CRITICAL EXPOSITION OF THE CONCEPT OF STATEHOOD UNDER INTERNATIONAL LAW

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Abstract

This paper critically exposed the concept of statehood under international law. The paper adopted the doctrinal method of research with primary source of information drawn from laws, conventions, and treaties, while secondary sources drawn from textbooks and legal digests. The paper also identified the challenges of statehood under international law can be broken down into three broad categories. Foremost amongst all, is the issue of defining a state, there is no single, universally accepted definition of a state. This makes it difficult to determine whether a particular entity should be considered a state under international law, recognizing a state, the process of recognition is highly political, and not all states are recognized by other states. This can lead to confusion and conflict, application of international law, states that are not recognized may not be able to benefit from the protections of international law. This is since international law is not always clear or universally agreed upon. In addition, there is a tension between the rights of states and the rights of individuals. The paper made some succinct recommendations amongst which included that statehood should be viewed as a functional concept that should focus on the ability of an entity to perform the essential functions of a state, rather than on its specific form or structure, recognition of statehood should be based on objective criteria, such as effective control over territory, population, and government, rather than on subjective political considerations and that concept of Statehood should consider the changing nature of the international system, including the rise of global and regional organizations, the emergence of new states, and the growing importance of international law amongst others.

Keywords: *Exposition, Statehood and International Law*

1.0 Introduction

Every State has a beginning a moment in which its existence under international law can be identified and from which it enjoys a full international legal personality. In the 21st century of ''state'' remains a critical component of international law and international relations. Given its central role, there exist a clear and codified definition of state under international law. Unfortunately, since 1945 several attempts were made to define a state, but none of the given definitions succeeded in gaining global acceptability. Therefore, the Montevideo Convention[2], can be viewed as the best-known legislation on the definition of State. Article 1 of the Convention enunciates state as a person of international law and which possesses the qualifications of a permanent population, a defined territory, government and as well the capacity to enter relations with other states.

Further, from the territorial aspect of statehood, it is a fact that states are territorial entities. Firstly, this element requires the existence of governmental power over some territory, without specifying a minimum area for the purpose of fulfilling this condition. For instance, Tuvalu, a state of only 26sqkm,

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[2] The Montevideo Convention on the Rights and Duties of States, article 1, the Convention was signed in Montevideo, Uruguay, on 26 December 1933, during the Seventh International Conference of American States.

obtained full-fledged independence in 1978 and became a full member of the United Nations in 2000. Similarly, Nigeria became an independent country in 1960 and joined United Nations the same year. Secondly, a permanent population, it is essential for statehood, and it relates to territorial dimension, because if states are territorial entities, they are also aggregates of individuals.[3] It is important that a state has a presence of government capable of exercising independent and effective authority, control the affairs of the state and ensures social and legal order. Nonetheless, if a state ceases temporarily to have an effective government this does not mean that the state disappeared.[4]

The creation of States has been a focus question in international law, although the relevant role of politics and effectiveness has also given rise to doubts about the role of the international legal regime in the development of law of statehood.[5] The concept of statehood under international law is the subject of much debate and discussion among scholars and practitioners of international law. It is a complex concept, and there are several different approaches to defining it. However, the most accepted definition is based on the criteria set out in the Montevideo Convention of 1933. Under this convention, a state must have a defined territory, a permanent population, a government, and the capacity to enter relations with other states. In addition to these four "Montevideo criteria," there are also other factors that may be considered in determining whether a particular entity qualifies as a state.[6] There are several international treaties and articles that address the question of statehood. One important treaty is the United Nations Charter, which recognizes the principle of self-determination and the right of people to form their own states. The International Court of Justice has also addressed the issue of statehood in several cases, such as the Kosovo Advisory Opinion and the East Timor case.[7]

The United Nations Charter, adopted in 1945, recognizes the right of self-determination and the right of people to freely determine their political status and freely pursue their economic, social, and cultural development. Article 1 of the UN Charter sets out the purposes of the United Nations, which include the development of friendly relations between nations based on respect for the principle of equal rights and self-determination of peoples. This provision has been interpreted by some scholars to imply that the Charter recognizes the right of people to form their own states.[8]

The Vienna Convention on the Law of Treaties, adopted in 1969, sets out the rules governing the conclusion, interpretation, and application of treaties. Article 3 of the Vienna Convention states that "every state possesses capacity to conclude treaties," which has been interpreted by some as an affirmation of the right of states to exist and the importance of statehood. The Vienna Convention also provides rules on the interpretation of treaties, which may be applicable when determining whether a particular entity qualifies as a state under international law.[9] There are several challenges associated with the concept of statehood, as reflected in the international conventions and treaties discussed above.

[3] Montevideo Convention, 1933, article 1-3.
[4] M Dixon, *Textbook on International Law* (Oxford: Oxford University Press 2010) 121.
[5] J D Aspremont, 'The International Law of Statehood: Craftsmanship for the Elucidation and Regulation of Births and Deaths in the International Society' [2014] (29) *Connecticut Journal of International Law* 201.
[6] Montevideo Convention, 1933, article 1-5.
[7] F Finck, 'The State Between Fact and Law: The Role of Recognition and the Conditions under which it is Granted in the Creation of New States' [2016] *Poolish Yearbook of International Law* 51-55.
[8] United Nations Charter, 1945.
[9] Vienna Convention on the Law of Treaties, 1969.

