Part IV

Subjects of International Law
Chapter VII  States as Subjects of International Law and the Expansion of International Legal Personality

I. Introduction: International Legal Personality Expanded

The domain of the subjects of International Law, which in the past was largely devoted – sometimes exclusively – to States, has lately been much enriched with the acknowledgement of international organizations and individuals as also subjects of the law of nations. In turning now to this chapter of International Law, my intention is here to focus on the expansion of international legal personality, rather than to review classic doctrine on the matter. This means to review new developments on the matter, with the advent of international organizations and of the human person, individually or in groups, and of humankind as a whole, also as subjects of the law of nations. This does not mean to overlook the international legal personality of States, which has already been firmly established in International Law a long time ago, and which has been overworked in the past. It means to concentrate attention, as from the personality of States, on the expansion of international legal personality in the current process of humanization of International Law.

II. Statehood and Recognition

The preconditions for statehood in International Law are those of an objective International Law, irrespective of the “will” of individual States. Suffice it at this stage to focus statehood in the right perspective, as distinguished from the question of recognition of States. It is, in fact, precisely in relation to the effects of recognition that the classic dispute between the declaratory and the constitutive theses arose. Recognition being largely discretionary, it has in practice operated

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1 In this chapter and in chapters VIII-XI, infra.
2 As to the classic prerequisites of statehood, gradually greater emphasis has shifted from the element of territory to that of the normative system, and, in more recent times, to that of the population, thus reflecting the current process of humanization of International Law; cf. chapter XXI, infra.
3 With regard to recognition in particular, the partisans of the constitutive thesis sustain that the act of recognition is decisive even for the emergence of the interna-