The Israel-Lebanon Maritime Border Agreement: Does Lebanon Implicitly Recognize the State of Israel?

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Abstract

In October 2022, Lebanon and Israel signed a Maritime Border Agreement brokered by the United States of America. Lebanon does not recognize Israeli statehood, and the two States have been at war since 1948. This Article seeks to examine the following legal question: Does the signing of the Maritime Border Agreement imply Lebanese recognition of Israeli statehood? In response, this Article begins with a brief examination of the history of the territorial and border disputes between Lebanon and Israel (discussed in Section I), then proceeds to analyze the definition of statehood and the two theories of statehood recognition. International law does not provide a precise definition of statehood and does not dictate a process for statehood recognition. As such, it is hard to interpret implicit ambiguous acts of statehood recognition (discussed in Section II). Despite this lacuna in international law, this Article argues that Lebanon's Maritime Border Agreement with Israel implies statehood recognition.

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INTRODUCTION

The State "is the most fundamental unit of the international legal order."[1] To understand what a State is, one must assess different facts through the lens of the law. It is interesting—if not ironic—that scholars often wish to examine statehood in legal terms even when it arises out of an unlawful event such as a revolution or a coup. Furthermore, scholars wish to leave political considerations outside the legal analysis, when in fact they are an important part of the process.

Despite these two minor critiques, statehood remains unquestioned when there is a symmetry between law and facts; in other words, when there is no dispute. However, the question is of value when political reality does not match the law. This is the case between Lebanon and Israel; the two States have been at war since the proclamation of the State of Israel in 1948 and its recognition by the international community. In October 2022, Lebanon and Israel signed a Maritime Border Agreement brokered by the United States of America. Lebanon does not recognize Israeli statehood, and many

1. STATEHOOD AND SELF-DETERMINATION: RECONCILING TRADITION AND MODERNITY IN INTERNATIONAL LAW 1 (Duncan French ed., 2013).

have wondered whether this signature implies Lebanese recognition of the State of Israel.

There are two opposing theories as to whether Lebanon implicitly recognized Israel's statehood in signing the Maritime Border Agreement. This Article begins with a brief examination of the history of the territorial and border disputes between Lebanon and Israel (Section I), then proceeds to analyze the legal concept of statehood as defined by Rowan Nicholson in *Statehood and the State-Like in International Law*. For a State to exist, it must have personality—it must exist as a fact with rights and duties on an international level. Also, it must be recognized as a State (Section II). There are two opposing theories on statehood recognition: the effectiveness theory and the recognition theory. The effectiveness theory consists of four criteria for a State to exist and to be legally recognized: territory, people, government, and capacity to enter relations with other States. Under the recognition theory, a State is a State when recognized or declared as such by other States. The questions then become: What form does this recognition take? Does it have to be in writing? Or can it be an implicit act? This Article analyzes these two theories as they allow us to interpret Lebanon's legal actions and understand whether the Maritime Border Agreement implies Lebanese recognition of Israeli statehood.

I. TERRITORIAL AND MARITIME BORDER DISPUTES

In December 2010, Noble Energy, which was acquired by Chevron in 2020, discovered the Leviathan field. With 22.9 trillion cubic feet of recoverable gas, the Leviathan field "is the largest natural gas reservoir in the Mediterranean, and one of the largest producing assets in the region."[2] There is no doubt that this discovery is of great importance, especially when Europe is struggling with its gas supply from Russia, and gas production has already started in 2019 in Israel, Egypt, and Jordan. However, this discovery created a maritime border dispute between the States of Lebanon, Israel, and Cyprus. The conflict is more serious between Lebanon and Israel since the two States are technically at war.

A. States at War & Territorial Border Dispute

Israel and Lebanon have been at war since the proclamation of the State of Israel in 1948. Like many Arab countries, Lebanon refused to recognize the State of Israel and referred to it as the Occupying

2. *Leviathan,* NEWMED ENERGY (July 21, 2023, 8:30 AM), https://tinyurl.com/4dpr2drn [https://perma.cc/6F6N-U7LN].