One challenge is that there is no universally agreed-upon definition of what constitutes a "state." As noted above, the Montevideo Convention and the ILC's Draft Articles define a state in terms of having a defined territory, a permanent population, and a government. However, these definitions do not fully capture the diversity of states that exist in the world today.[10]

The challenges of statehood under international law can be broken down into three broad categories. Foremost amongst all, is the issue of defining a state, there is no single, universally accepted definition of a state. This makes it difficult to determine whether a particular entity should be considered a state under international law.[11] Additionally, recognizing a state, the process of recognition is highly political, and not all states are recognized by other states. This can lead to confusion and conflict.[12] Lastly, application of international law, states that are not recognized may not be able to benefit from the protections of international law.[13]

2.0 Critical Exposition of the Concept of Statehood under International Law

In any legal system, certain entities, whether they be individuals or companies, will be regarded as possessing rights and duties enforceable at law[14]. Thus, an individual may prosecute or be prosecuted for assault and a company can sue for breach of contract. They can do this because the law recognises them as 'legal persons' possessing the capacity to have and to maintain certain rights and being subject to perform specific duties.[15] Just which persons will be entitled to what rights in what circumstances will depend upon the scope and character of the law. But it is the function of the law to apportion such rights and duties to such entities as it sees fit. Legal personality is crucial[16]. Without its institutions and groups cannot operate, for they need to be able to maintain and enforce claims. In municipal law individuals, limited companies and public corporations are recognised as each possessing a distinct legal personality, the terms of which are circumscribed by the relevant legislation. It is the law which will determine the scope and nature of personality. Personality involves the examination of certain concepts within the law such as status, capacity, competence, as well as the nature and extent of rights and duties[17]. The status of a particular entity may well be determinative of certain powers and obligations, while capacity will link together the status of a person with rights and duties. The whole process operates within the confines of the relevant legal system, which circumscribes personality, its nature and definition. This is especially true in international law. A particular view adopted of the system will invariably reflect upon the question of the identity and nature of international legal persons.[18]

[10] R Cohen, The Concept of Statehood in United Nations Practice' [1961] (109) *University of Pennsylvania Law Review* 1127-1129.
[11] R Wilde and Others, *Recognition of States: The Consequences of Recognition or Non-Recognition in UK and International Law* (Chatham House Publication 2010) 2-15.
[12] R Wilde and Others, *Recognition of States: The Consequences of Recognition or Non-Recognition in UK and International Law* (Chatham House Publication 2010) 2-15.
[13] B Dahiya, 'Statehood in International Law' [2023] (6) (1) *International Journal of Law Management & Humanities* 20-25.
[14] J Crawford, *The Creation of States in International Law* (2nd Oxford University Press 2014) 20-30.
[15] *Ibid.*
[16] *Ibid.*
[17] *Ibid.*
[18] R Kolb, *The Concept of Statehood in International Law* (2th edn Hart Publishing 2013) 30-35.

The decolonisation movement has stimulated a re-examination of the traditional criteria. Article 1 of the Montevideo Convention on Rights and Duties of States, 1933 1 (1) lays down the most widely accepted formulation of the criteria of statehood in international law. It notes that the state as an international person should possess the following qualifications: '(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter relations with other states. The Arbitration Commission of the European Conference on Yugoslavia in Opinion No. 1 declared that 'the state is commonly defined as a community which consists of a territory and a population subject to an organised political authority' and that 'such a state is characterised by sovereignty'. It was also noted that the form of internal political organisation and constitutional[19].

Recent practice about the new states of Croatia and Bosnia and Herzegovina emerging out of the former Yugoslavia suggests the modification of the criterion of effective exercise of control by a government throughout its territory.[20] Both Croatia and Bosnia and Herzegovina were recognised as independent states by European Community member states and admitted to membership of the United Nations (which is limited to 'states' by article 4 of the UN Charter 1948 at a time when both states were faced with a situation where non-governmental forces controlled substantial areas of the territories in question in civil war conditions. More recently, Kosovo declared independence on 17 February 2008 with certain Serb-inhabited areas apparently not under the control of the central government. In such situations, lack of effective central control might be balanced by significant international recognition, culminating in membership of the UN[21]. Nevertheless, a foundation of effective control is required for statehood. Conversely, however, a comprehensive breakdown in order and the loss of control by the central authorities in an independent state will not obviate statehood. Whatever the consequences in terms of possible humanitarian involvement, whether by the UN or otherwise depending upon the circumstances, the collapse of governance within a state (sometimes referred to as a 'failed state') has no necessary effect upon the status of that state as a state. Indeed, the very designation of 'failed state' is controversial and, in terms of international law, misleading. The capacity to enter relations with other states is an aspect of the existence of the entity in question as well as an indication of the importance attached to recognition by other countries. It is a capacity not limited to sovereign nations, since international organisations, non-independent states and other bodies can enter legal relations with other entities under the rules of international law. But it is essential for a sovereign state to be able to create such legal relations with other units as it sees fit. Where this is not present, the entity cannot be an independent state. The concern here is not with political pressure by one country over another, but rather the lack of competence to enter legal relations. The difference is the presence or absence of legal capacity, not the degree of influence that may affect decisions[22]. The essence of such capacity is independence. This is crucial to statehood and amounts to a conclusion of law in the light of circumstances. It is a formal statement that the state is subject to no other sovereignty and is unaffected either by factual dependence upon other states or by submission to the rules of international law.[23] It is arguable that a degree of actual as well as formal independence may also be necessary[24]. This question was raised in relation to

