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.[1] 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 oblige 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.[2] 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.[3]

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[1] See *infra,* ch. XVIII.

[2] Certain special aspects of recognition and its congenor, acquiescence, are noticed *infra,* at pp. 159-61.

[3] See *infra,* pp. 82 ff.