Powers of the State of Palestine. In 1949, Israel and Lebanon signed the General Armistice Agreement which considered the 1923 Palestine-Lebanon boundaries as the "Armistice Demarcation Line."[3] The Palestine-Lebanon boundaries were set by the French and British colonial powers at the time in the Paulet-Newcombe Agreement which was adopted on February 3, 1922 and entered into force on March 7, 1923.[4]

The Suez Canal crisis of 1956[5] and the Six-Day War in 1967 resulted in a mass exodus of Palestinians to Lebanon.[6] In the early 1970s, an estimated number of 20,000 Palestinian fighters entered Lebanon and used Lebanon as a front line to launch attacks against Israel.[7] Clashes erupted between Lebanese and Palestinians. While some Lebanese supported the Palestinian cause, others did not and wanted to sign peace with Israel instead. Consequently, the Palestinian-Israeli conflict was exported to Lebanon.

Violence escalated between Palestinians and Lebanese, and the civil war broke out on April 13, 1975 in the infamous Bus Massacre, when the right-wing Lebanese Christian militia killed 22 Palestinians in retaliation for the harassment and killing of Lebanese Christians.[8] During the Lebanese Civil War., Palestinians continued their fight against Israel from Lebanese soil. In 1982, Israel launched "Operation Peace for Galilee" and entered Beirut, the capital of Lebanon, to eliminate the Palestine Liberation Organization from Lebanon and Syria.

In 1985, Israel retreated from Beirut but did not withdraw entirely from Lebanese soil. South Lebanon remained occupied by Israel until May 24, 2000.[9]

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3. Lebanon-Israeli Armistice Agreement, Isr.-Leb., Mar. 23, 1949, 42 U.N.T.S. 287.

4. Agreement Respecting the Boundary Line Between Syria and Palestine from the Mediterranean to El Hammé, Fr.-Gr. Brit., Mar. 7, 1923, 13 L.N.T.S. 363–73.

5. *See* David Tal, *The 1956 Sinai War: A Watershed in the History of the Arab-Israeli Conflict, in* REASSESSING SUEZ 1956: NEW PERSPECTIVES ON THE CRISIS AND ITS AFTERMATH 133, 142 (Simon C. Smith ed., 2016). In July 1956, Egyptian President Gamal Abdel Nasser nationalized the Suez Canal. In October 1956, Israel invaded the Egyptian Sinai joined by France and Great Britain, and by the end of the conflict, Egypt won.

6. GUY LARON, THE SIX DAY WAR: THE BREAKING OF THE MIDDLE EAST 15–21 (2017). Responding to the rise of the State of Israel and the exodus of Palestinians, neighboring Arab States like Egypt, Syria, and Jordan started building their arsenals. On June 5, 1967, Israel launched a preemptive air assault on the Egyptian and Syrian air forces. Israel came out victorious and captured the Sinai Peninsula, Gaza Strip, West Bank, Old City of Jerusalem, and the Golan Heights. The status of these territories remains disputed to this date.

7. WOMEN AND WAR IN LEBANON 16 (Lamia Rustum Shehadeh ed., 1999).

8. Juan de Onis, *22 Palestinians Killed in Beirut*, N.Y. TIMES (Apr. 14, 1975), https://tinyurl.com/4brpdyz5 [https://perma.cc/Z4QR-7FHC].

9. Dalia Dassa Kaye, *The Israeli Decision to Withdraw from Southern Lebanon: Political Leadership and Security Policy*, 117 POL. SCI. Q. 561, 563–64 (2002); August Richard Norton, *Hizballah and the Israeli Withdrawal from Southern Lebanon*, 30 J. PALESTINE STUD. 22, 23 (2000).