[19] Montevideo Convention, 1933.
[20] *Ibid.*
[21] M N Shaw, *International Law* (7th edn Cambridge University Press)
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*

the grant of independence by South Africa to its Bantustans. In the case of the Transkei, for example, a considerable proportion, perhaps 90 per cent, of its budget at one time was contributed by South Africa, while Bophuthatswana was split into a series of areas divided by South African territory.[25] Both the Organization of African Unity and the United Nations declared such 'independence' invalid and called upon all states not to recognise the new entities. These entities were, apart from South Africa, totally unrecognised. However, many states are as dependent upon aid from other states, and economic success would not have altered the attitude of the international community. Since South Africa as a sovereign state was able to alienate parts of its own territory under international law, these entities would appear in the light of the formal criteria of statehood to have been formally independent[26]. However, it is suggested that the answer as to their status lay elsewhere than in an elucidation of this category of the criteria of statehood. It lay rather in understanding that actions taken to pursue an illegal policy, such as apartheid, cannot be sustained. An example of the complexities that may attend such a process is provided by the unilateral declaration of independence by Lithuania, one of the Baltic states unlawfully annexed by the Soviet Union in 1940, on 11 March 1990. The 1940 annexation was never recognised de jure by the Western states and thus the control exercised by the USSR was accepted only upon a de facto basis. The 1990 declaration of independence was politically very sensitive, coming at a time of increasing disintegration within the Soviet Union, but went unrecognised by any state[27]. In view of the continuing constitutional crisis within the USSR and the possibility of a new confederal association freely accepted by the fifteen Soviet republics, it was at that time premature to talk of Lithuania as an independent state, not least because the Soviet authorities maintained substantial control within that territory.[28] The independence of Lithuania and the other Baltic States was recognised during 1991 by a wide variety of states, including crucially the Soviet Union. It is possible, however, for a state to be accepted as independent even though, exceptionally, certain functions of government are placed in the hands of an outside body[29]. In the case of Bosnia and Herzegovina, for example, the Dayton Peace Agreement of 1995 provided for a High Representative to be appointed as the 'final authority in theatre' about the implementation of the agreement, and the High Representative has, for example, removed several persons from public office. None of this has been understood by the international community to affect Bosnia's status as an independent state, but the arrangement did arise as an attempt to reach and implement a peace agreement in the context of a bitter civil war with third-party intervention. More controversially, after a period of international administration, Kosovo declared its independence on 17 February 2008, noting specifically that it accepted the obligations for Kosovo under the Comprehensive Proposal for the Kosovo Status Settlement (the Ahtisaari Plan)[30]. This Plan called for 'independence with international supervision' and the obligations for Kosovo included human rights and decentralisation guarantees together with an international presence to supervise implementation of the Settlement[31]. The provisions of the Settlement were to take precedence over all other legal provisions in Kosovo. The international presence was to take the form of an International Civilian Representative (ICR), who would also be the European Union Special Representative, to be appointed by the

[25] D Stone, *International Law, and International Relations* (2nd Routledge Publishing 2014) 20-35.
[26] *Ibid.*
[27] *Ibid.*
[28] *Ibid.*
[29] R Portmann, *Legal Personality in International Law* (Cambridge 2010) 20-25.
[30] *Ibid.*
[31] *Ibid.*

International Steering Group[32]. The ICR would be the final authority in Kosovo regarding interpretation of the civilian aspects of the Settlement and would have the ability to annul decisions or laws adopted by the Kosovo authorities and sanction and remove public officials whose actions were determined to be inconsistent with the Settlement terms. In addition, an international military presence, led by NATO, would ensure a safe environment throughout Kosovo.

Further, important issue related to statehood is that of decolonization, which refers to the process of freeing colonies from the control of their colonizers[33]. This process has resulted in several new states emerging in recent decades, such as Namibia and Timor-Leste. The process of decolonization has raised several issues related to statehood, such as whether newly independent states should be considered successor states to their former colonial powers or completely new entities. The decolonization process has also led to several disputed territories, such as Western Sahara, which has been the subject of ongoing conflict and dispute. The concept of statehood is also closely linked to the principle of self-determination, which is enshrined in the United Nations Charter and other international treaties. The principle of self-determination holds that people have the right to freely determine their political status and pursue their economic, social, and cultural development. This principle has been used to justify the emergence of new states, such as Bangladesh, which emerged from the Bangladesh Liberation War. However, the principle of self-determination is not always clear-cut, and it has been subject to various interpretations and debates.[34]

One such debate is over the extent to which self-determination can be used to justify the break-up of existing states[35]. For example, the principle of self-determination has been cited by some groups as a justification for secession from existing states, such as in the case of Catalonia's bid for independence from Spain. However, other states, such as Spain, have argued that the principle of self-determination does not apply in these cases, and that secession would violate the territorial integrity of the state. This highlights the complex and often contested nature of the principle of self-determination, and its relationship to the concept of statehood.[36]

Also, another area of debate related to statehood is the question of statehood for non-state entities. These are entities that exist within the territory of another state but do not have the status of a state[37]. Examples of such entities include the Palestinian Authority, the Kurdish Regional Government, and Somaliland. These entities have sought to establish themselves as states but have not been recognized by the international community. The question of whether these entities should be considered states is a complex one and is subject to ongoing debate. The question of statehood for non-state entities raises several difficult questions, such as the criteria for statehood, the protection of minorities, and the relationship between self-determination and territorial integrity[38]. It also raises the question of whether states should have the right to intervene in the internal affairs of other states, particularly in cases where

[32] *Ibid.*
[33] *Ibid.*
[34] *Ibid.*
[35] P Kooijmans, *The Doctrine of the Legal Equality of States* (Leiden Press University 1998).
[36] *Ibid.*
[37] *Ibid.*
[38] *Ibid.*

minority groups are being oppressed or denied the right to self-determination. This question is particularly relevant in the case of the Rohingya in Myanmar, who have been denied citizenship and other basic rights[39].

