

The International Statehood: An Africanist Perspective in Contemporary Times

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Abstract

The dominant discourse on the emergence and evolution of international law and statehood has often placed great emphasis on their European origins, with European states as the exclusive and active players in this evolution. The African dimension in the context of how indigenous African states participated in the evolution and emergence of international law and statehood before the advent of European colonialism is often overlooked. The main objective of this paper is to introduce an Africanist perspective into this discourse in contemporary times. An additional objective is to demonstrate that although Eurocentric scholars tend to argue that before the colonial encounter, there were no pre-existing states, to the contrary, several kingdoms across Africa were notably demonstrating strong attributes of statehood in the indigenous African context. The methodologies utilised in this paper are historical analysis and doctrinal analysis. The paper finds that before the colonial encounter, Africans engaged with international law through commerce, treaty-making, alliances with foreigners and diplomatic relations among several other ways. It is also the findings of this paper that the current legal status of statehood in international law reflects both continuity and change, sometimes based on politics. This paper contributes to knowledge by demonstrating that contemporary scholarship on the origin and evolution of international law and statehood ought to reflect this historical and contemporary African legal reality. It recommends a deliberate incorporation of African perspectives into contemporary notions of statehood and international law.

Keywords: International law, Statehood, Africa, States, Sovereignty, Europe

1. Introduction

Even though some scholars have traced the evolution of international law and statehood back to ancient states¹ and their practices in relation to each other, modern international law and contemporary notions of statehood began with social and political developments in Europe in the fifteenth and sixteenth centuries.² Indeed, the idea of discovering and acquiring territories in the sixteenth and seventeenth centuries influenced the evolution and emergence of international law and statehood.³ The dominant view in historical and contemporary scholarship around statehood and the evolution of international law seems to focus exclusively on the European origins of modern states and international law without considering the African context. Therefore, it is of academic interest to examine, alongside the European aspect, the African context in relation to the development and evolution of statehood, simultaneously with international law. Through historical analysis and some focus on Nigeria as a case study, it will be argued that before the colonial encounter with Europe, Africans had developed notable indigenous states and were involved in the practice of international law in various ways.

The existing literature on statehood and international law from an Africanist perspective has richly interrogated the formal criteria of statehood articulated in *Montevideo* and entrenched in the 1933 *Convention*, emphasising the historical legacies of colonialism and the persistence of Eurocentric normative frames in contemporary global governance; scholars such as Makau Mutua critique the 'savage slot' that African states are forced into within international legal discourse, arguing that mainstream theory inadequately accounts for indigenous political formations and normative traditions, while proponents of decolonial approaches like Sundhya Pahuja and Antony Anghie highlight how coloniality continues to shape sovereign equality and intervention paradigms.⁴ Other work examines the African Union's normative contributions, particularly the Constitutive Act's innovative sovereignty-as-responsibility language and its implications for non-interference and collective security, yet empirical analyses of how these norms have been operationalised remain limited.⁵ Similarly, while post-colonial scholars foreground the arbitrariness of colonial borders and their destabilising effects on state legitimacy, there is a paucity of systematic engagement with how these border legacies interact with contemporary criteria for state recognition in practice, especially in cases of secessionist movements within Africa. Moreover, most literature tends to privilege theoretical critique over detailed case studies that trace how African states negotiate statehood in international fora such as the International Court of Justice or the United Nations General Assembly, leaving a gap

¹ L. Oppenheim, *International Law: A Treatise*, vol 1 (Longmans, Green and Co 1905) 44-50.

² *ibid* 54. See also RMM Wallace and O Martin-Ortega, *International Law* (6th ed. edn, Sweet & Maxwell 2009) 5.

³ *ibid*.

⁴ Makau Mutua, *What Is TWAIL?* (American Society of International Law, 2000) 29–30; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2005); Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press 2011).

⁵ African Union Constitutive Act 2000, arts 3–4; see generally Charles Chernor Jalloh, *The African Union and the Promise of Regional Integration in Africa* (Routledge 2018).

in understanding the agency of African actors in shaping substantive international legal norms on statehood in the 21st century.⁶

This paper contributes to knowledge by demonstrating that contemporary scholarship on the origin and evolution of international law and statehood needs to reflect this historical African legal reality. Furthermore, the paper demonstrates how contemporary notions of statehood in international law reflect both continuity and change. The paper also contributes to knowledge through demonstrating that although the Montevideo criteria and the declaratory theory of recognition remain doctrinally authoritative, providing a stable legal framework for assessing statehood, at the same time, contemporary practice reveals the growing influence of political considerations, selective recognition, and global challenges such as climate change. The paper will therefore recommend a deliberate incorporation of African perspectives into contemporary notions of statehood and international law.

This paper is divided into seven sections. After this introductory section, the second section introduces the reader to the methodologies employed herein. Section three discusses the medieval origins of statehood, sovereignty and international law in Europe. The fourth section examines development in Africa prior to the colonial encounter. In the fifth section, the commencement of the movement towards a global society, beginning with the Paris Peace Conference in 1919, which led to the establishment of the League of Nations, is critically examined. This third part ends with an analysis of the impact of the Charter of the United Nations 1945 on the emergence of post-colonial African states under international law. Section six demonstrates how contemporary notions of statehood are presented under international law. Section seven is the concluding section of this paper.

2. Method

The main methodologies employed in this paper are historical analysis and doctrinal analysis. Thus, historical analysis has enabled the paper to examine the evolution of statehood and international law from medieval times to the present day through the lens of Africanism. The doctrinal method has been used to examine the provisions of relevant international instruments such as the Covenant of the League of Nations, the UN Charter, the Montevideo Convention and the UN Declaration on the Granting of Independence to Colonial Countries and Peoples. This has helped in highlighting the significance of these instruments in the evolution of statehood and international law from an Africanist perspective.

3. Analysis or Discussion

3.1. The Emergence of Statehood in Europe

It has been argued that the environment which led to the development of modern states in Europe can be traced back to early times through what was described as ‘a kind of cultural homogeneity only rivalled, at such geographic scale, by that of

⁶ Martti Kskenneiemi, ‘International Law in the World of Ideas’ in James Crawford and Martti Kskenneiemi (eds), *Cambridge Companion to International Law* (Cambridge University Press 2019) 47-63.

