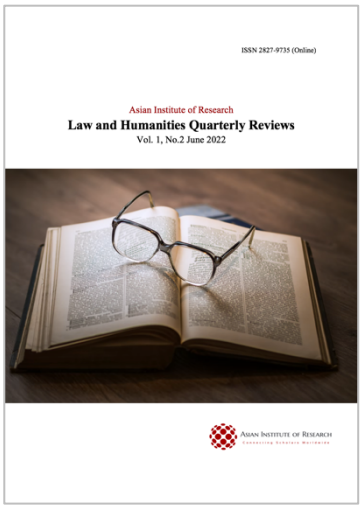

Law and Humanities Quarterly Reviews

Okeke, C. (2022). The Dynamics of Self-determination in the Context of Statehood and Sovereignty in International Law. *Law and Humanities Quarterly Reviews*, 1(2), 94-117.

ISSN 2827-9735

DOI: 10.31014/aior.1996.01.02.13

The online version of this article can be found at:
https://www.asianinstituteofresearch.org/

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The Asian Institute of Research
Law and Humanities Quarterly Reviews
Vol.1, No.2, 2022: 94-117
ISSN 2827-9735

DOI: 10.31014/aior.1996.01.02.13

The Dynamics of Self-determination in the Context of Statehood and Sovereignty in International Law

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Abstract
The dynamics of self-determination have increasingly demanded the attention of academics, policymakers, and the international community in general. This can be attributed to the new age of the communications revolution; peoples are increasingly aware of state systems and how they can be recognized and respected within a state system. These people, largely with peculiarities, whether to be recognized within a state or internationally, are now pushing to exercise what they perceive as their right to self-determination, which in their calculation includes the right to independent statehood; in international law, do these groups have this right? Is this new call a result of the dissolution of imperial powers, neo-decolonization or just increased international consciousness on the subject matter? How should the intelligentsia and the international community approach this issue in our modern-day? History has shown that self-determination movements often resort to violence to achieve targeted aims and objectives. The origins of these movements have continued to be a subject of debate within international relations and international law as well; however, the outside world continues to pay little attention to this thorny matter until conflict breaks out, leaving similarly ambitious groups with the mindset that violence is the only practical course of action. The issue of self-determination is often assessed from a formal, legalistic viewpoint. While most knowledgeable actors continue to address the issue mildly, it should be known that in practicality, the issue is far trickier than it looks on paper. Self-determination encompasses so many issues—including individual and minority rights, autonomy, state repression, territorial integrity, state sovereignty, and claims to independence, to name but a few—the intelligentsia and the international community should see this issue as one that cannot be treated lightly, at least for the sake of protecting lives and property. This paper extensively discusses the concept of statehood in international law, including the issue of state-building and the criteria for the rise of a state established in law. It further examines and interrogates the Montevideo Convention; also, this work explores the recognition of statehood in its classical and modern understanding as it relates to prevailing legal theories.

Keywords: International Law, People, Self-Determination, Sovereignty, Statehood, Territorial Integrity

1. Introduction

Modern legal scholarships suggest that there is a close correlation between the widespread understanding of the right to self-determination and the legal principles and concepts that explain statehood and state rebuilding. The right and legal concepts here fortify each other; the idea of attaining self-determination cannot be reached with a critical alteration to the form and shape of the state. But despite that, there is usually a clash when the

fundamentals of international law attempt to deal with these issues independently. For instance, the principle of state sovereignty and territorial integrity in international law is always linked with the tenet of statehood, while the right of self-determination among the intelligentsia has to do mainly with the protection of human rights, rule of law and equity; however, international organizations constantly tackle these principles in ways they deem convenient.

Therefore, when a people seek political self-determination within an established state, the issue of rebuilding that state takes center-stage; rebuilding state apparatuses and transforming the governing system usually see the emergence of a new state, particularly in its internal structure.

It becomes necessary to discuss what the state would look like if the right of political self-determination is pushed harder to shake the sovereignty of a state. The internal and external forms of the state come into focus and the legal criteria that make either internal or external self-determination succeed to become a serious issue for actors in the international legal system.

For the sake of the maintenance of world peace and security, modern and traditional legal scholarships have been concerned with the sovereignty of the state. At the same time, international law wants to protect the people and ensure that their political aspirations and whims are respected. These days, the sovereignty of most states has been threatened by globalization and various trade agreements, but most fundamentally, the core of the changes experienced in the sovereignty of a state has to do with the responsibility of the international community to preserve human rights and the rule of law within the acceptable legal parameters.

Under international law, the prevailing concepts in regards to statehood and state sovereignty go in contrast to the criteria for the right of self-determination. The worrying issue here, therefore, is whether the legal concept of statehood and the perseverance of state sovereignty contrast the contemporary notion among countries of the world of the understanding of international law and its capacity to embrace and promote the right of the people to self-determination.

In this paper, attempts are made to provide answers to these teething problems by examining the legal concepts and principles attached to the debate of statehood and state rebuilding and how the self-determination of a people can be impactful to this debate, particularly when we discuss their right to political self-determination which takes a greater form of agitation and persistence.

The concept of statehood in international law is discussed extensively in this work; the issue of state-building and the criteria for the rise of a state established in law, specifically, the Montevideo Convention, will be elaborated. The recognition of statehood in its classical and modern understanding will be explored in the context of prevailing legal theories. Lastly, attention will be drawn to the issue of popular demand for the right to self-determination and its effect on the political and legal tenets as they relate to state rebuilding.

2. The Notion of Statehood in International Law

What we describe today as the “principle of doctrine” is a new phenomenon that was made universal in the 20th century. Before this time, international lawyers and international treaties and documents did not include in their content the process of determination of an enclave’s statehood. Observers only argued that international law devoid of systematic set of principles about the determination of a people to form an entity was lacking in something critical. This issue has long been discussed for many years by international legal luminaries but not until the 20th century that a solution was reached. Despite the truism, the subject itself continues to draw legal attention to its loopholes and the need for an improved consensus lingers.

One unique trait of a state in our modern day and age is its territorial integrity. The state holds the highest power within its confinement. Outside of its bounds, the state is expected to abide by the internationally agreed principle of non-interference in the domestic affairs of other states.

Furthermore, the legal notion of a state describes a people that are aligned and arranged in unison based on their homogeneity and share common political, social, economic, religious, linguistic characteristics. This state has a military for protection and other institutions and apparatuses of government for its daily upkeep. All units are harmonized for the single purpose of advancing the cause of the people and better their lives. The state promotes social cohesion within a single mechanism and within limits of defined legal bounds. The state is a social construct that explains the lifestyle and expectations of a people while promoting their growth and quality of life.

Therefore, the notion of a state is one that has the attributes of complexities that are interconnected and integrated with each other. The state has elements that are designed to power its supremacy, to define its operational composition and to share powers to various organs within it. The state has a governmental framework with the powers to exercise its authority within the law and to uphold the doctrine of statehood as recognized by the international community.

Under a state structure, a government is a huge project which entails the procedures and modus operandi of not only administering its powers but by duly sharing it to all relevant organs within the law for the smooth running of the state. For a state to be recognized, its power must be derived within the confines of the law and not outside of that. Its power is described as what it generally accepted by the people of the state. The political power of the government distinguishes it from just being a nation. The essence of political power within the government is to enable it establish and run the state, while political power is not a pre-requisite for the existence of a nation.
The way the state is designed is such that the existence of an individual within it is different from the existence of a government that is organized by political parties as the legal organizations to manage its affairs. These parties have the power to make decisions on behalf of the people within and outside the state. The state being an independent unit has the traits of stability and enhances stability through democratic and proper representation of the people.