The issue related to statehood is the question of responsibility for states that fail to protect their citizens from violence. This issue has been particularly prominent in the case of the Syrian civil war, where the Assad regime has been accused of committing war crimes against its own people[40]. This raises the question of whether the international community has a responsibility to intervene in cases where a state is failing to protect its citizens.[41] The principle of the responsibility to protect (R2P) has been put forward as a possible solution, but it remains controversial and has not been consistently applied. Also, the issue related to statehood is the question of state sovereignty in an increasingly globalized world. Globalization has led to an increase in transnational flows of people, goods, and information, which has challenged the traditional notion of state sovereignty. This is particularly evident in the case of human rights, where some states have argued that they should not be held accountable for human rights violations that occur within their borders.[42]

However, others have argued that states should be held accountable for the actions of their citizens, even if those actions occur outside of their borders. Elaborating further, these debates highlight the changing nature of statehood in the 21st century. The traditional notion of state sovereignty has been challenged by globalization, and there is a growing recognition of the need for states to cooperate on issues such as human rights and the environment[43]. This has led to the emergence of new forms of governance, such as regional and global institutions, which have increased the complexity of the concept of statehood. It remains to be seen how these new forms of governance will affect the traditional understanding of state sovereignty[44]. One final issue related to statehood is the increasing role of technology in shaping the nature of statehood. In the past, the boundaries of states were relatively fixed and static. However, in the age of the internet, information and capital can flow across borders with ease, and states are increasingly finding it difficult to control the flow of information and money. This raises questions about the role of technology in shaping the future of statehood. For example, some scholars have argued that the rise of cryptocurrencies could lead to the creation of virtual states, which exist solely in the digital realm[45].

3.0 Evaluating the Doctrines and Principles of Statehood under International Law

There are several principles that are generally accepted as defining statehood under international law. The most cited is the Montevideo Convention on Rights and Duties of States, which was adopted in 1933. According to this convention, a state must have four key characteristics to be considered a sovereign state: a permanent population, a defined territory, a government, and the capacity to enter

[39] *Ibid.*
[40] R Portmann, *Legal Personality in International Law* (Cambridge 2010) 20-25.
[41] *Ibid.*
[42] *Ibid.*
[43] *Ibid.*
[44] *Ibid.*
[45] Montevideo Convention, 1933.

relations with other states[46]. These criteria have been further developed and expanded upon by subsequent treaties and by scholars and practitioners.[47]Article 1 of the Montevideo Convention states that a state must have a permanent population. This population does not need to be large or numerous, but it must be settled within the territory of the state. In addition, the population must be relatively stable and not merely temporary residents or transient visitors. The second criterion is a defined territory, which must be both fixed and stable[48]. The territory does not need to be large, but it must be more than just a place where people gather. Third, the state must have a government that is able to exercise effective control over the territory and population.[49]

This government must have a certain degree of independence and authority, and it must be able to enforce laws and maintain order. Fourth, the state must have the capacity to enter relations with other states. This means that the state must be able to communicate and interact with other states on an equal footing and must have the capacity to engage in diplomacy and international trade. Together, these four criteria form the basis of the legal definition of a state under international law. However, it should be noted that there is some variation and disagreement among scholars and practitioners on the specific meaning and scope of these criteria[50].

It should also be noted that the Montevideo Convention does not mention some other factors that are often considered important in determining statehood, such as recognition by other states[51]. While recognition by other states is not a formal legal requirement, it is often seen as an important political and practical consideration. In addition, the Montevideo Convention does not define what constitutes a "government" or a "permanent population," leaving some room for interpretation and debate. Furthermore, there are other related concepts, such as sovereignty and statehood, that are not specifically addressed by the Convention. In addition to the Montevideo Convention, there are several other sources of international law that have an impact on the definition of statehood. The UN Charter, for example, recognizes the principle of self-determination, which can affect the status of states and territories. The International Court of Justice has also issued several rulings on statehood and related issues, including the principle of uti possidetis juris, which holds that newly formed states should retain the borders of the former entity from which they emerged. Moreover, regional organizations such as the European Union have developed their own legal frameworks for recognizing statehood[52].

There are also various customary international law principles that can affect statehood. For example, the principle of non-recognition of illegal situations, such as states formed using force or violations of human rights, can be a factor in determining whether a state is recognized as legitimate[53]. In addition, the principle of the continuity of states and the legal doctrine of effectiveness, which holds that a state is legitimate if it can effectively govern its territory and people, are also relevant to the legal definition of statehood. Finally, it is worth noting that the international community has recognized states that do

[46] *Ibid.*
[47] *Ibid.*
[48] *Ibid.*
[49] *Ibid.*
[50] Montevideo Convention, 1933.
[51] Ibid.
[52] Ibid.
[53] I J Charney, International Law and Politics of the Territorial Sea (Martinus Nijhoff Publishers 1999).

not fully meet the criteria of the Montevideo Convention, such as microstates and certain entities that emerged from decolonization. These cases highlight the fluid and flexible nature of the concept of statehood in international law. Overall, while the Montevideo Convention provides a starting point for the legal definition of statehood, it is only one piece of the puzzle, and the concept is shaped by a variety of other international law principles and precedents[54].