China.⁷ It is also claimed that another social factor which favoured the emergence of centralised states in medieval Europe was the prevalence of peasants.⁸ Charles Tilly argues that many peasants in the sixteenth century came under the control of state builders.⁹ It has been argued that within the world of medieval peasantry in Europe, there were cities and communities growing up as centres for trade, communication and manufacturing, and this process had been going on for about 500 years before that period.¹⁰ The significance of these social arrangements to state-making lay in the fact that they provided the necessary and favourable environment in which state-makers could gain access to resources (both human and material).¹¹ Compared to political events at this period in Africa, state-makers in Europe did not have to contend with strongly organised family lineages, 'tribes' and decentralised ethnic groups. Hence, the ease with which centralised states emerged in Europe.

However, the gradual expansion of strong and centralised states in Europe was met with stiff resistance from ordinary people.¹² The following three different categories of people are reported to have resisted; firstly, the ordinary people who were being forced to surrender crops, labour, goods, land and loyalties to the emerging states; secondly, the established authorities in the forms of deliberative assemblies which were being pressured to either relinquish or share their powers with the emerging states; and thirdly there were oppositions from other rival claimants to sovereignty.¹³ Tilly provides several examples of resistance to the emergence of states in Europe of that era.¹⁴ In France, things were no calmer either. France is reported to have experienced some bloody wars in the sixteenth century, and they were focused on issues of the royal prerogative versus the liberties of the regions.¹⁵ It has been demonstrated that there was certainly resistance to the emergence of state authority in the seventeenth century Europe ¹⁶

The resistance from the general populace notwithstanding, European state-makers succeeded in imposing their will on the general populace through centuries of brutal efforts of state-building. Consequently, Europe was reduced from some five hundred political units in 1500 to about twenty different states by 1900.¹⁷ This meant that the process of state-building had a lot of losers, as several political units were

⁷ Charles Tilly, 'Reflections on the History of European State-Making' in Charles Tilly, (ed) *The Formation of National States in Western Europe* (1975) 18.

⁸ *ibid.*

⁹ *ibid* 19.

¹⁰ *ibid* 20.

¹¹ Cultural homogeneity and peasantry.

¹² *ibid.*

¹³ *ibid.*

¹⁴ *ibid* 22-23.

¹⁵ *ibid* 23.

¹⁶ *ibid.*

¹⁷ *ibid.*

absorbed which already exercised some sort of sovereignty. For example, free cities, bishoprics and various entities.¹⁸ State makers in Europe continued to consolidate their efforts through several dubious means.¹⁹

3.2. The Peace of Westphalia – 1648

The Peace of Westphalia represents the European settlements which brought the Eight Years War between Spain and the Dutch as well as the German phase of the Thirty Years War to an end. Some writers have credited the Peace of Westphalia with the emergence of modern statehood and the doctrine of territorial state sovereignty.²⁰ In line with this, it is claimed that under the Peace Treaties, several states obtained territories and exclusive sovereignty over those territories, with the central authority of the Holy Roman Empire replaced with the sovereignty of the various princes who governed their territorial states.²¹

Although the Peace of Westphalia²² was a watershed moment in the development of the doctrine of sovereignty, statehood and the evolution of international law in Europe. The nation-states of Europe had their origin in the European state system, which existed before the Peace of Westphalia (1648).²³ Indeed, the Peace of Westphalia represents the first major attempt at establishing unity in the international community based on states exercising and having sovereignty over their territories.²⁴ In the aftermath of the Thirty Years' War (1618–1648), which had its origin in religious intolerance and war, the Peace of Westphalia encouraged and promoted toleration amongst Protestant and Catholic states through providing safeguards for religious minorities.²⁵ The Peace of Westphalia made it clear that Europe was to be divided into different and sovereign states with their boundaries determined by international agreements.²⁶

However, Derek Croxton has contested the validity of the claims that the emergence of sovereign statehood in Europe is attributable to the Peace of Westphalia²⁷ Croxton maintains that the Peace of Westphalia was in reality not a multilateral treaty but two separate bilateral treaties – one between Sweden and the Emperor (signed at Osnabruck) and the other between France and the Emperor (signed at

¹⁸ *ibid.*

¹⁹ *ibid* 24-25.

²⁰ JL Brierly and A Clapham, *Brierly's Law of Nations: An Introduction to the Role of International Law in International Relations* (7th ed. edn, Oxford University Press 2012) 5.

²¹ *ibid.*

²² Comprising of the treaties of Munster and Osnabriick both signed in 1648.

²³ JR Crawford, *The Creation of States in International Law* (Oxford University Press 2006) 10.

²⁴ A Gross, 'The Peace of Westphalia, 1648-1948' (1948) AJIL 20, 20.

²⁵ *ibid.*

²⁶ Tilly (n 7).

²⁷ D Croxton, 'The Peace of Westphalia of 1648 and the Origins of Sovereignty' (1999) 21 IHR 569 [570].

