When Do States Disappear? Thresholds of Effective Statehood and the Continued Recognition of “Deterritorialized” Island States

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Overview

I. Thresholds of Effective Statehood
   1. Defined Territory
   2. Permanent Population
   3. Government
   4. Independence

II. Competence to Determine State Extinction

III. Duty of Continued Recognition

IV. Policy Recommendations
Thresholds of Effective Statehood

1. Defined Territory

• Importance of habitation for the qualification as territory
• Artificial islands qualify as territory
• Artificial installations might be accepted as territory

Thresholds of Effective Statehood

2. Permanent Population

• Quantitative and qualitative characteristics
• “Population nucleus” as “legal anchor”
• Acceptance of “caretaker populations”
Thresholds of Effective Statehood

3. Government

• Importance of maintaining a government
• Governments in exile represent existing states
• After departure of last “population nucleus”, possibility of a government in exile depends on the continued (constitutive) recognition of the island state

Thresholds of Effective Statehood

4. Independence

Factual Independence
• Self-sufficiency
• Threshold: dependence on foreign assistance

Legal Independence
• Legal autonomy
• Threshold: recognition as state

and/or
Who determines whether a state has ceased to exist?

• Individual states:
  bilateral denial of statehood

• The community of states:
  objective loss of international legal personality

• The United Nations:
  loss of international agency only with loss of UN membership

Duty of Continued Recognition

Effectiveness  Tension  Legality

• Defined Territory
• Permanent Population
• Government
• Independence

• The extinction of states must not violate fundamental norms of the international legal order ("jus cogens" norms)
The Principle of Legality

- Article 41 DASR: No state shall recognize as lawful a situation created by a serious breach of a jus cogens norm
- Legal duty to keep recognizing the international legal personality of the extinguished state
- State practice: unlawfully annexed states

Jus cogens norms implicated in the disappearance of Small Island States

- The right to self-determination
- Permanent sovereignty over natural resources
- Possibly: the “fundamental right to state survival”
Duty of Continued Recognition

Problem: Establishing a serious breach of these jus cogens norms

- Factual impairment vs. breach
- Difficulties of assigning state responsibility
- Moral duty based on international justice and solidarity

Duty of Continued Recognition

Advantages of maintaining “deterritorialized” statehood

- Presumption of sovereign equality
- Plenary competence in the international sphere
- Protection from (de jure) statelessness
- Administration of maritime zones
Policy Recommendations

• Ensure that a “population nucleus” stays on some part of the island territory, even if this territory is artificially reinforced

• If this is not possible: Ensure that some “caretakers” remain on some residual territory

• Maintain a government that claims continued existence

Thank you.