

## Chapter IV Incidence and Continuity of Statehood

### 1. Introductory

**The state is a type of legal person** recognized by international law. Yet, since there are other types of legal person so recognized—*as emerges from the previous chapter*—the possession of legal personality is not in itself a sufficient mark of statehood. Moreover, the exercise of legal capacities is a normal consequence, *rather than conclusive evidence*, of legal personality: a puppet state may have all the paraphernalia of separate personality and yet be little more than an agency for another power.

**It is sometimes said that statehood is a question of fact**, meaning that it is not a question of law. However, as lawyers are usually asking if an entity is a state with a specific legal claim or function in view, it is pointless to confuse issues of law with the difficulties, *which undoubtedly exist*, of applying the legal principles to the facts and of discovering the important facts in the first place.

**The criteria of statehood are laid down by law.** If it were not so, then statehood would produce the same type of structural defect that has been detected in certain types of doctrine concerning nationality.<sup>1</sup> In other words, a state would be able *by its own unfettered discretion* to contract out of duties owed to another state simply by refusing to characterize the obligee as a state. Thus a readiness to ignore the law may be disguised by a plea of freedom in relation to a key concept, determinant of many particular rights and duties, like statehood or nationality.

*In starting from this position it will be apparent that the writer has in part anticipated the results of the examination of recognition in the next chapter. Nevertheless, as a matter of presentation the question whether recognition by other states is an additional determinant will be ignored in the present chapter.<sup>2</sup> The subject of state succession is also excluded from the discussion, and the subject-matter conventionally described by that label is considered in Chapter XXVIII. However, when the continuity of states is considered some attempt will be made to distinguish this from state succession.<sup>3</sup>*

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<sup>1</sup> See *infra*, ch. XVIII.

<sup>2</sup> Certain special aspects of recognition and its congenitor, acquiescence, are noticed *infra*, at pp. 159-61.

<sup>3</sup> See *infra*, pp. 82 ff.