Munster).²⁸ Indeed, Benjamin Straumann appears to agree with the above views.²⁹ For Leo Gross, the Peace of Westphalia merely ended the supreme authorities of the Pope and the Emperor while introducing a new form of state 'absolutism' in the international system.³⁰ Thus, Gross maintains that international law came to depend on states to consolidate their powers rather than enhance the rule of law.³¹ As this paper demonstrates below, since the Peace of Westphalia and for the next three hundred years, the European state system that emerged was imposed on the entire world, including Africa.³²

3.3. The Congress of Vienna (1814-1815)

The Congress of Vienna represents a series of conferences³³ and the Final Act of the Congress of Vienna³⁴ held between 1814 and 1815 by the various European states at the time in reaction to the Napoleonic wars. To confront the Emperor (Napoleon), who had embarked on a gargantuan war or revolution in Europe, a military coalition between the 'Four Great Powers' of Britain and Russia³⁵ who were later joined by Prussia and Austria³⁶ was formed.³⁷ In addition to the Four Great Powers, several other pre-existing European states were participants in the negotiations, including the 'Eight'.³⁸ However, there were also other so-called 'Minor Powers'³⁹ who were invited to the deliberations just for the purposes of expressing their wishes, even though in fact it was 'The Five'⁴⁰ that ultimately had the capacity to negotiate and ratify the Final Act.⁴¹ The Congress met under Article XXXII of the Second Treaty of Paris.⁴²

However, the crucial question in the aftermath of the defeat of Napoleon at Waterloo (1815) was how the existing states could protect themselves both individually as sovereign states and collectively as a group of European states against future Napoleonic-like wars.⁴³ It has been argued that Congress was a failure, as it did not know how to balance the undesirability of revolutions on the one hand and how far it was right for those states to interfere in the internal affairs of other sovereign

²⁸ *ibid* 582.

²⁹ B Straumann, 'The Peace of Westphalia as a Secular Constitution' *Constellations* (15) 2 (2008) [183-184].

³⁰ Gross (n 24)22.

³¹ *ibid* 38.

³² Tilly (n 7), 45.

³³ Started in September 1814.

³⁴ Completed on 9 June, 1815.

³⁵ Joined in 1912.

³⁶ Joined in 1913.

³⁷ C Dupont, 'History and Coalitions: The Vienna Congress (1814-1815)' (2003) 8 IN 169.

³⁸ The 'Eight' included the original 'Four' plus France, Spain, Sweden and Portugal.

³⁹ Portugal, Spain and Sweden.

⁴⁰ The Four Great Powers plus France.

⁴¹ G Peterson, 'II. Political inequality at the Congress of Vienna' (1945) PSQ 532.

⁴² Of 1814.

⁴³ R Langhorne, 'Reflections on the Significance of the Congress of Vienna' (1986) 12 RIST 313, 316-317.

states on the other.⁴⁴ In addition, as the centre-piece of Napoleon's revolution was the idea of sovereignty of the 'people' or 'nation' and in his case the French rather than sovereignty of the state (France), the triumph of the 'Grand Alliance' has been described by analysts as one that 'favored the state over the nation'⁴⁵ Indeed, the Congress of Vienna represented a victory for the states rather than for the people that lived within them as sovereignty at this period in Europe was synonymous with the various states.⁴⁶

There were other developments in relation to international law and sovereignty at the Congress that are worth noting. In particular, the work of the Committee on International Rivers was responsible for resolving problems relating to the free navigation of rivers passing through the territory of more than one state.⁴⁷ As a result of the work of this Committee, rules were agreed at the Vienna Congress based on the 'theory of riparian co-administration'.⁴⁸ Thus, international waters were to be administered for the benefit of world commerce, but their administration and navigation were to be left in the hands of the riparian states.⁴⁹ Hence, the sovereignty of the riparian state was safeguarded through ensuring the observance of the principle of 'local control' by assigning to each riparian state the right to draft regulations in accordance with the general principles of their streams and tributaries.⁵⁰

It appears that whereas the Peace of Westphalia ended the sovereignty of the Pope as well as that of the emperor and transferred this sovereignty to the states, the Congress of Vienna essentially consolidated the sovereignty of those states. While the Peace of Westphalia aimed to allow religious freedom and tolerance within and among states, the Congress of Vienna aimed to stop or prevent revolutions from occurring within the territories of any of the existing European states. Both occurred in reaction to wars and were essentially centred on political events in Europe.

3.4. Africa, Statehood and the Development of International Law

Africa's place in international law from the Middle Ages to the early 19th century can only be understood within the context of the political, commercial and diplomatic history of the more significant African states and Kingdoms that were in existence during the pre-mediaeval era. Thus, pre-colonial states such as Morocco and Ghana already existed and were demonstrating attributes of statehood as far back as 300

⁴⁴ *ibid* 319-321.

⁴⁵ JS Barkin and B Cronin B, 'The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations' (1994) 48 IO 107, 117.

⁴⁶ *ibid* 118.

⁴⁷ Peterson (n 41), 544.

⁴⁸ *ibid*.

⁴⁹ *ibid* 544-545.

⁵⁰ *ibid*.

AD.⁵¹ Indeed, scholars have demonstrated that Ghana for example had all the characteristics of a state at this period in history.⁵² It has been argued this ancient state of Ghana was defeated by other African states at about 12 AD.⁵³

Furthermore, another pre-colonial state that existed and was known to have exhibited the features of a great state or empire is Mali in the context of how its leaders administered justice and managed the affairs of the state. Bruce-Wallace argued that it was characterised 'with effective systems of administration and justice.'⁵⁴ In this context, Teslim Olawale Elias wrote that Mali and Western Sudan were indeed great pre-colonial African states.⁵⁵ This pre-colonial state of Mali was an epitome of how Africans demonstrated their ability to build and administer cohesive state entities.⁵⁶ It has been shown that in pre-colonial Nigeria, there existed several pre-colonial states from medieval times to the nineteenth century. Examples of such pre-colonial states in the northern parts of Nigeria included: the Sokoto Caliphate, Katsina, Zaria, Gobir and Kano.⁵⁷ In particular, historians have argued that because of its strength, the Sokoto caliphate defeated and overwhelmed the other Hausa states through an Islamic holy war that was led by Usman Dan Fodio, and many other states that were not Islamic were also conquered.⁵⁸ Obiora Chinedu Okafor argues that the holy war destroyed several smaller indigenous states in Northern Nigeria.⁵⁹

In Southern Nigeria, pre-colonial states were also in existence, just like in the Northern parts of Nigeria. Such states included: the Kingdom of Ile-Ife, the Oyo Kingdom and the Benin Kingdom, among others. Indeed, the Benin Kingdom was famous for having early contacts and interactions with other similar European states. As at the year 1472, the Benin Kingdom was already a great state and was known to have been visited by Europeans such as the Portuguese.⁶⁰ Indeed, Elias and Akinjide reported that there were diplomatic correspondences between the Oba of Benin and the King of Portugal.⁶¹ Laurencio Pinto, the captain of one of the Portuguese ships that ferried some missionaries to Warri (a town within the then

⁵¹ TO Elias and R Akinjide, *Africa and the Development of International Law* (Martinus Nijhoff Publishers 1988) 7.