In recent years, the concept of statehood has also been challenged by the emergence of new forms of state-like entities, such as virtual states, autonomous regions, and city-states. Virtual states, for example, are entities that do not have a physical territory, but exist as virtual communities on the internet. These entities may not meet the traditional definition of statehood, but they are increasingly challenging the traditional notions of sovereignty and territory. Similarly, autonomous regions, such as Hong Kong and Macau, do not have full sovereignty, but have a high degree of autonomy and may act as de facto states in some respects.[55]

Territory is one of the most important criteria for statehood under international law, and the concept of territory has evolved over time. Under the traditional Westphalian model of statehood, a state's territory must be well-defined and distinct from that of other states. However, this model has been challenged by several developments in international law, including the creation of new types of states and territories, such as landlocked states, archipelagic states, and enclaves.[56]The traditional model of territory has also been challenged by developments in technology, such as the increasing importance of cyberspace and outer space[57]. In recent years, there has been a growing debate over whether territory is still the most important criterion for statehood. Some have argued that the traditional model of statehood is no longer valid in the globalized world, and that territory should not be the defining factor. Instead, they argue that other factors, such as self-determination, recognition, or the existence of a functional government, should be the primary criteria for statehood[58]. While this debate is ongoing, the concept of territory remains a key part of the legal definition of statehood[59].

Government is one of the key criteria for statehood under international law, as laid out in the Montevideo Convention. The Convention defines government as the "effective and independent exercise of sovereignty," and it requires that states have a functioning government that can make and enforce laws. The issue of government is closely tied to the issue of sovereignty, as a state cannot be truly sovereign if it does not have effective control over its territory and people. A functioning government is also necessary for a state to participate in international affairs and to enjoy the rights and protections of statehood.[60]

There are several different types of government that can exist in a state, but the most common type is a representative democracy.[61] In a representative democracy, the government is elected by the people and

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55 J Crawford, *The Creation of States in International Law* (Oxford Publishers 1966) 202-45.
56 *Ibid.*
57 *Ibid.*
58 *Ibid.*
59 *Ibid.*
60 J Crawford, *The Creation of States in International Law* (Oxford Publishers 1966) 200-240.
61 *Ibid.*

is accountable to them through the electoral process. Other types of government include dictatorships, monarchies, theocracies, and more. To meet the criteria for statehood, a government must be able to enforce its laws and to maintain order within its territory. Without this, a state cannot be considered truly sovereign. In addition, the government must have legitimacy in the eyes of the people, and it must be able to fulfil the basic functions of a state, such as providing for the welfare of its citizens and protecting their rights. Without an effective and legitimate government, a state cannot truly be considered a state under international law. One notable example of a government that did not meet the criteria for statehood was the Islamic State in Iraq and Syria (ISIS). While ISIS claimed to be a state, it did not have effective control over its territory, it did not have the support of the people, and it was not recognized by the international community. As a result, it did not meet the criteria for statehood and was not considered a sovereign state.[62] Also, a typical illustration of this is the Palestinian territories, which have been in a state of flux for decades. The Palestinian Authority (PA) is a semi-autonomous entity that controls parts of the West Bank and Gaza, but it is not a fully independent state. The PA lacks the recognition of many states, and it is not a member of the United Nations. The lack of a fully functioning and recognized government in the Palestinian territories has led to instability and conflict in the region. As these examples show, a functioning and legitimate government is a key component of statehood under international law. Without it, a state cannot be considered sovereign or legitimate[63].

The capacity to enter relations with other states is a crucial element of statehood under international law.[64] This capacity refers to the ability of a state to communicate and interact with other states, to negotiate and sign treaties, and to participate in international organizations. This capacity is what distinguishes a state from other political entities, such as provinces or municipalities. Without the capacity to enter relations with other states, a state cannot fully exercise its sovereignty. There are several requirements for a state to have the capacity to enter relations with other states.[65] In recent years, the concept of statehood has been further complicated by the rise of "state-like entities" such as failed states, occupied territories, and unrecognized states. These entities may meet some but not all the criteria for statehood under international law.[66] For example, a failed state may have a defined territory and population but may lack a functioning government. An occupied territory may have a functioning government but may not have control over its territory. An unrecognized state may have a functioning government and control over its territory but may not be recognized by other states[67].

4.0 Evaluating the Principle of Uti Possidetis Juris

The principle of uti possidetis juris is a key concept in international law that relates to the issue of statehood. It is based on the principle of territorial integrity, which holds that the boundaries of a state should not be altered without its consent. Uti possidetis juris builds on this principle by stating that newly independent states should retain the borders that they had at the time of independence. This

[62] *Ibid.*
[63] J Crawford, *The Creation of States in International Law* (Oxford Publishers 1966) 200-240.
[64] J Crawford, *The Creation of States in International Law* (Oxford Publishers 1966) 200-240.
[65] *Ibid.*
[66] *Ibid.*
[67] J Crawford, *The Creation of States in International Law* (Oxford Publishers 1966) 200-240.

principle was first codified in the Treaty of Westphalia in 1648, and it has been used in several cases since then.

Uti possidetis juris was first applied in the context of Latin American independence in the 19th century. At the time, many newly independent countries had borders that were inherited from the colonial powers that had ruled them. Uti possidetis juris was used to ensure that these new countries would retain the same borders that they had under colonial rule. This helped to prevent border disputes and territorial conflict in the region. Over time, the principle of uti possidetis juris has been applied in several other contexts, including the breakup of the Soviet Union and the independence of South Sudan.[68] Despite these criticisms, the principle of uti possidetis juris remains an important part of international law. It is enshrined in the UN Charter and has been affirmed by the International Court of Justice. It is seen to maintain stability and respect for sovereignty in the international system. However, there is still debate over how to best balance the rights of states with the rights of minority groups and other stakeholders. As the international system evolves, it is likely that the debate over uti possidetis juris will continue.[69]