The architecture and systems of the state are dynamic and this is due to the fact that we have different political philosophies that individual states have decided to adopt and live by. Today, classic ideologies like capitalism and socialism are still being discussed and adopted by countries on the basis of what they think works for their people. There are countries that are “democratic’ and support the rule of law and others that are “less democratic” and keen to meet the yearnings of the people and work for their betterment and cohesion.

The political ideology of state administration surfaces in the course of its existence and growth, the criteria for state building or re-building varies and political scholars share different opinions on them. In the next sub-chapter of this thesis, I will be unpacking the various academic ideas to enable us understand the legal framework of state building and re-building as supported by the right of self-determination.

2.1. The Criteria for Statehood in International Law

The notion of state and its role in international law and international law, it is clear that only international law recognizes it and determines which territory is qualified to be labeled a state. Since the end of WWII, several attempts have been made to interpret and codify the word “statehood”. In the course of the deliberation over the legal draft on the Declaration on the Rights and Duties of States in 1949, the Vienna Convention on the Law of Treaties in 1956 and 1966 and the articles on Succession of States in respect of Treaties drafted in 1974, moves were taken to explain the concept of the State. However, none of these attempts paid the required dividend in regards to the definition as the debate continues.

In the context of international law, the make-up of a state on the basis of internal self-determination which allows the citizens the power to actively participate in the day-to-day policy making of the state is not far-fetched from the legitimacy on the grounds of the external form of self-determination. This work previously discussed the importance of the right to self-determination and its relations to international law and the doctrine of democracy and human rights. These evolutions have emerged as pivotal factors in the transformation of contemporary international law which is concerned with equality, social justice and human rights as contained in international legal instruments.

The criteria for the creation of the state are different and equally grown in accordance to the academic and ideological philosophies existing under international law. From historical perspective of the creation of "states" has demonstrated that the people or group which is part of the state is the sole reasons why the state is needed in the first place. Nationalism has been pivotal to the emergence of states with the citizens pushing for recognition on the basis on their peculiarities viz: ethnicity, language, culture, religion etc.

There is a nexus between the people, groups and political power under any form of government. The operational method of the state in carrying its people along in legislative, judicial and executive duties is signs of active nationalistic groups. In 1648 at the treaty of Westphalia, nationalism pulled European entities together into agreeing to allow peace reign and to unilaterally promote and sustain peaceful co-existence among the different people. At this time, entities agreed to demarcation of borders through legal regulations which was hinged on customary law.

Nationalism that brought about peace and demarcation of borders at Westphalia did not automatically create states but helped in building international relations and peaceful co-existence. This event s were instrumental in the building of international law because nationalism pushed the people towards greater goals and one of them later became the international legal system being practiced today.

The emergence and development of international law did not slow down the advancement of nationalistic states, international law has embraced many modern criteria that are in sync with modern legal ideology and developed gradually in consistence with the principles of international law. The new wave was actively noticed during colonialism and the process of decolonization and has persevered in contemporary legal teachings which advocates for the right to self-determination as the right of the people under international jurisprudence.

1933 witnessed a huge change in the evolution of state building and re-building under international law with the Montevideo Conference of that year. This Convention helped in decolonization and was instrument in settling debates surrounding the criteria of a state. This Convention emerged with four criteria for what makes a state and these are:

1. A permanent population
2. A defined territory
3. A government
4. The capacity to enter into relations with other states

Population is very vital if a state is to be recognized in international law and serves as one of the criteria in the orthodox international law. However, in traditional law, the role of nationalism was crucial and constituted important legal criteria for state building.

At Montevideo, the issue of nationalism was not in the cards and was therefore made an open debate; however, the issues of formation of multi-ethnic and multi-cultural states were encouraged. This theory shows the modern trend in the creation of states which aims at encouraging mutual respect among all people resident within a "state" or enclave. The emergence of states under legal framework promoted the possession of community members in securing a territorial boundary which leads to the standards for citizenship.

One of the criteria of a state is population and this element essential takes center stage when discussing what makes a state. If the population is made up of diverse ethnicity, culture, race, religion, linguistics, the borders of that enclave become the basis for combining that population within a state; borders are very necessary to be able to define the population and call them a state. This concept played an important role in the creation of the principle of territorial integrity as an essential part of contemporary international law. The relationship between population and borders is that they need to go hand-in hand to meet the legal criteria for state building and international recognition. Well defined borders are quintessential for a state to establish healthy relations with its neighbours.

The existence of a government is the third requirement for recognition of statehood. In some textbooks, it has been argued that this is the most important criterion required as stated by the Montevideo Convention; this is so because it builds the mandate upon which state building is emerges. A state without the functional apparatuses like the legislature, judiciary and executive branches cannot function in serving the people. So, it is essential that the state has a running government to meet with the aspirations of the people, as the state cannot gain international rights to relate with others without a functional government, and the role of this government is to serve the people and respect international laws which govern the relationship among states.

Furthermore, at the Montevideo Convention, international relations were a major issue raised and made pivotal as a buttress to the characteristics of a state as an entity that has a specific population, definite borders and a functional government. The international law that set up this this legal criterion emphasized international recognition as a prerequisite for the advancement of a state. State is seen as a member of the international community which avails it the required international legal position.

Some questions have been raised concerning the provisions made at the Montevideo Convention, and some of them are: Does the criteria for state formation as reached at the Convention serve as a matric in international jurisprudence for the formation of a state? Can a state only be formed through the recognition of the international community and its ability to gain rights and obligations derived only under international law?

Diagnosing the Montevideo Convention, shows that peace, security, human rights and the rule of law are essential features in state formation. The Convention was created to basically meet with these conditions, that notwithstanding, the basic criteria are also in sync with the intellectual philosophy of world peace and security.
The ability of the state to enter into relations with other states shows that it is designed to respect the international laws monitoring the activities arising from such relations. But, without the existence of a functional government, the state is weak and cannot carry out its functions, resist external aggression and create its own internal laws.

The events of WWI, WWII, colonialism and the Cold War changed the dynamism of the Montevideo Convention in terms of its international practices and these events have had various influences on the outcome of the Convention. These activates did not completely erode the practices agreed at the Convention in regards to formation of states. What happened was that additional international standards were added to the practices and modern legal ideologies, international organizations, non-state actors; both regional and international have since risen.

It can therefore we argued that the Montevideo Convention criteria were based on dynamism and these practices do not prove the reality of legal transformations. Looking at the various activities between states in terms of their relations, the Montevideo Convention criteria did not reflect futuristic changes.

The requirement of a state to possess a government is very fundamental in international law, but we have seen cases where countries exist without a government, at least for some time. The case of Somalia from the early 1990s is one and currently, Libya is in a very similar situation, with many warlords claiming control of the state. In international law, there is no strict requirement for a country to possess absolute power through various government apparatuses, but it is crucial that is has an effective government to oversee its internal and territorial activities and ensure the safety of the citizens.

Decolonization and the Cold War weakened the principle of states particularly in regards to their relations with other members of the wider world. With countries gaining independence, they were thrown into a world where they had to make a decision on which side of the fence to belong – the West or the East. These new states were not allowed to enjoy the true luxury of international relations and their affairs were reduced to largely the camp they chose to align with.