⁵² NL Bruce-Wallace, 'Africa and International Law—the Emergence to Statehood' (1985) 23 JMAS 575, 578.

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ Elias and Akinjide (n 51) 9.

⁵⁶ *ibid.*

⁵⁷ *ibid* 10.

⁵⁸ OC Okafor, 'After Martyrdom: International Law, Sub-state Groups, and the Construction of Legitimate Statehood in Africa' (2000) 41 HILJ 503.

⁵⁹ *ibid* 507-508.

⁶⁰ Elias and Akinjide (n 51) 10.

⁶¹ *ibid* 11.

Benin Kingdom) in 1691 sent a deposition at the request of a priest where he indicated that Benin was greater than Lisbon in several ways.⁶²

Therefore, the existence of African states in the forms of empires and kingdoms, together with the various incidences of their interrelations between them, evidences a high degree of statehood as well as knowledge of and practice of international law, just as was practised by medieval states in Europe and Asia.⁶³ Thus, it is legitimate to conclude that even though the various kingdoms, empires and other political units that existed in Africa from early times through the mediaeval period until the late 19th century may have risen and fallen over time; before the colonial encounter with Europeans, many indigenous pre-colonial Africa states existed on the continent of Africa in contradistinction to some Euro-centric views expressed by certain European scholars.⁶⁴ An example of such Eurocentric views is the erroneous postulation that there were no pre-existing states in Africa ⁶⁵ Indeed, some writers have taken this Eurocentrism to another level by arguing that Africans did not have states at this period in history, when they were colonised in the nineteenth century.⁶⁶ Therefore, in view of the earlier discussions above in relations to the various states that existed in the form of empires, kingdoms and other political units in Africa before colonialism, it is submitted in accordance with the views of Wallace-Bruce that the Euro-centric view that there were no pre-existing states in Africa before the arrival of Europeans is false.⁶⁷

The above pre-colonial political and administrative arrangements in the context of pre-colonial African states were dislodged as a result of historical events in Europe relating to the Berlin Conference held between 1884 and 1885. These events changed and dismantled the sovereignty of pre-colonial African states, such that between the nineteenth century and the twentieth century, the pre-colonial African states described above disappeared from the political map of international law of this period. While at the 1815 Congress of Vienna, the European states were categorising themselves into 'Great Powers', 'Secondary Powers' and 'Minor Powers', the pre-existing states in Africa were denied recognition as states capable of engaging with their European counterparts as such.

3.5. Colonial Africa

It must be emphasised at the outset of this sub-part that, for reasons of historical accuracy, even though the 1884 to 1885 Conference of Berlin marked the official

⁶² *ibid* 12.

⁶³ *ibid* 15.

⁶⁴ JG Syatauw, *Some Newly Established Asian States and the Development of International Law* (Springer Science & Business Media 2013).

⁶⁵ *ibid* 18.

⁶⁶ R Jackson and CG Rosberg, 'Sovereignty and Underdevelopment: Juridical Statehood in the African Crisis' (1986) 24 JMAS 1, [2].

⁶⁷ Bruce-Wallace (n 52), 583.

partitioning of Africa and the transformation of the same into various colonies and protectorates, as demonstrated below, by the 1880s, Europeans were already exercising some influence on Africans before the conference. Some examples abound; by 1850 Gold Coast had been made a colony, and likewise, by 1862, Lagos had also been made a colony.⁶⁸ In addition, other parts of Africa, like Tunis, had already been created as Protectorates before the 1884 to 1885 Conference of Berlin.⁶⁹ In addition, other parts of Africa, like Tunis, had already been created as Protectorates before the 1884 to 1885 Conference of Berlin.⁷⁰ Officially, however, it was after the Berlin Conference that the majority of the already created colonies, like Lagos and the Gold Coast, became legally effective.⁷¹

3.6. The Berlin Conference (1884-1885)

The idea behind the 1884 to 1885 Conference in Berlin is epitomised by the statement of Prince Bismarck of Prussia, who opened the conference by indicating that the objectives were to end slavery and civilise Africans.⁷² However, a key point worthy of mentioning within the context of the evolution and emergence of statehood in the modern European sense, as well as international law, is the definition of and the rules regarding 'effective occupation'.⁷³ In addition, and following on from the rules regulating international rivers, in terms of the idea of free navigation through the territories of more than one state, the Act that emanated from the Congress held in Vienna and the outcome of the Conference in Berlin, created laws to regulate the free navigation of the Niger and Congo Rivers. They achieved this through the instrumentality of the Act of the Navigation of the Niger and the Act of the Navigation of the Congo.⁷⁴ The Final Act which emerged from the Vienna Congress did protect the sovereignty of riparian states and granted them the rights to freely navigate international waters, but because there was no African state representative at the Berlin Conference when the two Acts of Navigation of Rivers Niger and Congo were adopted and incorporated into the Berlin Treaty, they were not recognised nor granted such rights.⁷⁵

Indeed, as the 1884 to 1885 Conference in Berlin was going on, the British National African Company was simultaneously on the ground around the Northern parts of Nigeria entering and making agreements with indigenous rulers in the pre-existing

⁶⁸ Elias and Akinjide (n 51), 18.

⁶⁹ *ibid.*

⁷⁰ *ibid.*

⁷¹ *ibid* 18-19.

⁷² Protocol No.1 – Meeting of November 15, 1884 reprinted in RJ Gavin and J Betley, *The Scramble for Africa: Documents on the Berlin West African Conference and Related Subjects, 1884/1885* (Ibadan University Press 1973) 129.

⁷³ *ibid* 130.

⁷⁴ General Act of the Berlin Conference in Gavin and Betley n 70, 287-291.