The Principle of Self-determination is another key concept that relates to the issue of statehood. This principle holds that all people have the right to determine their own political status and form of government. This principle is enshrined in the UN Charter and is a fundamental human right. In addition, it is often seen to ensure that all people can participate in the political process and have a voice in the decisions that affect their lives. Self-determination can be exercised through a variety of means, including secession, autonomy, or other forms of self-governance. A famous illustration of the principle of self-determination in action is the case of South Sudan. After decades of civil war, the people of South Sudan voted overwhelmingly to secede from Sudan and form their own country. This was seen as an expression of the right of self-determination and was supported by the international community. However, the situation in South Sudan has been far from ideal, with ongoing conflict, political instability, and poor living conditions. This shows that the implementation of self-determination can be complex and challenging, even when it is accepted in principle.[70]

Another illustration of the principle of self-determination at work is the case of Catalonia in Spain. The region of Catalonia has a distinct culture and language, and some people in the region have long advocated for independence. In 2017, Catalonia held a referendum on independence, which was declared illegal by the Spanish government. The referendum was marred by violence and controversy, and it is unclear what the future holds for Catalonia. This case illustrates the challenges of implementing the principle of self-determination in practice. Also, another example is the Kurdistan region of Iraq. Kurdistan has long been a place of conflict and instability, but in recent years it has made significant progress towards self-determination[71]. The Kurdistan Regional Government has been recognized by Iraq and other countries, and it has a high degree of autonomy. However, it is still not recognized as an

[68] J Crawford, *The Creation of States in International Law* (Oxford Publishers 1966) 200-240.
[69] *Ibid.*
[70] M N Shaw, *International Law* (7th Cambridge University Press 2014) 30-35.
[71] *Ibid.*

independent state, and there are still unresolved issues, such as the disputed territory of Kirkuk. This example shows that self-determination can be a long and difficult process, even when there is progress[72].

5.0 Appraising the Creation of Statehood under International Law

The traditional exposition of the criterion concentrated upon the stability and effectiveness needed for this factor to be satisfied, while the representative and democratic nature of the government has also been put forward as a requirement[73]. The evolution of self-determination has affected the standard necessary as far as the actual exercise of authority is concerned, so that it appears a lower level of effectiveness, at least in decolonisation situations, has been accepted.[74] This can be illustrated by reference to a couple of cases. The former Belgian Congo became independent on 30 June 1960 during widespread tribal fighting which had spread to the capital. Within a few weeks the Force Publique had mutinied, Belgian troops had intervened, and the province of Katanga announced its secession. Notwithstanding the virtual breakdown of government, the Congo was recognised by many states after independence and was admitted to the UN as a member state without opposition[75].

Indeed, at the time of the relevant General Assembly resolution in September 1960, two different factions of the Congo government sought to be accepted by the UN as the legitimate representatives of the state[76]. In the event, the delegation authorised by the head of state was accepted and that of the Prime Minister rejected.45 A rather different episode occurred about the Portuguese colony of Guinea-Bissau[77]. In 1972, a UN Special Mission was dispatched to the 'liberated areas' of the territory and concluded that the colonial power had lost effective administrative control of large areas of the territory.46 On 24 September 1973, the PAIGC proclaimed the Republic of Guinea Bissau an independent state. The issue of the 'illegal occupation by Portuguese military forces of certain sections of the Republic of Guinea-Bissau' came before the General Assembly and several states affirmed the validity of the independence of the new state in international law[78] denied that the criteria of statehood had been fulfilled.[79] However, ninety-three states voted in favour of Assembly resolution 3061 (XXVIII) which mentioned 'the recent accession to independence of the people of Guinea-Bissau thereby creating the sovereign state of the Republic of Guinea-Bissau'. In addition to modifying the traditional principle about the effectiveness of government in certain circumstances, the principle of self-determination may also be relevant as an additional criterion of statehood. In the case of Rhodesia, UN resolutions denied the legal validity of the unilateral declaration of independence on 11 November 1965 and called upon member states not to recognise it. No state did recognise Rhodesia and a civil war ultimately resulted in its transformation into the recognised state of Zimbabwe.[80] Rhodesia might have been regarded as a state by virtue of its satisfaction of the factual requirements of statehood, but this is

[72] *Ibid.*
[73] *Ibid.*
[74] *Ibid.*
[75] M N Shaw, *International Law* (7th Cambridge University Press 2014) 30-35.
[76] *Ibid.*
[77] *Ibid.*
[78] *Ibid*.
[79] *Ibid.*
[80] M N Shaw, *International Law* (7th Cambridge University Press 2014) 30-35.

a dubious proposition[81]. The evidence of complete non-recognition, the strenuous denunciations of its purported independence by the international community and the developing civil war militate strongly against this[82]. It could be argued, on the other hand, that, in the absence of recognition, no entity could become a state, but this constitutive theory of recognition is not acceptable. The best approach is to accept the development of self-determination as an additional criterion of statehood, denial of which would obviate statehood. This can only be acknowledged in relation to self-determination situations and would not operate in cases, for example, of secessions from existing states. In other words, in the case of an entity seeking to become a state and accepted by the international community as being entitled to exercise the right of self-determination, it may well be necessary to demonstrate that the internal requirements of the principle have not been offended. One cannot define this condition too rigorously in view of state practice to date, but it would appear to be a sound proposition that systematic and institutionalised discrimination might invalidate a claim to statehood.[83] One may point to the practice of the international community concerning the successor states to the former Yugoslavia. The European Community Adopted Guidelines on Recognition of New States in Eastern Europe and the Soviet Union on 16 December 1991, which constituted a common position on the process of recognition of such new states and referred specifically to the principle of self-determination[84]. The Guidelines underlined the need to respect the rule of law, democracy and human rights and mentioned specifically the requirement for guarantees for the rights of minorities. The creation of statehood is a complex process under international law. The Montevideo Convention outlines four criteria for statehood: a permanent population, a defined territory, a government, and the capacity to enter relations with other states. However, meeting these criteria is not always sufficient to ensure statehood. There are several additional factors that can play a role in determining whether an entity is considered a state. These include recognition by other states, international legal personality, and capacity to exercise effective control over territory.[85]

6.0 Engagement of State in International Relations

The way a state engages with the international community can have a significant impact on its ability to build and maintain a stable state. For example, some states, such as North Korea, have chosen to remain isolated from the international community. This has had a negative impact on the country's ability to develop economically and politically[86]. In contrast, Japan has chosen to be a major player in the international community, which has helped to open the country to trade and investment and has strengthened its relationships with other countries. These are just a few of the many factors that can influence the success or failure of state-building[87]. International assistance alone is not enough to ensure that a state is stable and prosperous. Other factors, such as political will, capacity, and international engagement, also play a crucial role.

