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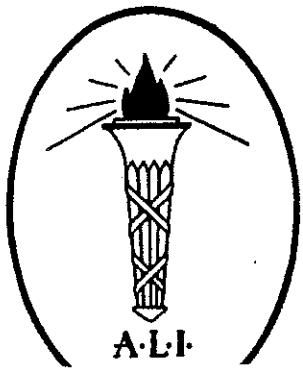

Chapter One

STATES

§ 201. State Defined

Under international law, a state is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.

Comment:

a. Definition of state. While the definition in this section is generally accepted, each of its elements may present significant problems in unusual situations. In the absence of judicial or other

means for authoritative and consistent determination, issues of statehood have been resolved by the practice of states reflecting political expediency as much as logical consistency. The definition in this section is well-established in international law; it is nearly identical to that in Article 1 of the Montevideo Convention on the Rights and Duties of States, 1933, 49 Stat. 3097, T.S. No. 881, 165 L.N.T.S. 19.

b. Defined territory. An entity may satisfy the territorial requirement for statehood even if its boundaries have not been finally settled, if one or more of its boundaries are disputed, or if some of its territory is claimed by another state. An entity does not necessarily cease to be a state even if all of its territory has been occupied by a foreign power or if it has otherwise lost control of its territory temporarily. See § 202, Reporters' Note 5.

c. Permanent population. To be a state an entity must have a population that is significant and permanent. Antarctica, for example, would not now qualify as a state even if it satisfied the other requirements of this section. An entity that has a significant number of permanent inhabitants in its territory satisfies the requirement even if large numbers of nomads move in and out of the territory.

d. Government. A state need not have any particular form of government, but there must be some authority exercising governmental functions and able to represent the entity in international relations.

e. Capacity to conduct international relations. An entity is not a state unless it has competence, within its own constitutional system, to conduct international relations with other states, as well as the political, technical, and financial capabilities to do so. An entity that has the capacity to conduct foreign relations does not cease to be a state because it voluntarily turns over to another state control of its foreign relations, as in the "protectorates" of the period of colonialism, the case of Liechtenstein, or the "associated states" of today. See Reporters' Note 4. States do not cease to be states because they have agreed not to engage in certain international activities or have delegated authority to do so to a "supranational" entity, *e.g.*, the European Communities. Clearly, a state does not cease to be a state if it joins a common market. See § 809.

f. Claiming statehood. While the traditional definition does not formally require it, an entity is not a state if it does not claim to be a state. For example, Taiwan might satisfy the elements of the definition in this section, but its authorities have not claimed it to be

a state, but rather part of the state of China. See Reporters' Note 8, and § 203, Comment *f*.

g. States of the United States. A State of the United States is not a state under international law since under the Constitution of the United States foreign relations are the exclusive responsibility of the Federal Government. A State may not make treaties (Article I, section 10) or otherwise engage in or intrude upon foreign relations to any substantial extent. See § 1, Reporters' Note 5.

h. Determination of statehood. Whether an entity satisfies the requirements for statehood is ordinarily determined by other states when they decide whether to treat that entity as a state. Ordinarily, a new state is formally recognized by other states, see § 202, but a decision to treat an entity as a state may be manifested in other ways. Since membership in the principal international organizations is constitutionally open only to states, admission to membership in an international organization such as the United Nations is an acknowledgment by the organization, and by those members who vote for admission, that the entity has satisfied the requirements of statehood. See § 222.

REPORTERS' NOTES

1. *Defined territory.* The requirement of a defined territory does not deny statehood to entities that at their creation were involved in substantial controversies about their boundaries—*e.g.*, Israel in 1948; Kuwait in 1963; Estonia, Latvia, and Albania, in 1919. See North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark & Netherlands), [1969] I.C.J. Rep. 3, 32; see generally Crawford, The Creation of States in International Law 36–49 (1979).

2. *Government.* Some entities have been assumed to be states when they could satisfy only a very loose standard for having an effective government, *e.g.*, the Congo (Zaire) in 1960. Crawford, Reporters' Note 1, at 42–47. A state may continue to be regarded as such even though, due to insurrection or other difficulties, its internal affairs become anarchic for an extended period of time.

3. *Military occupation.* Military occupation, whether during war or after an armistice, does not terminate statehood, *e.g.*, Germany's occupation of European states during World War II, or the allies' occupation of Germany and Japan after that war. An entity's statehood would be terminated if all of its territory were lawfully annexed, but not where annexation is in violation of the United Nations Charter. See § 202, Comment *e* and Reporters' Note 6. Compare the policy of the United States in the case of Estonia, Latvia, and Lithuania, occupied and annexed before the United Nations Charter was adopted. See § 202 and Reporters' Note 6 thereto.