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Statehood Recognition Under International Law: Examining the Criteria and Challenges in Contemporary Africa

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Abstract

Statehood recognition remains one of the most contested issues in contemporary international law, particularly within the African context where colonial legacies, contested borders, and post-independence governance challenges continue to shape claims to sovereignty. This study examines the legal and political dimensions of statehood recognition in Africa through a focused analysis of Nigeria and Cameroon, with particular reference to the self-determination movements of Biafra and Ambazonia. Drawing on the Montevideo Convention as the foundational legal framework, the paper evaluates whether these movements satisfy the established criteria of permanent population, defined territory, effective government, and capacity to engage in international relations. Beyond doctrinal analysis, the study situates statehood claims within their historical and post-colonial contexts, highlighting how inherited colonial structures and nationalist movements have influenced contemporary separatist aspirations. The paper further explores pragmatic pathways to recognition and conflict resolution, including revisiting rigid applications of statehood criteria for former colonies, adopting asymmetric federalism and autonomy arrangements, and leveraging governance support from regional and international African institutions. By integrating legal analysis with political and institutional considerations, the study contributes to ongoing debates on sovereignty, self-determination, and stability in Africa, offering policy-relevant insights for managing statehood claims without undermining regional peace and territorial integrity.

Keywords: Statehood recognition; Montevideo Convention; Self-determination; Africa; International law

1. Introduction

The scars of colonialism run deep in Africa, and the struggles of once-independent regions seeking to restore autonomy, even decades after the continent's last country gained independence [1], show the need to reconsider existing state structures. The struggle of groups, such as Biafra in Nigeria and the Anglophone separatists in Cameroon, to gain recognition as independent states is shaped by colonial history, which often "amalgamated" different ethnic, cultural, and linguistic communities into a single nation [2]. These ongoing struggles highlight the shortcomings of current international legal standards for statehood and the challenges posed by colonial-era boundaries.

While most legal scholarships often center on the legality or otherwise of efforts to secede/declare independence, this Paper advocates for a new, holistic approach to statehood and governance for Africa's former colonies. This Paper explores the historical and social factors driving the push for self-governance by Biafra, a secessionist western African state that existed from 1967 to 1970, and Ambazonia, a political entity proclaimed by Anglophone separatists out of Southern Cameroon who seek independence [3].

This Paper is divided into four Parts. Part I provides a brief background on Biafra and Ambazonia, detailing their historical, cultural, and political history to provide perspective on their quests for independence [4]. Part II explains the

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requirements for statehood under international law. With an emphasis on the provisions of the Montevideo Convention, it illustrates the shortcomings of the existing international statehood framework. This Part explores Biafra and Ambazonia's claims under the Montevideo Convention, determining whether they meet the criteria for statehood and assessing the reasons behind their successes or failures. Part III proposes solutions to the challenges groups in former colonies face as they seek independence. It specifically proposes revisions to the current statehood requirements in order to better address the issues faced by postcolonial regions, as well as other solutions such as asymmetric federalism and autonomous arrangements. Finally, Part IV synthesizes all aspects of the paper and establishes that international law has never been a static institution, and the issues such as the Biafra and Ambazonia movements necessitate a new response by developing international law to address the agitations of these groups.

2. Historical context of statehood in Africa

2.1. Background on the Creation of Nigeria and Cameroon

With few exceptions, the borders that constitute most Africa countries have largely remained intact since independence. These boundaries reflect the divisions established by European powers, notably during the Berlin Conference of 1884–1885[5]. In Nigeria, the British administration consolidated three distinct regions Western Nigeria, the Mid-West, and the Eastern Region into a single entity, treating them as a coherent unit. The Yoruba predominantly inhabited the West, while the Igbo were the majority in the East. One of the nation's most renowned novelists, Chinua Achebe described Nigeria as a 'neocolonial state under the iron grasp of its former colonial master, Great Britain, with a very willing steward at the helm [6].' One of the earliest and most violent rejections of colonial borders occurred in Nigeria, where political turmoil and violent attacks against the Igbo community culminated in the 1967 declaration of independence for Biafra [7].