[81] *Ibid.*
[82] *Ibid.*
[83] *Ibid.*
[84] *Ibid.*
[85] M N Shaw, *International Law* (7th Cambridge University Press 2014) 30-40.
[86] *Ibid.*
[87] *Ibid.*

7.0 Use of Diplomacy

Diplomacy, the process by which states interact with each other, is another important factor in the growth of statehood under international law. Diplomacy can help to build relationships between states and can also be used to resolve conflicts and promote cooperation. Diplomacy is often seen as a more peaceful and constructive alternative to military action[88].

One of the most important diplomatic organizations is the United Nations. The UN was established after World War II to promote peace and cooperation between states, and it has played a major role in the growth of statehood under international law. The UN has helped to promote decolonization, to provide humanitarian assistance, and to establish international norms and standards[89]. The UN has also played a role in the recognition of new states, such as East Timor and South Sudan. Also, important diplomatic tool is the use of economic incentives and sanctions. For example, in the case of South Africa, economic sanctions and boycotts were used to pressure the government to end apartheid. Similarly, in the case of North Korea, economic sanctions have been used to try to curb the country's nuclear weapons programme. For example, during the 2011 Arab Spring, social media was widely credited with helping to mobilize protesters and spread information about the uprisings. Do you think that the media has a positive or negative impact[90].

8.0 Cultural Diplomacy

Cultural diplomacy is a relatively new concept in the field of state-building. It refers to the use of cultural exchanges, such as art, music, film, and literature, to promote understanding and cooperation between states. Cultural diplomacy can help to break down stereotypes and misconceptions about other countries and can build bridges between different cultures.[91] Cultural diplomacy has been used in several different contexts. The United States has used cultural diplomacy to promote its values and interests around the world, through programs such as the Fulbright exchange program. The European Union has also promoted cultural diplomacy through initiatives such as the Erasmus programme which provides opportunities for young people to study abroad. China has used cultural diplomacy to promote its "soft power" and to attract foreign investment. One potential drawback of cultural diplomacy is the risk of "cultural imperialism," or the imposition of one culture's values and beliefs on another culture. This can be seen as a form of neocolonialism, and it can cause resentment and resistance in the host country[92]. Also, another potential issue with cultural diplomacy is the question of cultural authenticity. When a country promotes its cultural products abroad, there is a risk that these products may be presented in a way that is not reflective of the reality of life in that country. For example, a country may promote its traditional folk music, but the music presented may be a sanitized version that excludes the gritty reality of life for many of the country's citizens[93].

[88] *Ibid.*
[89] M N Shaw, *International Law* (7th Cambridge University Press 2014) 40-50.
[90] *Ibid.*
[91] *Ibid.*
[92] M N Shaw, *International Law* (7th Cambridge University Press 2014) 40-50.
[93] *Ibid.*

9.0 Regional Relations

Regional organizations have been a key aspect of the development of statehood in the modern world. These organizations, such as the European Union and the Association of Southeast Asian Nations (ASEAN), provide a forum for states to cooperate on issues such as trade, security, and cultural exchange. These organizations also play an important role in promoting and protecting human rights and democracy. Some have argued that these regional organizations are becoming increasingly important as a counterbalance to the dominance of the United Nations. One of the most significant issues that regional organizations face is that of balancing the interests of individual states with those of the region. This is particularly relevant in the context of economic integration, as states may be reluctant to give up control over their own economies to benefit the region. A good example of this is the debate over whether Turkey should be allowed to join the EU. While Turkey would bring many economic benefits to the region, it has also been accused of human rights violations and has faced opposition from some EU member states[94].

10.0 Appraisal of Statehood Practice in the United Kingdom

In the United Kingdom, statehood is based on a complex legal framework that is derived from several sources, including common law, case law, and international law. The legal basis for statehood in the UK is the doctrine of parliamentary sovereignty, which holds that the UK Parliament is the supreme lawmaking body in the country. Parliament has the power to make and unmake any law, and its decisions are not subject to any outside authority. This doctrine has been challenged in recent years, but it remains the cornerstone of the UK's legal system.

One of the key legal documents that defines the UK's statehood is the Magna Carta, which was signed in 1215 and has been amended over the years. The Magna Carta established the principle of the rule of law and laid the foundation for the development of the UK's democratic institutions. Other important legal documents that define the UK's statehood include the Bill of Rights (1689), the Human Rights Act (1998), and the Scotland Act (1998)[95].