In April 1996, Israel initiated "Operation Grapes of Wrath" against Hezbollah fighters, a Lebanese Shia militia which launched rockets from Lebanese soil into Northern Israel. Born in 1982 during the Lebanese civil war and the Israeli occupation of Beirut, Hezbollah is labeled as a terrorist organization by many countries today. In July 2006, Hezbollah fighters kidnapped two Israeli soldiers, which started a 34-day war with Israel. The United Nations Security Council met urgently and adopted Resolution 1701, which called for the full cessation of hostilities, the deployment of the Lebanese Armed Forces in south Lebanon, and the establishment of a demilitarized zone between the Blue Line and the Litani River.[10] The Blue Line is not a real border between Lebanon and Israel; rather, it is a "withdrawal line" adopted by the United Nations after Israel withdrew from south of Lebanon in 2000. It is monitored by the United Nations Interim Force in Lebanon ("UNIFIL") which works with both Lebanese and Israeli authorities to avoid misunderstandings and reduce tensions. UNIFIL is also tasked with reporting all Lebanese or Israeli accidental and non-accidental violations of the Blue Line.[11] The Blue Line gained importance after the 2006 war and the adoption of Resolution 1701.

Laury Haytayan, a Lebanese expert on oil and gas in Lebanon and the Middle East region, has noted that Lebanon and Israel have officially recognized territorial borders. These borders were inherited from the 1923 Paulet-Newcombe Agreement according to the *uti possidetis juris* principle.[12] "Claiming otherwise would mean that there are no boundaries in Africa, Asia and all the other parts of the world that endured colonization."[13]

Today, the territorial border dispute is reduced to the Shebaa Farms, a small piece of land near the Lebanese-Syrian border. The Lebanese authorities and Hezbollah fighters claim that the Shebaa Farms are Lebanese and, therefore, under Israeli occupation. After appointing cartographers, the United Nations decided that the Shebaa Farms are Syrian territory and were captured by Israel in 1967.[14] In 2011, the Syrian dictator Bashar al-Assad recognized that the

10. S.C. Res. 1701, ¶¶ 1–5 (Aug. 11, 2006).

11. Frederic Hof, *The Israel–Lebanon Border: A Primer*, WASH. INST. FOR NEAR E. POL'Y (Apr. 25, 2000), https://tinyurl.com/4thmhhvw [https://perma.cc/EBL8-6ZBC].

12. *Uti possidetis juris* is a principle of customary international law according to which boundaries of decolonized territories serve as borders to the new emerging States.

13. Laury Haytayan, *Maritime Mediation Between Lebanon and Israel: Looking Beyond the Hof Line*, DAILY STAR (Mar. 25, 2021).

14. Evelyn Leopold, *U.N. Cites Confusion Over Maps of Shebaa Farms*, REUTERS (Jan. 19, 2007), https://tinyurl.com/yc52fzpr [https://perma.cc/6RGL-YQS8].

Shebaa Farms are Syrian and not Lebanese and, therefore, Lebanon has no claim over the farms and no territorial dispute with Israel.[15]

B. Maritime Border Dispute

As political scientist Eduardo Wassim Aboultaif points out, border disputes are the oldest political issue in history. While territorial delimitation is often accompanied by national pride and honor, maritime border disputes are often focused on economic considerations rather than on ideology or identity.[16]

From a legal standpoint, maritime border disputes are governed by the 1982 United Nations Convention on the Law of the Sea ("UNCLOS"), which entered into force on November 16, 1994.[17] Article 15 stipulates, in the context of delimitation of the territorial sea between States with opposite of adjacent costs:

> Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.[18]

Furthermore, the UNCLOS regulates the Exclusive Economic Zone ("EEZ"), which is the sea area that extends beyond a State's territorial sea but still falls under its jurisdiction. According to Article 56, a coastal State has sovereign rights to explore, exploit, conserve, and manage living and nonliving natural resources in its EEZ.[19] Article 57 stipulates that the EEZ cannot extend beyond 200 nautical miles from a State's territorial sea baseline.[20] Article 59 states that if a conflict arises, it should be resolved "on the basis of equity and in the light of all the relevant circumstances, taking