In his work, Defining Statehood: The Montevideo Convention and its Discontents Thomas Grantd submitted that the Montevideo Convention only thought of the situation on the ground at a particularly period in time and

did not apply a futuristic approach, particularly on the subject of statehood and state-building. The result of the Convention did not envisage a long time solution, rather it met with the conditions at the time for state formation, but some experts have argued that there is the need for a new Convention to address the matter. The criteria reached at Montevideo have come under scrutiny in recent years and the apprehension now is how the people being the source of government can defend their human rights and dictate their own political future without external interference.

At the moment, there is a rift between the criteria reached at Montevideo which are still prevalent in international law and the contemporary thoughts in today's international jurisprudence. One of the downsides of the Convention according to legal scholars is its failure to mitigate on the duties of a people vis-à-vis that of their government. The fact that there is a population and government does not automatically equate to a state, the lack of consistency in standards and the population does not represent the ideal state; these inconsistencies mean that a state may struggle to protect the rights of the people and ensure their security.

Another noticeable oversight from the Convention which later became contentious was that of military or coercive force. It did clearly forbid the use of force in state building, but did not make the required clarification when it comes to international relations. In today's world, the use of force is seen as a threat to global peace and security. The Convention did mention in Article 11 that states should not recognize any state acquired through military force such as foreign occupation of a land, but failed to highlight the criteria that must be met to legalize such an action. The question then arises – Do states in modern day and age abide by this standard under international law and when forced is used to attain statehood, what has been done about it as a way of correction or recognition?

The issue of recognition forms part of the debate but does not affect the standard of state-building. It does not mean that recognition is not important but on the contrary to prove that it is needed and be included in the criteria for statehood. International recognition implies that the new state has met with the other criteria as contained in the Montevideo Convention as agreed in international customary law.

In other words, if a newly formed state meets the other standards – a population, a government and a defined territory but lacks relations with other states due to a lack of international recognition, then it could be said that it does not meet the criteria agreed in international customary law. The new state however can enter into relations with other existing states on the basis of interests or sympathy, their recognition at that point lacks the ideal international relations and cannot be said to have completed the circle for statehood. So, for such a state to be admitted into international organizations, their recognition becomes a prerequisite, for such a state to be fully said to be a member of the international community those standards must be completely met.

The use of military force in state formation has been a common event in modern times and it is expected that states should be created based on international legal standards. Otherwise, states will be formed contrary to the norms stipulated in international law. The population requirement not equate to acceptance of military force in state-building. States play important roles in international law, therefore, the formation of state, or any form of changes that might occur to an existing state must meet with the standards outlined in international law because lack of consistency leads to lawlessness and anarchy.

In international relations, the standard of international law is an acceptable framework, it also the model on which the doctrines and ideologies of international human rights and obligations are supported. Be that as it may, the standards agreed at the Montevideo Convention on statehood in the context of international law have diminished. More emphases are being laid now on breach of international law in the formation of states, which means the acceptance of states to the principles of international law.

By this metric, states respect and abide by the principles of international law and maintain its international relations within the parameters of the international legal system. With acceptance and compliance to the principles, global peace and security can be assured, and public international law could be said to be effective.

Compliance to these criteria assures peace, security and economic cooperation, protection of human rights and the prohibition on the use of military force bar exceptions where such measures are defined and agreed in

international law. The Montevideo Convention was more theoretical than practical, the standards set might grant a state recognition based on fulfillment of the laid down criteria but might not gain it the expected legitimacy.

Legitimacy of a state rather could come through effective governance, harmony with the people and guarantee of the protection of the rule of law. The international community under these terms must accept the state as a member and accord it all respect required. Public international law works to organize public relations and how states can co-exist in the most peaceful way possible. A state that breaches the principles of international law has made itself illegal and unwanted in the international community.
The Montevideo Convention is believed to be incomplete or at best, a work in progress, the formation of states and state-building depends largely on realistic factors beyond the standards reached in Montevideo. In contemporary legal science, it is argued that the principles should be more harmonious and flexible to accommodation new developments. The criteria should include strict compliance to international law and that creation of new states is in line with public international law, which ultimately leads to global peace, security and cooperation.

International legal scholars are of the opinion that international customary law is larger and more thorough than the provisions reached at the Montevideo Convention because it operates on the practicality of international practices. International customary law has contributed substantially to the development to the doctrines and ambitions of international jurisprudence. It is therefore safe to conclude that the standards set at the Montevideo Convention are defective and laced with exigencies that needs addressing in the twenty first century based on the dynamism in legal science and theory that are in sync with modern legal forethought.

3. The principle of the right to self-determination in the context of statehood

International law was developed for the sake of governing states and the way they relate with one another within the global space. In recent years, we have witnessed changes to this pattern with individuals and groups making legal claims under international law as well. These groups and individuals have taken up important roles in the international space and have in one way or the other altered the arrangement of international law. Some have argued that this new position might clash with the orthodox notion of states and why it is supreme and might supreme any idea of initiating the right to self-determination in international law.

This orthodox perception was clear in the Montevideo Convention where the ultimate power rests on the government as against the people that it derives it, therefore, making the government stronger than the people it governs, which is an aberration.

Most areas of debate surrounding the right of self-determination and the existence of a state have mostly dwelled on the external form of self-determination and secession from parent state. This practice became common international practice during the decolonization process and post-colonization; groups not recognized international or merged with existing groups were forced to push for independence under what they felt was their right. The outcome of this aided decolonization particularly in Africa and pushed for some international agreements as witnessed earlier before colonialism, like the Asia Minor Agreement of 1916 that saw the dismemberment of the old Ottoman empire.

A new matrix on the international front has evolved with new practices on the right of self-determination which is also engineered by popular voice of the people in determining their political destiny. It could be correct, therefore, to say that gradually changes have occurred in international law in regards to state building and nationalistic alliances. This change has given rise to the modern states that respects the rule of law, protects human rights and promotes social justice and equality; it has also allowed the people more involvement in policy making on state affairs.

The modern system in the international legal system no longer dwells on the external form of self-determination like it did during colonialism. The new world order now takes into account the rights of the people on the basis of their constitutional and human rights more than the right to form a new state which has multiple implications

under international law. The issue of human rights has been an international discourse and continues to form the core of many international conferences on state, self-determination and a people. The states are now very conscious of this phenomenon and take serious policy decisions to protect human rights and engage the people more in the political activities of the state which they belong to. Public international law does not only impose legal principles that demand full protection for human rights but, more importantly, compelling states to provide rules that act as safeguards against the breach of these rights.

For state building to be complete, it must provide the environment that protects human rights. These provisions must be in consistency with international law and in sync with the desires of the people for the sake of global peace and security. Under the advocacy of the UN Charter, legal scholar and proponents of public international law have come up with principles built on three main factors: peaceful coexistence, the maintenance of international peace and the avoidance of the use or threat of military force or coercion

These three main factors are critical but most critical of them is the principle of international peace and security, which does not hinder in any way the right of the people to self-determine their political future. Adhering to this particular principle improves peace and most possibly eliminates internal strife and insensitive governments that work against the whims of the people.

Therefore, the right to self-determination has a direct effect on the formation of state, state building and state rebuilding through the aid of legal textbooks, traditional international law and international treaties and conventions as this thesis has highlighted in previous chapters.

The push for the respect of the right of self-determination in international law can gain momentum and become a force in state building and state rebuilding by actively participating in international political practices that will force the hands of the makers of contemporary international law. A state should therefore not be considered to be legitimate if it does not respect this right in international law. This can be enhanced through a compatible government –people state. The government should not be designed in such a way that it will impose itself on the people and disregard the political whims and caprices of the people.