In Cameroon, the East, which was then administered by the French, and the West, administered by the British, were united to form Cameroon. The two colonizing powers ruled Cameroon very differently and for nearly half a century, Britain and France introduced vastly different political and legal systems in their respective territories [8]. Before gaining independence, people in British-administered Southern Cameroon (northwest and southwest regions) voted in a referendum on September 30, 1961, organized by the United Nations. They were asked if they wanted to join the new Federal Republic of Nigeria or French-administered Cameroon. They chose to join Cameroon with promises of a federal system and English as the official language. However, in 1972, Cameroon changed to a unitary state, which went against the original agreement, creating a sense of disenfranchisement [9]. Although the country has two official languages, namely French and English, the former is the predominant language used. Anglophone Cameroonians have reportedly complained about being marginalized as the administration has relegated English language to the background leading to economic inequalities between the Francophone and Anglophone Cameroonians.

Thus, political independence for Nigeria and Cameroon hardly represented the unqualified expression of a single national identity. These unifications, though occurring decades ago, continue to create divisions among once separate entities as well as along ethnic, linguistic, and cultural groups. As a result, the feeling of marginalization still persists today and has given rise to unrest and instability across Nigeria and Cameroon.

2.2. The Post-Colonial Emergence Of Nationalist Movements

The mid-20th century witnessed the emergence of nationalist movements across Africa, driven by a collective yearning for self-determination and a rejection of colonial rule [10]. The political goal that defined these movements was obvious: the national self-determination of a colonized people, free from the control and influence of their former colonial power. In most colonies, national movements used a combination of civil disobedience, armed resistance and protests to fight for independence. Armed struggle was often used only as a strategy of last resort when other more peaceful means of protest were futile or repressed [11]. The Organization of African Unity was formed in 1963 to, among other things, safeguard the independence of African countries [12].

These nationalist movements resonate strongly with contemporary groups such as Biafra and Anglophone separatists in Cameroon, who seek to reclaim their distinct national identities. Their struggles illustrate that the aspirations for national identity are not merely relics of the past but are deeply embedded in the collective consciousness of these regions. For example, the Nigeria-Biafra conflict was the first time a claim for self-determination gained significant global attention after the formal process of decolonization was thought to be complete [13]. The primary issue at stake was whether the former Eastern Region of Nigeria could unilaterally declare itself an independent state, forming the Republic of Biafra [14]. This issue fell outside the scope of earlier United Nations resolutions, which had primarily applied the principle of self-determination to colonial territories seeking independence.

Many assumed that once a colonial territory achieved independence, the principle of self-determination had been satisfied and was no longer relevant within newly independent states. However, Biafra's claim challenged this assumption and sparked a continuing debate about the scope and applicability of self-determination in post-colonial states. This debate raises the question of whether the self-determination demands of groups within post-colonial governments were met with decolonization, or whether a new standard should be established to address the right of these distinct cultural, ethnic and linguistic groups.

3. Legal framework for statehood

3.1. Criteria For Statehood Under International Law (Montevideo Convention)

The state continues to be an essential element of international law and global relations [15]. The source most often cited as a basis for statehood is the Montevideo Convention of 1933 [16]. The Montevideo Convention proposes four criteria for statehood: Art. 1 lays down that a State should contain the following qualifications: "(a) a permanent population; (b) a delimited territory; (c) a government; and (d) the ability to engage in relations with other States [17]." It is widely accepted that these are the four prerequisites for the establishment of a state and that they reflect customary international law [18]. This list provides a concise and perhaps easily applicable standard to assess whether an entity is a state.

Furthermore, there are two theories regarding the international law requirements of statehood. The declaratory theory claims that an entity can be accepted as a State if it complies with the criteria of statehood in the Montevideo Convention and recognition only declares this fact [19]. Thus, the declaratory recognition is "nothing more than an acknowledgment of pre-existing legal capacity [20]." On the other hand, the constitutive theory is founded on the assumption that statehood is dependent on the entity in question being recognized as a state by other states [21]. The constitutive theory has a number of shortcomings. Firstly, the question of which States' recognition must be obtained is ambiguous. Secondly, it does not provide a solution for a situation where several countries recognize an entity as a State while other States do not. Furthermore, there is the question of whether States recognize an entity based on their national interests and policies or if they have to recognize any entity that fulfills the traditional criteria [22].

The Montevideo Convention establishes a foundation for defining statehood, outlining specific standards that have become accepted as customary international law. However, the requirements have created challenges for entities like Biafra and Ambazonia seeking to assert their claim to independence while being members of the international community.