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15. Frederic C. Hof, *Assad: The Shebaa Farms Are Syrian, Whatever Hezbollah Claims*, NEW LINES MAG. (Apr. 7, 2021), https://tinyurl.com/5ak5658x [https://perma.cc/NAT5-BWX6]; Michael Young, *Leaving Hezbollah Hanging*, CARNEGIE MIDDLE E. CTR. (Apr. 13, 2021), https://tinyurl.com/5mm54pmj [https://perma.cc/KBR8-P6MC].

16. Eduardo Wassim Aboultaif, *The Leviathan Field Triggering a Maritime Border Dispute Cyprus, Israel, and Lebanon*, 32 J. BORDERLANDS STUD. 1, 2 (2016).

17. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

18. *See id.* art. 15.

19. *See id*. art. 56.

20. *See id*. art. 57.

into account the respective importance of the interests involved to the parties as well as to the international community as a whole."[21] Both Lebanon and Cyprus signed and ratified the UNCLOS, but Israel did not. Despite this lack of signature and ratification on the Israeli side, all three parties refer to the EEZ concept as defined by the UNCLOS.[22] The Leviathan field is in the EEZ of Lebanon, Cyprus, and Israel and "is situated in the south-eastern shores of Cyprus, on the north-west shores of Israel and on the south-west shores of Lebanon."[23]

Lebanon and Cyprus enjoy stable relations. In 2007, both States signed a maritime border agreement. While Cyprus ratified it in that same year, Lebanon did not. Although unclear, the delay in ratification was probably due to Lebanon's political turmoil. After the 2010 discovery of the Leviathan field, Lebanon asked Cyprus to renegotiate the agreement to decide on new maritime borders. However, Cyprus and Israel had already signed a maritime border agreement on December 17, 2010, which was ratified by both States in 2011.[24]

Lebanon objected to the Israeli-Cypriot agreement, stating that it was based on incorrect maritime borders. Lebanon argued that it was founded on Line 1 with longitude 33° 53' 54" E and latitude of 33° 38' 40" N. In a letter addressed to the United Nations Secretary General Ban Ki-Moon, the Minister of Foreign Affairs Adnan Mansur stated that the 1949 Israeli-Lebanese General Armistice Agreement considers Line 23 as the delimitation line between Lebanon and Israel:

> The geographical coordinates of point 23 are latitude 33° 31' 51.17," longitude 33° 46' 08.78". Point 1 does not therefore represent the southern end of the median between the Lebanese Republic and the Republic of Cyprus that separates the exclusive economic zones of each country, and can only be viewed as a point that is shared by Lebanon and Cyprus. It is not a terminal point and therefore may not be taken as a starting point between Cyprus and any other country, particularly given the fact that it is just one point like any of the others on this line.[25]

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21. *See id*. art. 59.
22. Aboultaif, *supra* note 16, at 4.
23. *Id.* at 2.
24. Agreement Between the Government of the State of Israel and the Government of the Republic of Cyprus on the Delimitation of the Exclusive Economic Zone (With Annexes), Cyprus-Isr., Dec. 17, 2010, 2740 U.N.T.S. 55.
25. Letter from the Lebanese Minister for Foreign Affairs and Emigrants to the Secretary-General of the U.N. (June 20, 2010), https://tinyurl.com/3cte2bt5 [https://perma.cc/BWB8-X6SS].

In addition to this letter, Lebanon sent a copy of decree no. 6433 to the United Nations, which considers Line 23 as the demarcation line between Lebanon and Israel.[26]

On October 1, 2011, the Lebanese President, the President of the Council of Ministers, and the Minister of Public Works and Transport signed decree no. 6433 on the delineation of the boundaries of the exclusive economic zone of Lebanon. In compliance with the Lebanese Constitution, Law no. 295/1994 which ratified the UNCLOS, and Law no. 163/2011 pertaining to the Delineation and declaration of the maritime regions of the Republic of Lebanon, the decree adopted Line 23 as Lebanon's maritime border.