As contained in legal texts and enshrined as legal standards, the process of state building under the concept of nationalism and claim to legitimacy by any government comes through the possession of a population (the people) that are pivotal for any state to stand. With colonialism and decolonization, new concepts have developed that have led to the creation of new standards for state building and state rebuilding.

The Montevideo Convention gave the legal impetus to these concepts and other formal standards of international law also added to it; such as the acceptance and fulfillment of principles and frameworks under international law for the recognition of a state in the international arena. The advent of the Cold War, witnessed a new wave of the right to political self-determination through legislations in international law. At the end of the Cold War, the right to self-determination has become a phenomenon globally acknowledged as a part of human rights and as presented by groups and international organizations.

The recent discourses have not implied that the right to political self-determination and the place of the people in political processes has not existence previously in the legal science. This trend with no doubt got a boast during the fight for colonial independence which was started after WWII. This later metamorphosed and became something bigger in international law with the end of the Cold War. One amply example is the membership of the European Union (EU) which was born post-Cold War, members must pledge to protect human rights and guarantee the exercise of the right to self-determination by allowing the people participate in the political processes of their states. The experience of the French Revolution and the overthrow of the Czar in Russia in the early 1900s aided the decision of the EU to arrive at the point where political participation is non-negotiable.

The idea of the state from inception was the outcome of the struggles of the people, the concept of state building materialized when the people a collective came together to build a legal entity called “State” to represent their interests and oversee the daily running of their activities; and most importantly, protect their rights domestically

and on the international arena. This struggle by the people has historical underpinning and developed when colonies were built and later when people demanded self-rule or independence and power to run the affairs of their newly acquired independent entities.

After the defeat of colonialism, this struggle was advanced by groups within existing states who demanded for an improved protection of their rights and participation in policy making within the state. Colonialism might have ended, but the quest for active participation in government affairs and protection of human rights continue to linger with the people asking various questions at various times regarding these issues. Historical, colonialism played a crucial role in state building under international law, today that cause is advancing with groups demanding to take charge of their political destiny.

The struggle for independence came with the emergence of political freedom fighters who pushed the colonists to relinquish authority and allow them run their affairs; these fighters in many countries were successful and handed the reins of affairs of their independence entities. The downside however, came when these freedom fighters took over power and refused to carry the people along in the running of the affairs of the state; suppressing their fundamental rights and placing them under dire socio-political conditions.

These self-acclaimed freedom fighters contributed to the collapse of the rule of law and social justice in newly independence states and supported a contentious regime. These activities led to the clamour by the people for the right to self-determination to be respected, this right today has been embedded into the system of state rebuilding and state formation through legal principles that promotes human rights and justice. Therefore, it is safe to submit that post colonialism and post-Cold War gave a new dimension to the right to political self-determination and standards for state building and rebuilding.

3.1. Examining the Legal Criteria for Statehood Post-Cold War

The Cold War era was a setback for the evolution of public international law by rendering invalid many of the principles set by the law. International interests and ideological politics added to the pressure witnessed at the time. Colonized people during this period were divided along two major lines of East and West blocs and were persuaded to form political parties along these ideals of these blocs. Each side wanted to win new states to its camp and solidify on its global goals. The former Soviet Union supported countries that leaned more towards Communism while the US and its allies pushed for capitalism and encouraged political parties to be formed along that ideology.

The collapse of the former Soviet Union and Yugoslavia in the early 1990s witnessed the dismemberment of states under the countries; these events opened up a new international practice that saw the rebuilding of states. During this time, the other members of the international community were more concerned about the protection of human rights and the exercise of the right to self-determination. The events of that period were a boast to groups and individuals who desired to engage in the politics of their states and subsequently went into forming new political parties. The republics under the former Soviet Union sought for independence and the people unanimously supported the action as was the trend at the time.

Various republics that later became independent states had referenda across the board and overwhelmingly the people asked to be separated from the parent state. The then Soviet Union did not oppose these actions and the international community also welcomed it as progressive and in line with the principle of right to self-determination. The new states met the traditional standards for state building but most importantly, had the support of the people and derived legitimacy from that support. The acceptance of the new state by the people was important or it will disintegrate in no time.

The evolution of the principle of the right to self-determination got into a critical stage globally when the whims and caprices of the people towards forming political parties and participating in politics began to gain greater international attention. At this point, international law began to frown at resistance of government towards groups exercising the right to self-determination.

State building as witnessed in East Europe supports this evolution as some communist states in that region were able to agitate for more political participation and change in the running of the affairs of the state; they particularly forced the states to prioritize human rights and the right of the people to self-determination. The fallout of these events have developed and been entered in various international legal texts and conventions, such as the Commission on Human Rights Resolution No. 2000/47 (2000)284 and No. 2002/47.285. The UN in recent times has encouraged state rebuilding as witnessed in Haiti in 1994, Somalia in 2014 and the Arab Spring of 2011 in line with the principle of self-determination.

It is innate in humans to fight for their freedom and sometimes lose their lives in the cause of it. History has demonstrated this on several occasions. Therefore, it is expected that a people should not be subjected to a government that does not represent them in the ways they like. One of the duties of a state is to defend itself against any foreign invasion, militarily or diplomatically, but at the same time, it is the responsibility of that state to defend the right of the citizens and avoid internal conflicts as a result of bad policies towards the people.

In the case of an internal conflict, contemporary legal submissions tend to be sympathetic to the principle of the right of self-determination and do not agree that an unpopular government should have its way or impose itself on the people. The right to self-determination in this context enjoys support under international law and encourages it to push for state building or rebuilding as the case may be.

The long line of events that led to the creation of the principle of the right to self-determination and its effect on state building and rebuilding cannot be overemphasized. Legal texts and events such as the International Covenant on Civil and Political Rights and the Declaration of Helsinki have also given credence to this right and opposed unconventional governments as witnessed in South Africa before 1990.

The Cold War era no doubt witnessed several clashes by the two political blocs and stagnated the evolution of the right to self-determination and state building, but the years following the end of the Cold War saw a more stable international community that supported the right to self-determination and the protection of human rights. The trend post-Cold War reflected the creation of a new set of criteria in the international space, that of harmony between a government and the people, where they agree to run the affairs of the state as equal partners and not one imposing its will on the other. The whims of the people were paramount and protected by the constitution. The government must prioritize the people and engage them actively in the management of the state so that as a team they can attain their goals and achieve social justice which sustains peace and security.

In Robert Delahunty views, states in modern days are accepted based on antecedents of the past, he argued that if a state has a government that is not harmonious with its people, then there is a major conflict there and that implies that the state is no longer perceived as one before the other members of the international community.

The people as understood in international law are well protected; however, they are still subjected to domestic laws and institutions of their various countries. Be that as it may, the government cannot neglect the rights of the people and the need to uphold the rule of law all the time. There should not be any places for segregation and minorities should always be protected. There must be an independent law system that consciously protect the rights of the people and encourage their participation in politics.

Events after the Cold War have continued to the growth of the new criteria for statehood and the right to self-determination, among other issues such as social justice and human rights. Political thoughts have since been more sensitive to the issues of racial, religious and social discrimination. The role of non-state actors has also boasted the importance of this right and encouraged the discourse around state building and rebuilding in international law for the sake of peace, security and economic cohesion.

4. Recognition of Non-State Actors in Relation to the Criteria for Statehood

The end of WWII the world has seen the rise of various international legal organizational, some of these organizations are setup regionally with legal frameworks regulating activities within that space while are set up just for a defined objective and adopting a particular problem as the core of its operation. These regional organizations have influenced international law to a large degree. The EU, AU, Arab League are some of these organizations that have made human rights the hallmark of their campaign. The EU's Charter on Fundamental Rights is one example that is now an internationally adopted.