⁷⁵ Elias and Akinjide (n 51) 20.

states like Gwandu and Sokoto.⁷⁶ It has been argued that it was these agreements and treaties which the British Company entered with local chiefs before and during the Berlin Conference that facilitated the British claims to the Lower Niger.⁷⁷ It was reported that subsequently, at different parts of pre-colonial Nigeria, the British then hastily entered into agreements and treaties with indigenous leaders by inducing the local chiefs to accept the protection and rule of the British.⁷⁸

It was reported that all of these agreements and treaties included statements that effectively annexed and ceded lands and territories to the British.⁷⁹ It was also observed that the combined effects of commercial, expeditionary and other activities related to ending the slave trade, the nature of pre-colonial African states changed remarkably, in West Africa, so that by 1885, most of them had become colonies. Examples of such areas in West Africa that had become colonies by this time are: the Crown Colony of Lagos, the Oil Rivers Protectorate, Sierra Leone, the Gambia and the Gold Coast.⁸⁰ It is unsurprising, then, that between 1878 and 1903, most of Africa had been grabbed and occupied by several European powers. For example, the pre-colonial African state of Sokoto, in present day Northern part of Nigeria, was defeated by the British in 1903.⁸¹

The colonial encounter between the pre-colonial African societies and the European colonial authorities had far-reaching consequences in the context of the sovereignty of those pre-colonial states and their participation and involvement in the evolution of international law. Effectively, as soon as the European colonial authorities had 'consolidated their boundaries by international treaties, the existing sovereignties of the old kingdoms and city states became submerged under the new sovereignties of the "metropolitan" Powers.'⁸² Consequently, since those pre-colonial and indigenous African states no longer existed as a result of their coming under the authority of the colonial states, the prior and existing avenues of engaging with other states and entities through entering into treaties, engaging in trade and commerce were closed.⁸³ Thus, since the local authorities in the colonies were subject to the home governments of the colonial authorities the local authorities had no power to enter into any international agreement.⁸⁴

Just like the situation in medieval Europe when state makers began to centralise and consolidate their state-making efforts, leading to the reactionary resistance by the

⁷⁶ *ibid* 17.

⁷⁷ *ibid*.

⁷⁸ *ibid*.

⁷⁹ *ibid*. For example, see Article I Treaty with Lagos, 1861 and Article I Treaty with Sokoto.

⁸⁰ O Roland and M Crowder, *The Cambridge Encyclopaedia of Africa* (Cambridge University Press 1981) 163.

⁸¹ *ibid* 158.

⁸² Elias and Akinjide (n 51) 19.

⁸³ *ibid*.

⁸⁴ *ibid* 19-20.

ordinary people in Europe, similar incidents of resistance to European rule and creation of European-style states in Africa were also prevalent.⁸⁵ For example, and in the Nigerian context, indigenous leaders in the form of local chiefs and kings, such as the Jaja of Opobo, requested an explanation as to the meaning of 'protectorate', and because he insisted and resisted British rule upon this condition, he was exiled by the British colonial authorities in 1887 to an area outside of West Africa.⁸⁶ Many other indigenous leaders suffered a similar fate to the Jaja of Opobo. Thus, the Sultan of Sokoto, the Oba of Ijebu, the Oba of Benin and the Nana of Ebrohimi, all in the territorial area of what was to become Nigeria, suffered a similar fate, although these latter indigenous leaders were not exiled upon defeat.⁸⁷ Furthermore, even though the British colonial authorities created a Protectorate that covered the entire area of what was later known as Northern Nigeria, it was reported that 'the non-Caliphate parts of "Northern Nigeria" also refused to give up their sovereignty and many groups in what was to be known as Middle Belt fought against the British off and on from 1900 to the period of the 1914-18 war.'⁸⁸ As Obaro Ikimi noted, despite attempts at resistance, the various incidences of resistance were subdued.⁸⁹

In the process of building a European-style Westphalian state, the British colonial authorities amalgamated the Northern and Southern Protectorates of Nigeria in 1914 to create modern Nigeria. It was in this manner that the British colonial authorities succeeded in creating a state (Nigeria) in line with the kind of state entities that existed in Europe through the forceful submerging and amalgamation of previously independent indigenous states.⁹⁰ It should be noted that because the colonial powers were the exclusive and active participants in international law at this moment in history, only entities recognised by Europe as states by the European colonial authorities were relevant players in the evolution of statehood and the emergence of modern international law. Therefore, although international law was developing alongside the political and commercial occurrences on the continent of Africa, Africans were mere onlookers, instead of key participants.⁹¹

3.7. The Movement towards a Global Society

In the aftermath of the First World War, thirty Allied states, along with others, sent their representatives to Paris in 1999, where they gathered to discuss and come up with better avenues of restoring peace in Europe in particular and in the world in

⁸⁵ Roland and Crowder (n 79) 158.

⁸⁶ O Ikimi, 'Nigerian Reaction to The Imposition of British Colonial, 1885-1918' in S Förster, WJ Mommsen and RE Robinson (eds) *Bismarck, Europe and Africa: The Berlin Africa Conference 1884-1885 and the Onset of Partition* (Oxford University Press 1988) 454-467.

⁸⁷ *ibid* 460-462.

⁸⁸ *ibid*.

⁸⁹ Ikimi (n 85) 466.

⁹⁰ *ibid*.