Line 23 is a 131-kilometer maritime border starting from the Naqura region in southern Lebanon going into the Mediterranean Sea. Despite adopting Line 23, Lebanon asked the UK Hydrographic Office ("UKHO") to determine its EEZ, and UKHO came up with a different southern maritime border for Lebanon with an expansion of 1,430 square kilometers known as Line 29.[27]

Several Lebanese lawmakers advocated for the amendment of decree no. 6433 to revise Lebanon's maritime borders from Line 23 to Line 29. However, former President Aoun rejected the request, stating that a caretaker government cannot amend a decree, as that would be a violation of the Lebanese Constitution. In fact, the Lebanese government had resigned after the deadly port explosion in Beirut that killed over 200 people and generated over $15 billion in property damage.[28] Consequently, Lebanon negotiated its maritime borders and EEZ based on Line 23 and not Line 29, which outraged many Lebanese. In doing so, Lebanon gave up its right to the Karish field. Furthermore, Qana field had become shared between the States of Lebanon and Israel. [29]

Since Lebanon does not recognize the State of Israel, Lebanon could not directly discuss maritime borders with Israel, nor directly decide on the delimitation of its EEZ which requires a bilateral

26. For a map of the Lebanese maritime border, see Nada Homsi, *Lebanon's Maritime Border Offers a Case Study of Missed Opportunities*, MENA (Aug. 10, 2022), https://tinyurl.com/2p8d8vtc [https://perma.cc/97ZF-WU4X].

27. Hamza Hasil, *Policy Brief 226, Lebanon-Israel Maritime Border Agreement: From the Line of Tension to the Regional Stability*, CTR. FOR MID. E. STUD. 5 (2022), https://tinyurl.com/4wn7j9vx [https://perma.cc/YG36-S75K].

28. Dominic Evans & Maha El Dahan, *Lebanon's President Says New Maritime Claim Needs Government Approval*, REUTERS (Apr. 13, 2021, 9:21 AM), https://tinyurl.com/4vj9tbzn [https://perma.cc/7WPN-H2G8]; Nicholas Blandford, *Lebanon-Israel Maritime Border Dispute Picks Up Again,* ATLANTIC COUNS. (June 16, 2022), https://tinyurl.com/2p8xk6du [https://perma.cc/H8PL-FKR9].

29. Hamzah Rifaat Hussain, *Lebanon's Maritime Deal with Israel*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Oct. 31, 2022), https://tinyurl.com/443a5ysh [https://perma.cc/6MKQ-NMUA].

agreement between two States. Rounds of negotiations began and were mediated by the United States. In 2012, Ambassador Frederic C. Hof submitted a proposal to both the Lebanese and Israeli States with a delimitation line known as the "Hof Line," but Lebanon rejected the proposal. Serious negotiations resumed in October 2020 and were followed by multiple additional rounds of negotiations. Around that time, the United Arab Emirates (UAE) recognized Israel's statehood and signed the Abraham Accords, which is a joint declaration between the State of Israel, the UAE, and the United States to normalize diplomatic relations between the UAE and Israel.[30] Shortly after, Sudan and Bahrain followed and officially recognized Israel's statehood.[31]

A 2020 public opinion poll in Lebanon shows a strong decline in support for Hezbollah, especially among the Shiite community. Moreover, the maritime boundary negotiations get "overall popular approval, particular from Lebanon's Sunnis and Christians, but also, more counterintuitively, from many Shia as well. Two-thirds of Sunnis (70%) and Christians (67%) agree that those talks are a positive development; half (51%) of Shia agree, with a mere 19% of all Lebanese expressing strong disagreement."[32] On the other hand, the peace agreement between Israel, the UAE, and Bahrain was not widely accepted by the Lebanese: "Two-thirds of Christians and three-quarters or more of both Sunnis and Shia label those deals at least somewhat negative."[33]