Subsequently, we have also witnessed the impact of non-regional organizations in the uplifting of public international law. These organizations have helped designed some of the rights legal experts discuss today in international law, particularly, human rights and the right to self-determination. The International Labour Organization (ILO) and the UN High Commissioner for Human Rights are some of the examples of these organizations; the Human Rights Watch as a non-state actor can also be mentioned.

In spite the presence of these regional and non-regional organizations, the most crucial non-state actor dominates within the confines of a state and worries international observers is the opposition group or party. The international community often finds itself in serious dialogue with these oppositions which in itself means that they are recognized and seen as important members of the state. Furthermore, this recognition in some cases imply that the legal agitation of these opposition groups are legitimate and stems from the way the government has managed their affairs, particularly in issues relating to political participation and protection of human rights. The international community is of the opinion, that the earlier the issue is resolved, the better it is for global peace and security.
The non-state actors cannot achieve their goals if they lack recognition from the international community, their actions must be in line with the doctrines of peace and security as preached by members of the international community, and their request for international organizations and states to take actions on their behalf must be consistent with international law. Their issues therefore accounts for some of the rules adopted in modern international law and enshrined in some international legal texts.

Non-state actors within an existing state cannot work effectively without the firm support of the general population and assurance of the protection of their rights. What this implies is that the people have to mobilize and push the non-state actors to act on their behalf in the event that government has derailed and no more a representation of the general will of the people. In other words, non-state actors need the people solidly behind them as legitimacy to push forward their aspirations. Non-state actors under international law are protected and have rights and obligations and the people behind them are subjected to the rules of international law.

Article 9 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, supports this argument and states in clear terms that 'the conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority'. This principle gives non-state actors within an existing state the legal backing to operate and carry out their assignments and not to fall foul of international law.

The role of non-state actors is not underplayed in any way when it comes to the protection of human rights, nor does it relegate the nexus that exists between human rights and self-determination. The formation of a state should take into proper account the existence of non-state action particularly as it relates to political participation and self-determination under international law. All non -state actors have a place in international law and this cannot be negated in any way; be it regional, domestic or legal organizations. One vivid example is the recognition of opposition group in Syria and the approval of the state for them to participate in the management of the state under domestic legal mechanisms.

Non-states actors have polarized the academia when it comes to the issue of how important they are in the international space in regards to state building and rebuilding, nonetheless, these organizations have altered the

international legal system, one way or the other through essential legal ideologies. The role of non-state actors cannot be underplayed since they are responsible for several successes achieved in the international arena in regards to human rights and respect for the rule of law. The need for harmony between the government and the people is essential and the presence of non-state actors has indeed encouraged this relationship in so many ways.
The presence of non-state actors does not only make states take the issue of human rights seriously, but it also plays an important role in determining the legitimacy of a government and the degree to which it can partake in international relations; violation of certain rules if put forward by non-state actors can lead to the expulsion of a member of a legal international organization. The AU's Article 30 of the Constitutive Act stipulates as follows: any 'governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union'. Recognition of a state is critical and its relationship with non-state actors helps it before the international community, since international law respects the role of these actors.
Therefore, by invoking international legal criteria for state building and state rebuilding, the issue of recognition and acceptance come to the fore. It is no gain saying then that international recognition demonstrates that an entity has met all legal criteria for statehood and agreed to abide by international law and form a harmonious relationship with the people.

5. International Recognition of the Right to Self-determination and State Recognition

Emerich de Vattel (1714-1767) asserted in his *Le droit des gens, ou principles de la loi naturelle, appliqués à la conduite et aux affaires des nations et des souverains* that a State needs but be independent and sovereign to benefit from equal status with all other sovereign States in the natural scheme of things.

State recognition is very fundamental in international law and some legal scholars have described recognition as the free will by which one or more states accepts the existence of a defined boundary with human population and organized under an effective government and also capable of complying with the obligations of international relations and international law. There, there is a relationship between what constitutes a state and the legal recognition that acts as evidence to buttress this recognition by members of the international community.

The presence of international organizations has encouraged state recognition to evolve in its role in the formation of states and state rebuilding. The birth of the UN in 1945 gave the legal right for international organizations and non-state actors to emerge; these players took up the critical assignment of the recognition of states in consistency with rules in international law.

State recognition in the early years was not too significant in the law of nations which could be said to be the same with international law of today. What made a state at the time were largely de-facto independence, the recognition of the state on the basis of the criteria set out today was not required then. Gradually, legal scholars became to assert that recognition by a state for the creation of another and its participation in international relations was necessary for its engagement on a practical ground.

Before the advent of international organizations, we had recognition, but in more subtle form; the emergence of these organizations solidified the argument and gave concrete backing to the legal standards for state recognition, state building and state rebuilding. Before then, most recognition was based on leverage and political interests; these organizations therefore have made the legal system of international relations closer in relations with modem legal ideology. Unilateral or self-recognition is usually based on partisan thought or ethnic interests while collective recognition ensures the fulfillment of all international criteria for statehood under international law.
International organization under the principles of international law has become active players in assessing and sanctioning the right of a people to form a state and exercise legal duties. Prospective states to belong to any international organization have to meet with the legal and political attributes of other states before they could be granted membership. The UN Charter is clear on this and on its admission of new members. The state must appreciate peace and security and agree to abide by the obligations of the UN as enshrined in the Charter.

The UN therefore admits only members willing to meet with these obligations at all times. Internal conflict does not excuse a state from performing these obligations as those conflicts could be as a result of the government to meet with the demands of the people. This as to do with an already existing state, but the rebuilding of a state is different and falls under different conditionality. The question would be: what are these criteria for state rebuilding?
To answer this question, one has to take a look at the UN Charter. Article 1 stipulates the purposes of the organization and paragraph two of that Article explains the purpose further by outlining that members should be respectful of the principle that equality and social justice were key; and that the people have the right to exercise self-determination.

Article IV clearly highlights that all members should abide by the rules as enshrined in the Charter. Any state that does not meet the rules and the yearnings of its people are in breach of the principle working against the right to self-determination. Organizations such as the UN do not agree to state rebuilding without proper attention paid to the right to self-determination.

The government that fails to meet the needs and aspirations of the people might be prone to internal strife and this would threaten the peace and security of that country and by extension the peace of the world. A situation like that is against the ideals of the UN and the whole essence of international law, which is all about global peace, security and cooperation. Therefore, it is compelling of the state to promote peace and security and be committed to the principle of the right to self-determination which stems from the people. International law is very concerned about the rights of the people and the obligations of the state towards the people.

Therefore, for a state to gain recognition, internationally, it must be ready to fulfill the obligations set by international law and one of them is that of the right to self-determination of the people and also to provide internal mechanisms to protect their human rights. There must be a correlation between the recognition of a state and its recognition of its duties and obligations towards its people.

Recognition of a state in international under the Montevideo Convention states in clear terms that the ability of a state to engage with another means it has met with all the criteria enshrined in the Convention. The Convention respects the right to political self-determination but did not give clear details on the mechanism; this responsibility has been taken up by various other organizations in explaining how and what self-determination entails.

Many legal scholars have come up with various explanations of what state recognition is or should be under international law, however, attempts have been made to build a consensus among divergent views on what should be commonly acceptable through practice use. These efforts have seen some positives results in international practices as adopted by contemporary legal organizations in concord with the Montevideo Convention.