3.2. Biafra and Ambazonia's Statehood Under the Montevideo Convention

The Montevideo Convention outlines four requirements for statehood: a permanent population, a defined territory, a government, and the capacity to engage in relations with other states. It can be argued that Biafra existed as a state even before its secession from Nigeria began.

The Biafran government was led by Odumegwu Ojukwu, a Nigerian military leader and politician [23]. Biafra functioned as an organized authority with a political, executive, and legal structure, as well as its own Army and currency. However, the "permanent population" requirement was complicated by the migratory nature of the Igbo people, who predominantly inhabited the region, and the displacements caused by the Nigerian Civil War. During the conflict, many Igbos were forced out of their homes and communities, undermining the stability necessary for a permanent population. However, the *Western Sahara Case* indicates that a permanent population does not have to remain constant [24]. So, it can be argued that Biafra had a permanent population although its people were largely migratory.

Furthermore, although the Eastern region had its boundaries established at the earliest political divisions of Nigeria, Biafra struggled to maintain control over its territory during the Nigerian Civil War [25]. Lastly, the main problem of regions and territories considering secession from existing States is their recognition. Despite many challenges, Biafra showed its capacity to engage in relations with other states. Biafra had, within its short existence, relations with countries like Tanzania, Gabon, Cote D'Ivoire and Mali [26]. Thus, although Biafra had a government, it was very difficult to say that it had a permanent population or a defined territory [27].

On 1 October 2017, Anglophone separatists declared the independent state of Ambazonia, seeking sovereignty for Southern Cameroon [28]. Southern Cameroonians may argue they have a legitimate case for statehood, but significant obstacles undermine their claim. Southern Cameroon historically had a well-established population of English-speaking Cameroonians. These communities, composed of contiguous tribes, engaged in trade and intertribal activities, fostering

a shared identity distinct from the Francophone majority in Cameroon [29]. However, the ongoing Anglophone Crisis has led to widespread displacement, leaving much of the population as refugees or internally displaced persons, which complicates the claim to a permanent population [30]. Also, while Southern Cameroon has historically defined borders, Anglophone separatists lack control over this region and the ongoing armed conflicts raise serious doubts about a claim to a defined territory.

Furthermore, Ambazonian governance is very fragmented. Unlike the Biafran movement, leadership structures within Ambazonia are divided, with multiple self-declared leaders and no clear chain of command [31]. Finally, Ambazonia has not received formal diplomatic recognition from any sovereign state. Efforts to seek recognition have faced resistance, particularly from the African Union which continues to maintain the position that its member states respect the borders with which they achieved independence.

In conclusion, both Biafra and Ambazonia have partial fulfillment of the requirements of statehood under the Montevideo Convention. Biafra's organized government, defined territory and little engagement with foreign states shows some compliance with the Montevideo Convention. However, the challenges in maintaining a permanent population and consistent territory undermined its claim to statehood. Similarly, although Southern Cameroon possess a distinct historical identity with defined borders, its fragmented governance, zero recognition from other states weaken its recognition under International law.

4. Proposed solutions and pathways to recognition

As regions like Biafra and Ambazonia pursue self-determination and potential statehood, practical solutions require a combination of diplomatic, legal, and institutional strategies. This Part proposes three solutions. *First*, the current statehood requirements under the Montevideo Convention should be revised to better reflect the realities of former African colonies. This recommendation focuses on three of the four requirements permanent population, defined territory, and ability to enter into relations with other states because the government prong is generally easy to establish. *Second*, governance models supported by international and regional African Organizations. need to be established. *Third*, asymmetric federalism and autonomy arrangements tailored to the specific needs of each country should be considered and implemented.

4.1. Revisiting the Statehood Requirement for Former Colonies

The criteria for statehood outlined in the Montevideo Convention has often come under scrutiny as some doubt that the Convention fully captures the essence of statehood while others have argued that it is over-inclusive, or too exclusive [32]. These hint at deficiencies in the Convention as an instrument to codify the concept of the state. For instance, some entities like Somaliland meet these requirements but are not states, while others like Croatia and Bosnia-Herzegovina in 1992 do not, but still become states. The process of State creation as it applies to former colonies needs to be explained outside of the Montevideo checklist. Rather than trying to explain State creation with a set of four descriptive criteria, it is more insightful to approach it holistically by considering the historical and cultural context of the regions seeking independence. This approach acknowledges that their distinct histories serve as the foundation for the validity of their assertions. This Part argues that a territory should not have to reestablish its claim if it was formerly an autonomous entity or state because it may have already satisfied the conditions for statehood.

