

# Valentin Bou-Franch\*

## The constituent elements of the State

### SLIDE 1

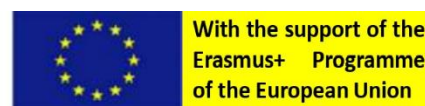
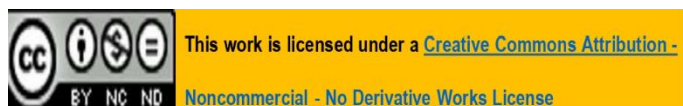
Hello, welcome. My name is Valentin Bou, and in this publication I am going to talk to you about the constituent elements of the State.

### SLIDE 2

As an introduction, we should note at the outset that there is no international legal norm that defines what a State is. In fact, international practice is limited to identifying the elements or requirements that must be met in order to qualify a given entity as a State.

The birth of a State, in general, is a question of fact, which international law takes note of.

There are many ways in which a State comes into being. A State can come into being: 1) through the process of decolonisation of the United Nations: more than 100 States came into being; 2) as a result of a resolution of an international organisation (e.g. Israel in 1947); 3) as a result of an international treaty (this was the case of Cyprus in 1959); 4) as a



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result of the dismemberment of a State (the Baltic States, i.e. Latvia, Lithuania, and Estonia, from the Soviet Union in 1991); 5) as a result of the dissolution of a pre-existing State (this was the case of Czechoslovakia, from which two States came into being: the Czech Republic and Slovakia): etc.

Despite the factual differences between States, the principle of sovereign equality applies to all: all States have equal rights and duties and are equal members of the international community.

### **SLIDE 3**

The first constituent element of the State is territory.

Territory is the territorial basis on which the State is based. It comprises: (1) land areas, i.e. the mainland (soil and subsoil), rivers and lakes; (2) marine areas, in the case of a coastal State. This includes: inland waters, archipelagic waters where applicable, and the territorial sea; and 3) airspace. It is the space overlying the land and, where appropriate, marine spaces.

Territory has two characteristics. The first one is the irrelevance of its size. Thus, we find micro-States, such as Andorra, as opposed to very large States, such as China. The second characteristic is that the territory is delimited by borders. However, it is not necessary for the delimitation to be complete.

For example, Spain has not delimited: 1) all its maritime borders with Portugal (to the north and south of the peninsula, as well as between the Azores and the Canary Islands); 2) all its maritime borders, between the continental and island territories, with Morocco; 3) its maritime border with Algeria; and 4) its maritime borders with France in the Mediterranean Sea.

I should add that territorial integrity is protected under International Law: (1) against the threat or use of armed force, by Article 2.4 of the United Nations Charter; and (2) against possible abuses of the right to decolonisation, by General Assembly Resolution 2625 (XXV).

## **SLIDE 4**

The second constituent element of the State is the population. The population of a State is the human community inhabiting its territory. It includes both its nationals and foreigners. On the one hand, its “nationals” are those persons, whether natural or legal, who are politically linked to that State by virtue of their “nationality.” On the other hand, “foreigners” include both those who have the nationality of another State, but live in its territory, and stateless persons or persons without nationality who also live in its territory.

Finally, I must comment on the scope of the State’s jurisdiction over the population, i.e. the

scope of the so-called personal jurisdiction. On the one hand, this jurisdiction is total over the population (nationals and foreigners) living in its territory. The only exception is foreign diplomatic and consular personnel accredited in its territory. On the other hand, it should be noted that extraterritorial jurisdiction, i.e. the jurisdiction that a State exercises over its nationals outside its national territory, is: (1) highly controversial when a State seeks to exercise it over its nationals living in another State, since in this other State, the latter is the sovereign State; and (2) there are no practical problems in exercising extraterritorial jurisdiction over: (1) vessels flying its flag; (2) aircraft registered in its territory; (3) registered objects launched into outer space; and (4) its scientific bases in Antarctica.

## **SLIDE 5**

The last constituent element of a State is the existence of an independent political-legal organisation.

For a State to exist, there must be a governmental and administrative structure that allows for the exercise of State functions. It should be noted that the form of the State (whether it is a unitary, federal, autonomous State, ...) is irrelevant, but it must be effective and guarantee the exercise of State functions.

As for the political status of government, it has traditionally been argued that it should be that which each State chooses. Today, this assertion is challenged by the strength of both the democratic principle (which requires democracy, the rule of law and respect for human rights) and the principle of good governance. The latter principle implies: (1) effective government action; (2) low levels of government corruption; and (3) the democratic functioning of public institutions.

I conclude by pointing out that if there is no effective government, then we will be faced with what is doctrinally called a failed State (cases of Somalia, Haiti, etc.). In extreme cases, the existence of a failed State can lead to the disappearance of the State itself.

## **SLIDE 6**

That is all I had to say to you. Thank you very much for your attention.