is formed, it should be recognised new state which is governed under the international law and given all the rights, duties and obligations for enjoyment and accomplish the same. For being a part of International Law in statehood community, a newly formed state must need to be recognised. There are certain criteria to be followed to be recognised as a state.

LEGAL IMPLICATIONS OF RECOGNITION

On acquiring the state recognition under International Law, there are certain rights, obligations and privileges are attained which are as follows:

1. A newly formed state is in ability to in come into any kind of diplomatic relation along with the existing states of statehood community.
2. A newly recognised state under International have an absolute privilege to enter into treaties with the other countries of same community.
3. This new state has all the rights and privileges of Internation Statehood Community only if they are recognised as De Facto or De Jure.

² Article on "" Recognition of States under International Law"" by Pankhuri Ananad, 15 June 2019

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

4. There are chance of state undergoing in state succession.
5. One of the main rights and obligation of state to sue and can be sued is availed only after getting recognition under International Law.
6. A newly recognised states under international law is also recognised as a member of United Nations.³

CONSECUTIVE THEORY

The opinions of Hegal, Oppenheim and Anziloti gave consecutive this theory which states that a State needs to get its recognition first to attain the value as an international person and became member of United Nations under international law.⁴

It does not mention that a state cannot be exist as a state until it has a recognition under International Law but, only states that in order to attain rights, privileges and obligations as an international Person a state needs to be recognised first.

There are few criticisms to this theory which are as follows:

- To attain the rights, duties and obligations as a state under International Law, a newly formed state must be recognised first under the same.
- There is difficulty when some states agree to recognised a new Stae as a member of statehood community but some other states disagree on same.

DECLARATORY THEORY

This theory was given by Winger, and Brierly which states “that any newly formed nation or state is independent of mutual consent from other existing states”. Under Article 3 of the Montevideo Convention of 1933, this declaratory theory has been provided which states that the existence of newly formed state does not depend on recognition by already existing states.

This theory was critically criticized on the ground that it cannot be a sole criteria for recognition of new state under the statehood community of the International Law.

The declaratory theory comes into play on a newly formed states contains all the important and required characteristics that are required to be recognised as under international law and such state fulfil all the requirements and become a newly formed sovereign state.

³ Article on International Law Recognised States by Ayushi Chaudhary, June 8,2021

⁴ Recognition of states and government in International Law: Theory and Practice by Miyazaki Takashi

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

Whereas the consecutive theory states that other states acknowledge the existence of new state, then only such new state can attain the rights, duties and obligations as a sovereign state under International Law of United Nations.⁵

TWO MODES OF RECOGNITION: THE DE FACTO RECOGNITION AND DE JURE RECOGNITION

The De Facto is the primary as well as temporary recognition of state which is based on facts and could be conditional. This mode recognition is granted under two conditions i.e. when the states hold a sufficient territory and when one state control over other existing states. This recognition is given to a newly formed state as a chance to prove its stability and methods to settle the issue. The states having a de facto recognition are ineligible to be a member of United Nations.⁶

De Jure Recognition is given to states when such states fulfil all the essential characteristics and requirements to be a state. This recognition can be can to a state with or without a state being recognised as a de facto. To give recognition under De Jure 2 essentials conditions are need to be required i.e. permanent stability and legal satisfaction of statehood. It gives recognition as a sovereign state.⁷

For Example: Soviet Union was established in 1917, then only UK government gave this state a de facto recognition. On 1924, UK Government gave Soviet Union a de jure recognition.

Difference Between De Facto And De Jure

S. No.	Basis	De Facto Recognition	De Jure Recognition
1.	Type of Recognition	This is also considered way of factual and provincial recognition.	This is also considered as a recognition which is legal and final.
2.	Grounds	This is granted on grounds that when a newly formed state fulfils all the necessary requirements of statehood community.	It is granted on accomplishment of required essentials of the statehood community as well as states should have sufficient

⁵<https://www.defactolaw.in/post/understanding-recognition-in-international-law-states-governments-and-types#:~:text=De%20facto%20and%20de%20jure%20recognition%20are%20two,of%20formality%20and%20the%20legal%20implications%20they%20carry.>

⁶ De Facto and De Jure Recognition of States under International Law by Kirti Bhushan, 28th July 2020

⁷ De Facto and De Jure by Amruta Patil, 9th August 2024

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

			control and its permanency.
3.	Need of Condition	A state can be declared as a De Facto with mentioning certain condition or without conditions.	A De Jure recognition is non-conditional and final.
4.	Revocability	De facto recognition can be revoked as it is given on temporary basis.	De Facto recognition cannot be revoked as it is granted permanent basis.
5.	Series of step	It is the first step before De Jure Recognition.	It is given with or without previous recognition of state as Def Facto.
6.	Rights and Obligations	Newly formed states which are recognised as it has very few rights and obligations as compared to other existing states.	States recognised as De Jure has same rights and obligations than other existing states under the international law.
7.	State Succession	Staes recognised it is unable to undergo a state succession.	The recognised states under this can undergo a state succession as they are declared a separate and new sovereign state.
8.	Diplomatic Immunities	States of under this recognition cannot avail the benefit of diplomatic relations.	States of De Jure recognition enjoy all the benefits of diplomatic relations.

8

Withdrawal Of the Recognition

It could be rare but the recognition can be withdrawn either by other states or by international community.

There could be several ways of withdrawal of recognition to be expected:

- Wherein a government changes or new leader takes over the country.

⁸<https://byjus.com/free-ias-prep/difference-between-de-facto-and-de-jure/#:~:text=De%20facto%20is%20defined%20as%20a%20state%20of,accordance%20with%20law%20%28i.e.%20that%20is%20officially%20sanctioned%29.>

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

- States can be broken into smaller states leading to formation of new states.
- States are not recognising and abiding by the international laws or rules.
- When recognisers i.e. the other states or international community rethink on their decision to give recognition to a newly formed state.
- To force other countries or encourage disputes between other countries.
- The world politics could also affect recognition of states.

The International Law can withdraw the recognition of state as De Facto on grounds when that particular state is unable to fulfil the requirements or stated essential conditions of its statehood. This withdrawal of recognition can be done through 2 ways i.e. through declaration by other state or communicating with the authorities of other state or by issuing a public notice.

Within the scope of International Law, the withdrawal of state's recognition as De Jure is very debatable. A very strict interruption only can lead to withdraw of De Jure recognition. Its nature is legal and irrevocable. Recognition of states as De jure can be revoked only in exceptional cases which could be a case when it loses an essential characteristic of statehood. This type of revocation is to be done through a public statement only.

CONCLUSION

Therefore, it can be concluded from the above discussions that a state needs to be recognized within the scope of international law to enjoy all rights and privileges as a state internationally. It can be observed from the above research that when any state gets a de facto recognition it has limited or a few rights and privileges but when a state is recognised as de jure, such state will have absolute right and privileges under the international law.

During the process of recognition of states as De Facto or De Jure, there are many obstructions that are put in their way by questioning the essentials required the state to be considered for recognition by already existing states. This recognition of states is accomplished either by express or by implied form.

If any state wants to enjoy the privileges of statehood community under the International Law, then it is a must for such a state to recognise itself under the International Law to avail such benefits of statehood community.

REFERENCES

- <https://byjus.com/free-ias-prep/difference-between-de-facto-and-de-jure/>

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

- <https://www.britannica.com/topic/de-facto>
- <https://legaldictionary.net/de-facto/>
- <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/de-facto-and-de-jure-recognition-is-there-a-difference/E07EC9A27631BAD3F704486F9A92672>



For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>