In addition to these legal documents, the UK's statehood is also influenced by international law. The UK is a member of the United Nations and is bound by the UN Charter and other international treaties. These treaties cover a wide range of topics, including human rights, trade, and the environment. The UK is also a party to the European Convention on Human Rights, which protects a wide range of human rights and freedoms. The UK's membership in the European Union was a significant factor in shaping its statehood, but this ended when the UK left the EU in 2020.[96]

All these factors combine to create a complex legal framework for statehood in the UK. This framework is constantly evolving as new laws are passed and new international treaties are signed. The United Kingdom's statehood is also shaped by its history, culture, and politics. An interesting recent development in the legal framework for statehood in the United Kingdom is the debate over Scottish independence. In 2014, a referendum was held on whether Scotland should become an independent country, but it ultimately voted to remain part of the UK. However, the issue of Scottish independence

[94] M N Shaw, *International Law* (7th Cambridge University Press 2014) 40-50.
[95] P Kooijmans, *International Law* (Cambridge University Press 1968) 30-45.
[96] *Ibid.*

remains a major political debate, and it raises questions about the future of statehood in the United Kingdom[97]. Furthermore, UK has a well-developed legal system, based on common law and the principle of judicial independence. The courts are responsible for interpreting and applying the law, and they play a vital role in upholding the rule of law and protecting the rights of individuals. This system is one of the strengths of the UK's practice of statehood. In addition, the UK's practice of statehood is shaped by its membership in international organizations. As a member of the UN, the EU, and other organizations, the UK is committed to upholding international law and cooperating with other states. This commitment is reflected in its policies on issues such as human rights, trade, and the environment.

However, there are also some criticisms of the UK's practice of statehood. For example, some argue that the UK's unwritten constitution, which is based on tradition and custom rather than a single document, is not as clear or effective as a written constitution. Additionally, the UK's unique relationship with the Crown and the Church of England has been criticized as anachronistic and out of step with modern society[98].

11.0 Appraisal of Statehood Practice in the United States of America

The United States' legal framework for statehood is based on the Constitution and the principles of federalism. The Constitution defines the federal government's powers and limits, and it also establishes the principle of dual sovereignty, under which both the federal government and the state governments have their own separate powers. This system of federalism is a key feature of the US' practice of statehood[99].

In addition to the Constitution, the US has several laws and legal principles that govern statehood. These include the Commerce Clause, which gives Congress the power to regulate interstate commerce; the Supremacy Clause, which establishes that federal law takes precedence over state law; and the Equal Protection Clause, which prohibits discrimination based on race, gender, and other factors. The US Supreme Court has also played a significant role in interpreting and applying these laws and principles.

12.0 Lessons from the United States of America and the United Kingdom in relation to Statehood

12.1 Comparative Lessons Drawn from the United States of America and the United Kingdom

The experiences of the US and the UK provide some key lessons that could be relevant to Nigeria. Firstly, the US' decentralized system of government provides a model for how Nigeria could strike a balance between federal and state power. Nigeria could consider a more decentralized system that grants greater autonomy to its states, while still maintaining a strong central government. Secondly, the UK's experience with devolution could provide a useful framework for the Nigerian government to consider how it could empower its regions and local governments. Thirdly, both the US and the UK have systems of checks and balances that ensure that no one branch of government is too powerful[100]. This could be a useful model for Nigeria, where there have been concerns about the overreach of the executive branch.

[97] *Ibid.*
[98] *Ibid.*
[99] P Kooijmans, *International Law* (Cambridge University Press 1968) 30-45.
[100] P Kooijmans, *International Law* (Cambridge University Press 1968) 30-45.

Lastly, the US and the UK have both experienced ethnic and religious tensions, which have been a source of conflict and instability. This is a challenge that Nigeria also faces, and it could learn from the experiences of these countries in terms of promoting peace and stability. These are just some of the lessons that Nigeria could learn from the US and the UK in terms of statehood under international law. However, it is important to keep in mind that each country has its own unique context and history, and what works for one country may not necessarily work for another. The Nigerian government will need to carefully consider its own context and needs before deciding on the best way to structure its government[101].

One unique challenge that Nigeria faces is the high level of corruption in its government and society. Corruption has a negative impact on development and makes it difficult for the country to attract foreign investment and achieve economic growth. Nigeria could consider lessons learned from countries like Singapore and South Korea, which have successfully reduced corruption and improved their economies. Another unique challenge for Nigeria is the issue of Boko Haram and other terrorist groups operating in the country.[102]

In terms of opportunities, Nigeria has a large and growing population, as well as abundant natural resources. These factors could provide a foundation for economic growth and development if they are managed effectively. The country also has a strong agricultural sector, which could be further developed to improve food security and reduce poverty. Additionally, Nigeria has a young population, which could provide a strong workforce for the future. The government could focus on education and training to ensure that this potential is realized.[103]

13.0 Conclusion

It is important to note that while states have rights and duties, the interpretation and implementation of these rights and duties is often disputed and complex. This is since international law is not always clear or universally agreed upon. In addition, there is a tension between the rights of states and the rights of individuals. This is reflected in debates over issues such as human rights, self-determination, and humanitarian intervention. The concept of statehood and its role in international law is thus a complex and ever evolving one.

14.0 Recommendations

The paper made the following recommendations:

i. Statehood should be viewed as a functional concept that should focus on the ability of an entity to perform the essential functions of a state, rather than on its specific form or structure.
ii. Recognition of statehood should be based on objective criteria, such as effective control over territory, population, and government, rather than on subjective political considerations.

[101] *Ibid.*
[102] *Ibid*.
[103] P Kooijmans, *International Law* (Cambridge University Press 1968) 30-45.

iii. The concept of Statehood should consider the changing nature of the international system, including the rise of global and regional organizations, the emergence of new states, and the growing importance of international law.

iv. The principle of self-determination should be applied in a way that balances the interests of existing states and the right of peoples to self-determination.

v. The concept of statehood should be developed in a way that promotes stability and peace and does not encourage secessionist movements or promote the breakup of existing states.