⁹¹ Elias and Akinjide (n 51).

general.⁹² The states that sent representatives to the Paris 1919 Peace Conference⁹³ subdivided themselves into 'Powers with general interests'⁹⁴, 'Powers with special interests'⁹⁵ and 'Powers with a right of attendance at sessions affecting them.'⁹⁶

The then American President (Woodrow Wilson) was not particularly impressed with the global configuration of states in the international domain, as the global system appeared to him to be composed mainly of so-called 'superpowers'. For him, this sort of international system in which 'superpowers' were the main players and actors was not satisfactory and needed to be drastically transformed.⁹⁷ As a result of his dissatisfaction with this sort of affairs in the international arena, he led the struggle towards a transformed and more viable idea of state sovereignty.⁹⁸ To this end, he stated that people should not be treated unfairly by constantly toiling with their sovereignty.⁹⁹ Going further in a 'Fourteen Points' agenda, Wilson maintained that: 'A general association of nations must be formed under specific covenants for the purposes of affording mutual guarantees of political independence and territorial integrity to great and small states alike.'¹⁰⁰

The result of the Paris Peace Conference was the Treaty of Versailles, which comprised 440 peace settlement clauses, which were the terms of agreements aimed at achieving peace among the European Powers on the one hand,¹⁰¹ and the adoption of the Covenant of the League of Nations¹⁰² on the other hand. However, for purposes of the development of international law, it is the Covenant that merits further analysis. as it is 'the most crucial contribution that the statesmen meeting in Paris could make to building the new international order.'¹⁰³

However, the evolution of international law and statehood continued with the emergence of the Covenant of the League of Nations (League Covenant) in the aftermath of the First World War, as the international system was developing into a global society. Through the instrumentality of the League Covenant, states agreed to the creation and emergence of a global and international system where there was

⁹² A Sharp, *The Versailles Settlement: Peacemaking after the First World War, 1919-1923* (2nd ed. edn, Palgrave Macmillan 2008) 1.

⁹³ Paris Peace Conference of 1919.

⁹⁴ British Empire, France, Italy, Japan, United States.

⁹⁵ Australia, Belgium, Brazil, Canada, China, Cuba, the Czechoslovak Republic, Greece, Guatemala, Hedjaz (Saudi Arabia), Honduras, India, Liberia, New Zealand, Nicaragua, Panama, Poland, Portugal, Romania, Serbia, Siam, South Africa.

⁹⁶ Bolivia, Ecuador, Peru and Uruguay.

⁹⁷ R Henig, *Versailles and After 1919-1933* (2nd ed. edn, Routledge 1995) 9.

⁹⁸ *ibid.*

⁹⁹ *ibid* 10.

¹⁰⁰ *ibid* 76.

¹⁰¹ *ibid* 29.

¹⁰² *Covenant of League of Nations* reprinted in Sharp n 90, [68-80].

¹⁰³ A Fleury 'The League of Nations: Towards a new Appreciation of Its History' in E Gläser, MF Boemeke and GD Feldman, (eds) *The Treaty of Versailles: A Reassessment after 75 years* (German Historical Institute Cambridge University Press 1998) 507.

collective security and global solidarity.¹⁰⁴ In the context of Africa and the defeat of Germany in the First World War, a mandate system was created by the League of Nations to take over the administration of German colonies in Africa.¹⁰⁵

Hence, African entities that were hitherto under German colonial administration were allocated to other European colonial authorities as Mandated Territories to prepare them for independence from colonial rule.¹⁰⁶ In accordance with this mandate, Cameroon was divided into two parts, with each coming under British and French mandates.¹⁰⁷ Consequently, the Mandate Powers were given the responsibility of administering the Mandate Territories under the supervision of a newly created Permanent Commission.¹⁰⁸ In the context of the evolution and development of international law and the concept of statehood in Africa, the historical events narrated above demonstrate that, because pre-colonial African states had lost their statehood and sovereignty, their territories still having enormous influence on the evolution and emergence of modern international law and statehood.¹⁰⁹

At a more general level, it would appear that the League Covenant epitomised the growing efforts at building a global society, where states would be cooperating to ensure international peace and security, as well as enhancing solidarity in the global system of that period.¹¹⁰ It has, however, been noted that because the US left the League of Nations, and Powers were never in it at the same time, it eventually collapsed.¹¹¹ This failure notwithstanding, the League Covenant arguably contributed to the emergence of a much-needed atmosphere for the creation of a global system, where states acted in solidarity before the Second World War – albeit without the presence of Africans as their statehood had become subsumed by the colonial authorities and administrations.¹¹²

Just like the First World War and the creation of the League of Nations, the United Nations (UN) was created after the Second World War with the principal goal of ensuring and enhancing peace in the world and promoting cooperation among states in the global system.¹¹³ Other purposes that motivated the creation of the UN include addressing global challenges such as political, social, cultural, economic and human rights matters.¹¹⁴ In line with these goals, the Charter of the UN demands

¹⁰⁴ Art. 10 of the Covenant.

¹⁰⁵ Art. 22 (1). The emphasis is mine.

¹⁰⁶ Art. 22 (2) and (3).

¹⁰⁷ Elias and Akinjide n 50 22.

¹⁰⁸ Article 22 (8) and (9).

¹⁰⁹ *ibid.*

¹¹⁰ Fleury (102) 517.

¹¹¹ Sharp (n 91) 65.

¹¹² Fleury (n 102) 516.

¹¹³ Art. 1 of the UN Charter.

¹¹⁴ Art. 1 (3) and (4).

under its Article 1 that Member States should aim to achieve the objective of the UN by following the principles set out under its Article 2. To enhance global solidarity, the United Nations Charter opens up the organisation to any state that is dedicated to promoting and maintaining, as well as states that have demonstrated the capacity to perform the obligations and responsibilities that are stipulated under the Charter.¹¹⁵

The emergence of the UN and the Charter, creating it which contains several rules, certainly represents the emergence of contemporary international law and statehood, through the way it preserves some previous international norms and rules, whilst simultaneously creating new rules and norms.¹¹⁶ Some of the new norms, rules and principles that were introduced by the Charter of the United Nations will be examined later in this paper in terms of their significance to the concept of statehood and sovereignty in relation to Africa. However, it should be noted that the UN contributes to the evolution, creation and growth of international law via three main ways. Firstly, the Charter contains rules and principles of international law; secondly, through establishing mechanisms for the promotion of new laws and the revision of old ones; and thirdly, through several specialised agencies that have developed and are developing several spheres of international law.¹¹⁷

In the context of sovereignty and statehood, the Charter does not define a 'state';¹¹⁸ however, it provides that as a cardinal principle, the UN is based on the principle of the sovereign equality of all its Members.¹¹⁹ In addition, it declared that it would be the function of the UN to enhance respect for 'the principle of equal rights and self-determination of peoples'.¹²⁰ With respect to Territories that were 'non-self-governing', the Charter made special arrangements for their independence.¹²¹ The combined effects of Articles 2 (1), 55 and 73 of the Charter have been rightly interpreted as setting the decolonisation process in motion with respect to Territories that were under colonial administration.¹²² For Territories that were under the Mandate system of the League of Nations, the Charter considered them

¹¹⁵ Art. 4 (1).