4.2. Permanent Population

The first criterion for statehood is permanent population. Permanence consists of two points: (1) a permanent population that intends on inhabiting the territory permanently, and (2) a habitable territory. Post-colonial regions seeking independence often face challenges in meeting the permanent population criterion because of displacement or mixing with other groups that they had lived separate from prior to independence. The traditional idea of population can be revisited to include a social entity that has common ancestry, history, religion, language, culture and

a sense of identity. Some of the objective elements the group may possess are: (1) common history; (2) common territory or geographical location; (3) cultural, linguistic, racial or ethnic ties; or (4) religious or ideological ties. International censuses and diaspora counts can be utilized to demonstrate a cohesive population identity connected to the region.

4.3. Defined Territory

The second criterion is a defined territory. The fact that an entity's borders have not yet been definitively established should not preclude its existence as a state. In *Deutsche Continental GasGesellschaft v. Polish State*, the German-Polish Mixed Arbitral Tribunal said:

[I]n order to say that a State exists and can be recognised as such...it is enough that this territory has a sufficient consistency, even though its boundaries have not yet been accurately delimited, and that the State actually exercises independent public authority over that territory. There are numerous examples of cases in which States have existed without their statehood being called into doubt. . . ., at a time when the frontier between them was not accurately traced.

Colonial borders were often split ethnic groups or merging incompatible ones, resulting in disputes over territories. Many of these territorial disputes still exist today [36]. To overcome this challenge, territorial recognition should adopt a more conciliatory approach, prioritizing historical and cultural borders over current borders. In addition, Historical maps can assist individuals in developing a meaningful connection to their claimed land. Furthermore, conditional acknowledgment of regions may be encouraged, with international mediation or peaceful arbitration used to resolve boundary disputes.

4.4. The Ability To Engage In Relations With Other States

The ability to establish relations with other states is arguably the most potentially controversial requirement. Whenever part of an existing state breaks away to form another independent state, recognition is always controversial, and no state can exist or operate on its own. However, in the *Kosovo Advisory Opinion*, the International Court of Justice recalled that many, if not most, States in the world have emerged without the predecessor State's consent [37]. The United States emerged against the wishes of Great Britain, for example. Unilateral secession is not prohibited under international law [38].

Recognition may vary depending on whether the declaratory or constitutive theory is used. Obtaining this "recognized capacity" is essentially only possible through formal recognition from current states. Biafra was recognized by few African states [39]. Other than France and Haiti, no other non-African state openly supported Biafra. No country has recognized Ambazonia's existence.

To address the challenges faced by groups seeking statehood in former colonies, the "ability to enter into relations with other states" criterion should be based on the expressed will to identify as a state, rather than on international recognition [40]. For example, the people of Southern Cameroon have consistently expressed their common will through elections, civil disobedience, domestic and international litigation, and through armed resistance [41]. The African Commission gave impetus to the common will principle by stating that the Southern Cameroon people are entitled to a right to existence as a distinct people with a unique identity by virtue of historical origins, established systems as well as cultures and traditions [42]. In the *Western Sahara Advisory Opinion*, the International Court of Justice explained that "the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned [43]."

Finally, informal interactions, such as recognition by non-state actors or intergovernmental bodies, considered evidence of their ability to engage in international relations, as these regions can use these platforms to assert their international presence and advance their statehood aspirations. Regional organizations such as the African Union or the Economic Community of West African States (ECOWAS) might play an important role in establishing provisional observer status or awarding symbolic recognition.

4.5. Implementing Governance Models With Support From International and Regional African Organizations.

A second possible pathway for post-colonial regions is to create new federal structures that accommodate the diverse ethnic and linguistic groups within a single country. While this is not necessarily an aid to establishing statehood, it can help reduce existing tensions [44]. In *Reference Re Secession of Quebec*, the Court acknowledged the preservation of minority rights and recognized that a minority group may be entitled to secede unilaterally if it is "denied meaningful access to the government to pursue their political, economic, social, and cultural development" [45]. In Nigeria, many argue that the country does not have a true federalism because various groups feel marginalized and excluded from the system [46]. Also, this approach is especially applicable in Cameroon, where the French-speaking and English-speaking regions have historically unique identities, and the forced merger has escalated into a full-fledged conflict due to irreconcilable disagreements between the two peoples. Unlike Quebec which entered into a legitimate constitutional arrangement as part of the Canadian Confederation, where it enjoys extensive autonomy and could determine its

political status through referendums, Southern Cameroon did not have the same freedom to shape its future. Although it expressed a desire in 1961 to form a federal union with *La République du Cameroun*, it was ultimately annexed without the opportunity to decline or negotiate its terms of union [47].