State recognition is not limited to the standard of a state to participate or relate with other states but on some other well laid out standards; but recognition is the origin of the existence of a state and evidence that it has met the required criteria as stated in international law. The UN is very emphatic on this and stresses that for any recognition, the state in question must respect international law. Progressively, the nexus between state recognition and consistency in international law would be discussed as it relates to the right of a people to self-determination which is one of the core issues of this thesis.

Various legal texts have discussed the legal frameworks of state recognition and how it helps in state building on the international arena and how the other members of the international community receive such a state. The interesting ones for this research are the constitutive theory and the declaratory theory.
These theories have been scrutinized in many ways by many legal experts who have spent quality time trying to understand them, dissect how they operate and analyze their strengths and weaknesses. We will be extending these researches by further exploring the roles they play in the right to self-determination, and the need to have a standardized theory workable internationally. This work will dig deeper to find out if there are areas where

common grounds have been found and how homogeneity can be introduced to recognition under contemporary international law.

5.1. Constitutive Theory of State Recognition

It could be correct to say that state recognition was at the beginning founded on the basis of Constitutive Theory of Statehood and this argument has its history at the Peace Congress of Vienna in 1815 where the act arrived at this congressed gave recognition to only 39 states at that time; these were only European states. This congress concluded that state building or rebuilding and recognition was subject to acceptance by existing states only. The argument according to the states was that the theory of statehood should have its "longevity" with those that established the act.

The Constitutive Theory deems a state to be a legal person in international law only when its recognized as fulfilling all standards of statehood by existing states. In his comment, Oppenheim submitted that "International Law does not say that a State is not in existence as long as it is not recognized, but it takes no notice of it before its recognition. Through recognition only and exclusively a State become an International Person and a subject of International Law".

This legal thought matched with the postulation of Hegel who asserted that a state is sovereign and independent against other states and having the full rights in the first instance but admitting that the recognition of other states was equally critical in that new state becoming a member of the international community.

The Constitutive Theory is aware that states might exist without recognition but such a state cannot attain full international legal recognition without the acceptance of its neighbours and how they are perform in international relations. There for state building or rebuilding is at the mercy of the existing states. This theory however has its flaws and could lead to new states acting in certain political way to please other states, thereby lacking its own true political ideology.

The core weakness identified in this theory is its inconsistency in recognition, a situation where a state is recognized by some and not by the others. By strict implementation of this theory, a state that does not have the unanimous recognition of other excising states would not be seen as a legal person in international law and cannot carry out obligations related to international relations. The new state therefore needs an overwhelming acceptance to be welcomed to the international community.

The absence of a standardized rule or a regulatory body to declare that a state is recognized or not will continue to make this matter a subject of academic debate; the new states should be able to abide by international law without necessarily being at the mercy of existing states and in some cases, subjected to the political will of an older state.

5.2. Declaratory Theory of State Recognition

The Constitutive Theory of Statehood was dominated from 1815 until it new international legal thoughts disrupted it. The shift in political thinking of the 20th century ushered in a new theory that brought about a theory some scholars have considered more realistic. The century before WWI saw the creation of some states in Europe like Germany, Italy, Russia, Romania etc., post-WWI saw the creation of even more states in that region like Poland, Yugoslavia, Czechoslovakia etc.; we also witnessed the creation of mandates in the hands of Britain and France in some regions after the demarcation of huge empires like the Austria-Hungary Empire and the Ottoman Empire. Most notably around this time was the political rhetoric of President Woodrow Wilson of the United States on his Fourteen Points advanced the doctrine of self-determination which in the long run at huge outcomes for the international order.

The fallout of this new paradigm led to the Constitutive Theory losing its place in the international legal space in favour of a more accepted concept which was termed the Declaratory Theory of Statehood. The proponents of

the Constitutive Theory still hold the view that recognition was an essential requirement for statehood; the apostles of the new theory which was birthed at the Montevideo Convention in 1933 dismissed such thoughts with their own matrix enshrined in Article 3 of the treaty reached at the Convention; arguing that statehood is not contingent of recognition by other states that a state does not need to get international legal backing from others to perform its roles and obligations in international law. In other words, the recognition of a state simply means the admission of a true situation.

Some legal theorists have argued that the prevailing practice among states is torn between these two theories, the odds in this age tilts more to the Declarative doctrine. The rules arrived at in Montevideo in 1933 still prevail among members of the international community and has been repeated by the Badinter Commission (for the former Yugoslavia).

5.3. The Contrasts between the Constitutive and the Declaratory Theories in Recognition

The declaratory theory is torn between the principle of recognition by diplomacy or recognition by existence. For example, the Principality of Sealand has no official international recognition part from the recognition of existence granted it by Germany, but the Royal Bates family that owns the state has vehemently argued that the recognition of Germany was enough. The declaratory theory of state recognition stipulates that a state is seen as one when it complies with the minimum standards for statehood, in other words, the recognition granted by other states becomes mere "declaratory"

None of the two theories of state recognition meets with modern practice of state building. The declaratory theory asserts that territories can easily by the fact of their existence be labeled as having a legal standing, which in itself confuses fact with international law or principle. If the theory dwells on effectiveness as its core doctrine, it is still important that it is a legal doctrine. A state is not a mere fact, but a reality that is based on laid down legal procedures which every other state is ready to abide by. Therefore, the rule should not only be based on fact but on fundamental principles as agreed by the international community.

On the other hand, the constitutive theory, although it draws attention to the need for cognition, or identification, of the subjects of international law, and leaves open the possibility of taking into account relevant legal principles not based on 'fact', incorrectly identifies that cognition with diplomatic recognition, and fails to consider the possibility that identification of new subjects may be achieved in accordance with general rules or principles rather than on an ad hoc, discretionary basis.
The beauty of the declaratory theory is that it does not create an artificial class among members of the international community and does not allow a group of people impose themselves on the others or their state; the simple objective of international law is to ensure that the people form the government that is best suited for them. They are given the power to dictate and run their own internal affairs provided that the government meets the legal standards agreed in international treaties and international law in general.

Some scholars are of the opinion that declaratory theory unites the states more than constitutive and gives them a sense of belonging in the international community. Constitutive theory contrasts that by allowing some states feel isolated and unwelcome in the international community. Northern Cyprus and its people is one example. Only Turkey recognizes it just as we cited with the Principality of Sealand, earlier.

Declaratory theory gives more room to a state and how it organizes itself within the international community, which has to do with its politics, economy and general well-being of its citizens. The state above every other thing has the obligation of obeying international law and respects its neighbours. Some texts have argued that declaratory theory supports de-facto or unconstitutional government which gets to power through arms or the annexation of a state by another, but this school of thought has its flaws because declaratory theory does not advocate for an unconstitutional government and does not accept a state that has not met with the international criteria for recognition.

This claim is buttressed by the criteria by which statehood is attained through the books as contained in the UN Charter which states in Article 4 paragraph 4 that the UN membership is open to all countries that 'are able and willing to carry out these obligations'.

The responsibility of states in the international community is not only written in the UN Charter but in some other regional treaties and legal instruments. Another argument can emerge from one phenomenon that all new states are a products of an old state through secession of some kind; this new state will require recognition from its mother state which then implies that the constitutive theory is in synch with this situation. Some of the submissions to back this claim are the Bangladesh experience in 1971 when it seceded from Pakistan with its consent; Eritrea from Ethiopia in 1994 and more recently, South Sudan from Sudan in 2011.