¹¹⁶ N Singh, 'The United Nations and the Development of International Law' in A Roberts and B Kingsbury, (eds) *United Nations, Divided World: The UN's Roles in International Relations* (2nd ed. edn, Oxford University Press 1993) 384.

¹¹⁷ Singh (n 115), 385.

¹¹⁸ Under the Montevideo Convention on the Rights and Duties of States (a treaty signed at Montevideo, Uruguay, on December 26, 1933), in Article 1, the characteristics of a State include: permanent population; defined territory government and capacity to enter external relations.

¹¹⁹ Art. 2 (1).

¹²⁰ Art. 55.

¹²¹ Art. 73.

¹²² Singh (n 115) 390-391.

Trusteeship Territories under the Trusteeship Council, which was established for that purpose.¹²³

The Charter of the UN has had very significant effects on the way territories are acquired in the international arena. In particular, the Charter effectively abrogated the then prevalent means of acquiring territories by conquest, through its principles of non-use of force as well as the concept of territorial integrity and sovereignty of states.¹²⁴ Following on and backed by the principles and goals stipulated under the Charter of the UN, the UN General Assembly adopted an epochal resolution in 1960—the UN Declaration on the Granting of Independence to Colonial Countries and Peoples.¹²⁵ The effect of this Declaration on the re-emergence of states in the international system, and particularly in Africa, was cataclysmic. Indeed, as at the first meeting of the UN General Assembly in 1946, when the UN comprised only fifty-one Member States,¹²⁶ As at the time of writing, the membership of the UN stands at 193, and this includes several African states with their respective sovereignties recognised as such under international law.

The creation of the UN in 1945 indeed facilitated the re-emergence of African states, and through the instrumentality of the 1960 UN General Assembly Declaration on independence, many states in Africa gained their political independence thereafter.¹²⁷ It is important to address the question of whether the new states that attained independence inherited the treaty obligations of their former Governments. It appears different countries took different approaches to the issue.¹²⁸ Nigeria and all other Anglophone African states took the approach of declaring to the UN and other states that, for international agreements like treaties, they will consider those binding, while they opted to reserve their views in terms of others that they intended to study and communicate their stance from time to time. In contrast, Tanganyika (comprising of present day Rwanda and Burundi) declared all treaties between it and any individual entity will be binding for two years only, while Uganda, Kenya and Malawi declared pre-existing treaty obligations would be observed for fifteen months from the date of their independence after which time they required all other third party states to come forward to renegotiate the treaties for them to remain in force.¹²⁹ Francophone African States also took the Nigerian approach.¹³⁰ Therefore, it appears all the newly independent African states were

¹²³ Chps. XI, XII and XII of the UN Charter.

¹²⁴ Singh (n 115) 390.

¹²⁵ Adopted by General Assembly resolution 1514 (XV) of 14 December 1960.

¹²⁶ Elias and Akinjide (n 51) 46.

¹²⁷ Elias and Akinjide(n 51) 46.

¹²⁸ *ibid* 22.

¹²⁹ *ibid*.

¹³⁰ *ibid*.

united in demanding that all bilateral treaties be renegotiated between them and third parties.¹³¹

3.8. The Current Legal Status of Statehood in International Law

Statehood remains the central organising concept of public international law in contemporary times. Despite the proliferation of international organisations, non-state actors, and transnational regulatory regimes, the state continues to function as the primary subject of international law and the principal bearer of international rights and obligations. Yet, the legal status of statehood is neither static nor uncontested. Since 2015, scholarly debate has intensified around the adequacy of traditional criteria of statehood, the legal significance of recognition, and the tension between legal doctrine and political practice. This section examines the current legal status of statehood in international law, analysing the applicable legal criteria, theories of recognition, the relationship between statehood and international legal personality, and the challenges posed by contemporary practice.

The orthodox legal point of departure remains Article 1 of the Montevideo Convention on the Rights and Duties of States 1933, which identifies four criteria for statehood: a permanent population, a defined territory, an effective government, and the capacity to enter into relations with other states. Although the Convention is regional in origin, it is widely accepted as reflecting customary international law.¹³² Contemporary scholarship continues to affirm the relevance of these criteria, particularly as a framework for objective legal assessment. Crawford emphasises that the Montevideo criteria describe the ‘normal incidents’ of statehood rather than rigid legal thresholds, allowing for a degree of flexibility in their application.¹³³ This flexibility is evident in practice, where states have been recognised despite territorial disputes, limited control over territory, or institutional fragility.

Nonetheless, recent literature has questioned whether the Montevideo framework sufficiently reflects modern realities. Vidmar notes that effectiveness, especially in relation to government and territorial control, is no longer applied uniformly, particularly where self-determination claims or international administration are involved.¹³⁴ Similarly, concerns have been raised about the ‘defined territory’ requirement in the context of climate change and the potential disappearance of

¹³¹ *ibid.*

¹³² Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19, art 1.

¹³³ James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2019) 45–52.

¹³⁴ Jure Vidmar, ‘Statehood and Recognition’ in Malcolm Evans (ed), *International Law* (5th edn, OUP 2018) 163–166.

low-lying island states, challenging the assumption that physical territory is a permanent prerequisite of statehood.¹³⁵

3.9. Recognition and Theories of Statehood

The legal status of statehood is closely linked to the doctrine of recognition, traditionally explained through two competing theories: the declaratory and constitutive theories.