Furthermore, support from international and regional organizations can address the issues that arise from the independence efforts by Biafra and Anglophone separatists in Southern Cameroon. One of the shortcomings of the African Union is its deficient structural and institutional capacity to manage African conflicts. Currently, the African Charter on Human and People's Rights does recognize the right to self- determination, but only in respect of States still under Colonial rule [48]. This has always posed serious obstacles in the way of entities seeking independence. However, regional and international organizations can lead mediation efforts to resolve these tensions. For example, the *Ahtisaari Plan*, a United Nations-led mediation effort, provided Kosovo with a roadmap to achieve autonomy while setting the groundwork for independence [49]. Although Kosovo's independence remains a debated issue in international law, the *Ahtisaari Plan* demonstrated a part that international mediation plays in facilitating peace and stability even in contentious regions [50]. Similarly, the African Union played a dominant role in South Sudan's journey to statehood in 2011, facilitating the Comprehensive Peace Agreement (CPA) in 2005 [51]. The CPA is an example of an internationally backed national peace agreement. It provided for a new national constitution, allowed for a separate administration for Southern Sudan. and a timeline for a referendum on independence. This referendum, held on January 9, 2011, led to South Sudan's independence six months later.

In conclusion, adopting governance models with the support of international and regional organizations, particularly the African Union, increases the likelihood of reduced tensions and workable solutions for groups such as Biafra and Anglophone separatists.

4.6. Asymmetric Federalism and Autonomy Arrangements

Asymmetric federalism can be an effective way to meet the autonomy and self-determination goals of Biafra and Anglophone separatists of Ambazonia while preserving Nigeria and Cameroon's territorial integrity. Asymmetric federalism refers to a federal system of government in which authority is unevenly distributed among states, resulting in some having greater autonomy than others [52]. Spain is often referred to as having a form of asymmetrical federalism – comprising regions with differing powers. Since the Spanish Constitution of 1978 came into force, the central government has asymmetrically devolved and transferred powers to the governing authorities of the Autonomous Communities. Some communities, particularly those with strong cultural and regional identities founded on historical tradition, have been granted more authority than others. For example, Catalonia is considered an autonomous community within the country of Spain with certain self-governing privileges [53].

Additionally, autonomy arrangements might be a more practical and achievable solution for groups with distinct ethnic identities. The Biafra and Ambazonia movements can gain some independence and control over their own affairs while still being part of a larger country, enjoying the benefits that come with it. A followable example of autonomy arrangement is the Nunavut Agreement [54]. The Nunavut Agreement provided the Inuit of Nunavut with full self-government and a separate territory, making it a historic settlement in terms of size and establishment of a separate Canadian territory. Although largely a Land Claims Agreement focusing on indigenous rights, it serves as a model for Biafra and Ambazonia: it represented the Government of Canada's recognition that Nunavut people desired their own government, one that was closer to the people and more culture-centered. The agreement addressed land and resource rights, self-government, and the preservation of Inuit culture, language, and customs.

The Nigerian and Cameroonian governments may consider recognizing the Biafran and Ambazonian peoples' territorial claims through land rights agreements that provide access to resources in the disputed areas. This could involve recognizing traditional territories, natural resources, and fostering long-term economic growth in these areas. Both regions may be awarded self-government capabilities within a system that allows them to conduct their own affairs while staying part of larger states. The Biafran and Ambazonian people's cultural identity, including language, traditions, and customs, can be better recognized and preserved in this way.

5. Conclusion

International law is not a static institution, and the decade-old agitations of Biafra and Anglophone Separatists in Cameroon highlight the need for a new response to the aspirations of post-colonial regions in Africa. The traditional requirements of statehood, as defined by the Montevideo Convention, require reevaluation because the Southern Cameroon and Biafran quest for statehood does not look like one that will be resolved by circumventing the people's

demonstrated aspirations and common will. A more nuanced approach is necessary, but it remains to be seen what the future of Biafra and Southern Cameroon would turn out to be.

Compliance with ethical standards

Disclosure of conflict of interest

No conflict of interest to be disclosed.

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