One would argue that the new states mentioned above did not completely meet the legal criteria set for state building or rebuilding, this argument interestingly has polarized the legal community with opinions divergent. Since these secessions occurred under international supervisions and the new states have been able to join both regional organizations of their region and the UN is a vindication of their recognition. It therefore means that they complied with the international legal standards and ticked all the boxes as stipulated in the Montevideo Convention of 1933. Most importantly, these secessions give credence to the claim of the right to self-determination and the power of the choice of the people that voted in the various referenda.

Legal scholars that are of the opinion that the consent by a parent state is a prerequisite for statehood align more to the constitutive theory but this theory and conviction falls contrary to the right of self-determination; this is so because this right stems from the people and their desire to manage their own political affairs within the framework of international law. The danger here is that when the people are refused the space to exercise their right of self-determination, they might resort to armed skirmishes and disrupt the peace and security of the parent state and by pushing this agenda militarily would constitute a threat to international peace and security as well.

Eritrea before 1994 and South Sudan before 2011 are two clear examples of armed conflicts that would have been avoided if the parent state had agreed to secession by the dissatisfied group. In South Sudan, the world witnessed a protracted armed conflict that took so many lives and disrupted peace and security not only in the country but in the region in general. The government of Sudan eventually allowed for a referendum with an overwhelming outcome that allowed South Sudan to be independent. Eritrea had a long stretched conflict from 1961 up until 1993 when the government of Ethiopia agreed for the people to conduct an election and be independent as well.
Another case in question is Kosovo where the UNSC Resolution 1244 of 1999 granted the people's wish of independence after a bloody war waged against the Federal Republic of Yugoslavia which is the parent state. The UNSC decision was aimed at bringing peace and security to the country and region and by extension granting the people's right to self-determination; but hitherto, Yugoslavia has not supported the right of the people of Kosovo to self-determine their political destiny outside the borders of Yugoslavia, rather granted them autonomy within the bigger state. In 2008, Kosovo went ahead to declare independence and has since been an official member of the UN and the IMF; it has also gained recognition from over 100 countries around the world.

From the above thesis, it is evident that the declaratory theory perceives state recognition as a political activity embedded in the ability of the state to perform and its diligence before the international community when it comes to the respect of the rules of international law. Constitutive theory on the other hand opposes this concept of statehood and does not think it is enough for the recognition of a state.

The contrast established so far does not imply that declaratory theory does not take into account the place of recognition in state building, rather what it does is to sync recognition with the legal criteria set at the Montevideo Convention and sees recognition as what every responsible state should do when a new states has met those criteria. In other words, it's the responsibility of the other states to do the rightful thing of recognizing a new member that has just met all international legal standards.

This concept ensures that a new state is not subjected to the caprices of an old state because it granted it recognition. Be that as it may, it is still unclear and not as explicit as one would have thought when we talk about statehood and recognition due to the paucity of legal documents on the subject-matter under international law, at least since the Montevideo Convention. Even when we accept the rules reached in Montevideo, there are still no clear evidence that every state has met with them. Declaratory theory faces more conundrums than the constitutive theory when we apply the Montevideo Convention, but the argument that supports it will be the ability of the new state to meet the rules and obligations of international law.

The ability of the new state to meet these rules and obligations will give it leverage before the international community and supporters of public international law. That affirmation will be made known when such a state is admitted into the UN and/or regional organizations like the EU and AU. The UN and other regional organizations have in common the enthusiasm of international law and when a state is recognized by either or both organizations, then it can be said to have attained statehood. Therefore, it is difficult to have other concepts that will go against this one since it appears to be more realistic in the day and age we live in.
The rules set in customary international law and international treaties have been constant for a long time and once a new state is able to accept the rules of international law and meet with its international obligations as well as that of its people then it is a member of the international community. These criteria can be found in the legal texts of international like the UN Charter that compelled all member states to fulfill their obligations at all times. Regional organizations also have these rules and its compliance makes a state recognizable.

The Montevideo Convention criteria on state recognition to some legal scholars are not broad enough in scope coupled with the debate surrounding the interpretation of the criteria as a whole. There have been arguments on widening the scope and infusing more conditions for statehood and some of these suggestions have been – that a new state have the characteristic of democracy, popular support, respect for rights of the minorities and willingness to comply with international law. The need for what has been described as “Revised Montevideo Criteria” calls for the infusion of statehood with considerations that better reflect changing normative standards; the need to eliminate ambiguity also becomes pertinent to allow for lesser dispute when issue of self-determination arises.

The revision of the declaratory theory stresses the argument among legal scholars that the only practicable theory at the moment is that of declaratory. It is seen as being compatible with international legal practices that encourages the right to self-determination and seek to advance global peace, security and cooperation among states.

6. How Can a State be Recognized under International Law?

The recognition of an entity as a state implies that it has met with all the criteria of statehood as stipulated by international law. These criteria were clearly written in the Montevideo Convention of 1933; in this day and age, not all political communities that claim to have attained statehood or met with the requirements of Montevideo are recognized by the international community. This then begs the questions: What community is entitled to state recognition? Which legal body determines this state recognition? These are questions that keep coming up in legal debates when the right to self-determination takes center stage. Around the world, we have issues that epitomize this conundrum and they have refused to be resolved or disappear. The Kurds in the Middle East are still battling for recognition via the right of self-determination over what they claim to be their homeland. There are also cases of Nagorno Karabakh (Azerbaijan), Abkhazia and South Ossetia (Georgia), Northern Cyprus (Cyprus) or Transnistria (Moldova), that see themselves as independent yet lack recognition by the international community.
WWII saw global transformation in state building and the collapse of the old Soviet Union even elaborated this phenomenon. Conflicts, fall of empires, diplomatic secessions, decolonization all led to the formation of new states at one point or the other in our history. Most of these states were products of the right to self-determination. Did the new states meet the international legal criteria for statehood? This has also been a question that has polarized scholars of international law.

The case of the US in 1776 and its declaration of independence shows a different dimension to recognition, which again goes to say that the process is not easy or simple as written in the books. Recognition in summary is the ability of a state to function effectively within the international community under the rules and obligation of international law. Self-rule by secession, armed conflicts or any other means, show the desire of a people to determine their political future without external intervention. It is then the desire of the people that does not seem measurable through the lens of legal norms and doctrines.

The Montevideo Convention was explicit on the conditions for statehood and these have been a guide for statehood since 1933. The question therefore is: if a political entity is not recognized and allowed the freedom to engage in international relations under the norms of international law, what then is the nexus between recognition and sovereignty of a people?

7. Criterion for Homogeneity and Integration in the Context of State Recognition

The repeat of many international legal practices have led to its normalization and acceptance, looking at the criteria of homogeneity and integration in international jurisprudence shows a variation of cases in which the UN has been firm on with results proving to be popular and decisive. The case that readily comes to mind is that of Southern Rhodesia, at this time, the UN was firm and issued a Resolution tagged Resolution No. 288 (1970)406 which made it clear that the new government was not recognized. The UNGA Resolution No. 2946 (1972)407 equally encouraged its members to abstain from any form of relationship with the apartheid regime then in Rhodesia.
Why would the UN issue such a statement and what were the factors that necessitated it? The answer might not be far-fetched. The lack of harmony between the government and the people was clear and enough reason for the UN to step in. The people saw the government has high-handed and not representative of their interests. South Africa is another case where the same Resolution was reached. The UN and the international community did not support the government of the country which did not meet with the yearnings of the majority of the people of the land. Thus, there was no homogeneity between the apartheid regime of South Africa and the people.