3.9.1. Declaratory Theory

The declaratory theory holds that an entity becomes a state once it satisfies the objective criteria of statehood, independent of recognition by other states. Recognition is merely declaratory of an existing legal fact. This approach is explicitly endorsed in Article 3 of the Montevideo Convention and remains dominant in contemporary doctrine.¹³⁶ Modern writers largely support this view, arguing that allowing recognition to determine statehood would undermine legal certainty and entrench political discretion as a source of international legal personality. Shaw observes that the declaratory theory better reflects the structure of international law, which lacks a central authority empowered to 'create' states.¹³⁷

3.9.2. Constitutive and Hybrid Approaches

The constitutive theory, by contrast, posits that statehood depends on recognition by existing states. While this theory is generally rejected as a matter of strict law, its influence persists in practice. Talmon argues that recognition remains functionally decisive in determining whether an entity can participate fully in international relations, even if it is not legally constitutive of statehood.¹³⁸ Contemporary scholarship increasingly adopts a hybrid position, recognising that while statehood is legally grounded in objective criteria, recognition plays a critical role in enabling the effective exercise of international rights and duties.¹³⁹ This tension between legal doctrine and political reality is a defining feature of the current legal status of statehood.

3.10. Statehood and International Legal Personality

Statehood is traditionally understood as conferring full international legal personality, including the capacity to enter into treaties, establish diplomatic relations, and invoke international responsibility. However, recent scholarship has

¹³⁵ Rosemary Rayfuse, 'International Law and Disappearing States' (2016) 41 South Pacific Law Review 1.

¹³⁶ Montevideo Convention (n 1) art 3.

¹³⁷ Malcolm N Shaw, *International Law* (8th edn, CUP 2017) 158–160.

¹³⁸ Stefan Talmon, 'Recognition of Governments: An Analysis of the New British Policy and Practice' (2017) 63 ICLQ 1.

¹³⁹ Vidmar (n 136) 170–172.

stressed that legal personality is not binary but may exist in degrees.¹⁴⁰ The relationship between statehood and membership of international organisations, particularly the United Nations, illustrates this point. UN membership is not a legal requirement for statehood, yet it functions as powerful evidence of widespread recognition and acceptance within the international community.¹⁴¹ Conversely, the exclusion of an entity from the UN does not, in itself, negate its claim to statehood under international law.

Post-2015 practice demonstrates the continued relevance of statehood as a legal concept, while also revealing its contested nature. Partially recognised entities such as Kosovo, Palestine, and Somaliland highlight the gap between legal criteria and political acceptance. Kosovo, for example, has been recognised by a significant number of states and exercises effective governmental authority, yet its statehood remains disputed by others, including members of the UN Security Council. Scholarly consensus treats Kosovo as a *sui generis* case, shaped by exceptional factual and legal circumstances.¹⁴²

Palestine presents a different configuration, combining widespread diplomatic recognition with fragmented territorial control and governance. Contemporary legal analysis increasingly accepts Palestinian statehood as legally valid, even while acknowledging ongoing challenges relating to effectiveness.¹⁴³ These cases illustrate that the legal status of statehood today is often indeterminate in practice, despite doctrinal clarity.

3.11. Emerging Challenges to Classical Statehood

Recent literature identifies several structural challenges to the traditional law of statehood. First, climate change threatens the physical territory and population base of certain states, prompting debate over whether statehood can persist without habitable territory. Some scholars argue for the emergence of a concept of 'deterritorialised statehood' to preserve legal personality despite territorial loss.¹⁴⁴ Secondly, the increased use of non-recognition as a political tool raises concerns about the instrumentalisation of statehood. Selective recognition practices risk undermining the principle of sovereign equality and eroding the coherence of international law.¹⁴⁵ Finally, the expansion of international governance regimes has reduced the functional autonomy traditionally associated with sovereignty, leading some commentators to question whether statehood still carries the same legal

¹⁴⁰ Jan Klabbbers, *International Law* (3rd edn, CUP 2023) 63–66.

¹⁴¹ Charter of the United Nations, art 4; Crawford (n 135) 493–495.

¹⁴² Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion) [2010] ICJ Rep 403; Crawford (n 135) 437–442.

¹⁴³ John Quigley, *The Statehood of Palestine* (CUP 2019) 233–240.

¹⁴⁴ Rayfuse (n 137) 12–15.

¹⁴⁵ Talmon (n 140) 22–25.

significance it once did. Nonetheless, the prevailing view remains that statehood continues to provide the foundational legal framework for international relations.¹⁴⁶

The current legal status of statehood in international law reflects both continuity and change. The Montevideo criteria and the declaratory theory of recognition remain doctrinally authoritative, providing a stable legal framework for assessing statehood. At the same time, contemporary practice reveals the growing influence of political considerations, selective recognition, and global challenges such as climate change. Statehood today is best understood as a legal status grounded in objective criteria but mediated by international practice. While the law of statehood has not fundamentally transformed since 2015, its application has become increasingly complex, underscoring the need for a nuanced and context-sensitive approach to one of international law's most enduring concepts.

4. Conclusion

This study found that the dominant discourse on the evolution of international law and statehood has often placed great emphasis on the European origins of statehood and international law, with European states as the exclusive and active players in this evolution. This study also finds that before the colonial encounter, Africans engaged with international law through commerce, treaty-making, alliances with foreigners and diplomatic relations among several other ways. An additional finding is that although Eurocentric scholars tend to argue that before the colonial encounter, there were no pre-existing states, to the contrary, several kingdoms across Africa were notably demonstrating strong attributes of statehood in the indigenous African context.

Furthermore, the current legal status of statehood in international law reflects both continuity and change. The Montevideo criteria and the declaratory theory of recognition remain doctrinally authoritative, providing a stable legal framework for assessing statehood. However, contemporary practice reveals the growing influence of political considerations, selective recognition, and global challenges such as climate change. This study, therefore, recommends that an Africanist perspective needs to be incorporated into the pre-existing discourse on the evolution of statehood and international law in contemporary times. Indeed, it is further recommended that African states need to put their stamp on the concept of statehood under international law, in a similar way as they did with the adoption of the African Charter on Human and Peoples' Rights, as a way of introducing an African dimension of human rights into the general body of international human rights law.

¹⁴⁶ *ibid.*