The UNGA in pushing its actions further in South Africa emerged with Resolution No. 554 (1985), which nullified the new constitution of South Africa on the grounds that it was not representative of the people of the land. The period also witnessed the enactment of Resolution (A/RES/S_16/1), of 1999 which asked the apartheid regime of South Africa to establish an all-encompassing democratic system which will carry the people along. In 1994, the UNSC doled out another Resolution tagged Resolution 919 which indicated that the organization was pleased with the democratic elections in the country, which saw Nelson Mandela as the first black president of the country.

The above cases are clear indications that under international law, governments that do not conform to the aspirations of the people, particularly when they are racist like the case of South Africa are not welcomed. Therefore, that position under international simplifies the role of homogeneity and integration and how they lead to state recognition on the international arena.
State recognition does not hinge solely on the orthodox standards of recognition like the Montevideo Convention for state building but defends largely on the will of the people and their role in the policy making of the state. The ability of the people to be carried along and consulted when decisions are to be made is critical and makes this standard important. The EU is also keen in observing this standard among its members and calls for exercise of rights and mechanism to protect the people particularly minorities. The EU designed the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union in 1991 to help bring about peace and security in the region. These norms hugely promoted the criteria for homogeneity and integration for forming of new states and rebuilding of old ones.

The preamble of this text clearly sided with the principle of the right to self-determination and this was reiterated in the Helsinki Final Act with emphasize on the rule of law and protection of human rights. These principles became legal prerequisites for new states coming out from the old unions to gain recognition, in these texts; the

compliance with the right of self-determination depicts the criterion of homogeneity and integration in two legal dimensions.

Further to the legal texts which covers the protection of human rights, particularly, as it relates to the right to self-determination, the Helsinki Convention posits that the right of the people to determine their own political destiny must be respected and he people have the freewill to select the form of government that best meets their aspirations, internally and at the international arena. Democracy that best works for the people should also be adopted as the people are the essence of the government and state and homogeneity is vital in their co-existence. In the same vein, the EU appreciates the importance of homogeneity and integration through two key lenses – democracy and self-determination. According to the EU, this method is effective as it was experimented in the case of Kosovo when it announced its secession intentions from Serbia. The EU subsequently, announced on 30 May 2008 that the state of Kosovo would be recognized and accepted in the ranks of the EU as a legal entity.

The advisory opinion of the ICJ No. A/RES/63/3 which ruled that the independence declaration of Kosovo did not violate general international law made it easier for the EU to recognize it as a member; also having fulfilled all legal obligations under the rules of the union, particularly as they relate to human rights and the rule of law; therefore the EU agrees that the new state met the criteria for statehood and should become their newest member.

Legal scholars also argue in defense of Kosovo that the new state was constructed on the basis of popular will and gave a voice and freedom to the people which was previously lacking under the parent state. The way the government is being run shows that the entirety of the people) races and religions) are carried along and there is harmony between the government and the citizens. The constitution of the country clearly supports human rights and need for the people to be actively involved in the decision-making process of the state. Although, no scholar has claimed that Kosovo is a fully independent state, however, the legal working apparatuses in Kosovo are being supervised by the UN which technically grants Kosovo the required recognition. The EU in abiding to the norms of international law has recognized Kosovo and wishes to consent to the wishes of the people of the land.

The place of an unpopular government should not be accepted by the members of the international community and in the event that they do as against the will of the people then the standard of homogeneity and integration has not been legally fulfilled. But, if independent states encourages popular actions for independence and strengthens the principle of the right to self-determination then it would be right to say that the standard of homogeneity and integration is indeed necessary for peaceful co-existence of a government and its people within a state.

It could therefore be said that this standard encourages popular government which supports the recognition of a state in international law. The engagement of the people in the decision-making of the state and the respect of the rule of law are clear indications that the state has complied with the standard of homogeneity and integration which should always exist between the government and the citizens; which legal scholars believe is essential for state building and rebuilding.

7.1. Popular Government and the Creation of new States

Popular government entails the process of collective decision-making in the running of the affairs of a state. This simply means there is the respect of the rule of law and protection of human rights; thus, all members of the state have equal rights and deserve to be treated as important as everyone else; this concept helps a government to remain healthy and popular; this right to equality and participation in policies that distinguishes a popular government from any other type in international law.

If popular government is the essence of the principle of the right to self-determination, then it has a strong place in the creation of a new state or rebuilding of an old one, particularly as it relates to homogeneity and integration

of the government and the citizens. To know an accepted government, one can only see it through the lens of the people and how they engage with their government in the day-to-day running of affairs.

Therefore, a popular government is a reflection of its work in the management of the state in accordance with the aspirations of the people. Some states are democratic in nature but without a popular government which is ironic and often leads to internal conflicts. Many examples can be seen from the length and breadth of the world.

The standards for state creation must be met with popular support of the government by its people for the sake of not only internal peace and security but equally global peace and security. When a new state is form and recognized, the first element that is crystallized is that of popular support from the people which then propels the international community to indeed engage the state and welcome it in its ranks. The case of South Sudan in 2011 is one that epitomizes this school of thought.

The quest for a popular government or what some scholars described as democracy is increasing and many legal international texts have made it a part and parcel of human rights as contained in the chapter one of this thesis. Democracy has become a base on which many states build and run their affairs; it is seen as a basic requirement for the admission of any new state in the EU and many other regional organizations. Thus, the need for a people and government harmony becomes imperative as it helps a government become popular and in effect make the state accepted in the international arena. So, the concept of popular government can be connected to the legitimacy and acceptance of a state in contemporary international law.

In practice, popular government is a means to an end and ultimately serves the purpose of a harmonious and integrated system between the people and the government. Morally, the realization of homogeneity and integration open up new opportunities for growth for a state and shows good governance devoid of any form of imposition or arbitral laws on the people.

It would be safe to then conclude that the relationship between the government and the people should be harmonious to support the concept of inclusivity in state creation. The presence of a government that is popular guaranteed peace and security not only on paper but in reality and many countries across the world can bear witness to this claim.

In conclusion, popular government reinforces the concepts of self-determination and the rule of law within a state. It acts as the base for homogeneity and integration needed for the sustainability of a state. For state creation and recreation, therefore, the place of a popular government is critical and cannot be underplayed. This concept in other words fortifies the argument for self-determination and recognition of a state and serves as a proof verifying the standards for statehood.

8. Conclusion

The bid by a people to actualize their ambition of political self-determination and recognition of their state in compliance with the rules and obligations under international have been a process that has not been hindered by the criteria for state creation or recreation. The right to self-determination has helped shape and reshapes the criteria in international law for state-building and rebuilding.

This impact can be clearly seen in the application of the standard for homogeneity and integration between the people and the government that represent them, which in the international space has shown to be indicative of legitimacy and recognition of a new state. This theory can then be among the newly created criteria at the base of contemporary international law. Therefore, one can say that there is a confluence between the principle of the right of self-determination and the international legal norms that transacts the business of state-building and rebuilding.

Indeed, democracy is an acceptable means to ensure the implementation of the right to political self-determination. However, the standard of homogeneity and integration is tangible evidence of the realization of this right because it makes sure that the government is widespread and not one that imposes its laws on the

people. Therefore, popular government and the standard of homogeneity and co-existence augment one another in making an accepted government that respects the rule of law and protects the human rights of its populace; ultimately, one that guarantees social justice and equity following the benchmarks of international law.

This paper, therefore, has highlighted that the right to self-determination in contemporary international law did not emerge from international law itself but rather helped in the advancement and strengthening of the law as it relates to the theory of statehood and state recognition and upholding of the objectives of the UN in keeping peace and security around the world.

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