In October 2022, Lebanon and Israel officially agreed to a U.S.-brokered deal that establishes their permanent maritime boundaries.[34] Members of the two States of Lebanon and Israel did not meet. Instead, they met separately with Amos Hochstein, the American envoy for energy affairs, at the Blue Line and in the United Nations offices. The agreement came in the form of separate letters between the United States and Lebanon as well as the United States and Israel. The letters were also sent to the United Nations to officially record

30. Abraham Accords, Sept. 15, 2020, 60 I.L.M. 448.

31. Adela Suliman & Charlene Gubash, *Sudan Formally Recognizes Israel in U.S.-Brokered Deal*, NBC NEWS (Oct. 23, 2020, 12:43 PM), https://tinyurl.com/4cx3pamc [https://perma.cc/3564-HACA]; Mark Landler, *Another Gulf State Recognizes Israel. Here's Why It Matters*, N.Y. TIMES (Sept. 12, 2020), https://tinyurl.com/2p94uwwr [https://perma.cc/AWV9-J6CM].

32. David Pollock, *Lebanon Poll Shows Drop in Hezbollah Support, Even Among Shia; Plurality Back Israel Boundary Talks*, WASH. INST. FOR NEAR E. POL'Y (Dec. 1, 2020), https://tinyurl.com/yx83deua [https://perma.cc/QUH3-AKHM].

33. *Id.*

34. Antony J. Blinken, *Historic Agreement Establishing a Permanent Israel-Lebanon Maritime Boundary*, U.S. DEP'T OF STATE (Oct. 27, 2022), https://tinyurl.com/3smya36j [https://perma.cc/CJS5-PVPF].

the Lebanese-Israeli maritime borders.[35] Following these events, one wonders how to legally interpret the agreement. Specifically, does it imply Lebanese recognition of Israeli statehood? To answer this question, it is important to review the definition of statehood and the legal theories of statehood recognition.

II. DEFINITION OF STATEHOOD

A. Origins of Statehood as a Legal Concept

The definition of statehood as we know it today was born out of the Peace Treaty of Westphalia, which is the collective name for two treaties that were signed and sealed in Münster on October 24, 1648 to end the Thirty Year's War within the Holy Roman Empire and the Eight Year's War between Spain and the Dutch. The two peace treaties were negotiated in Münster and Osnabrück.[36] For Eric David, the Treaties are important in the history of international law because the negotiations that led to the adoption of the treaties immobilized multiple representatives from different European entities and marked the first time in history where so many delegates of sovereign entities met in one place to discuss norms and peace agreement. In a way, the negotiation of the treaty was the first international diplomatic meeting in history.

The Treaties announced the principal of equal sovereignty among parties,[37] the supremacy of international law over domestic law of the contracting parties, and the supremacy of international

35. Mohammed Zaatari, *Has Lebanon Recognized Israel by Striking a Maritime Border Deal?,* ALJAZEERA (Oct. 27, 2022), https://tinyurl.com/2a6urwj2 [https://perma.cc/ZPW2-M5AU].

36. Treaty of Westphalia, Oct. 24, 1648, 1 Consol. T.S. 198; *see generally* JOACHIM WHALEY, GERMANY AND THE HOLY ROMAN EMPIRE: VOLUME I: MAXIMILIAN I TO THE PEACE OF WESTPHALIA, 1493–1648 (2011) (providing a historical account of the Treaty of Westphalia signed in Münster).

37. Treaty of Westphalia, *supra* note 36, § I. This Section provides:

> That there shall be a Christian and Universal Peace, and a perpetual, true, and sincere Amity, between his Sacred Imperial Majesty, and his most Christian Majesty; as also, between all and each of the Allies, and Adherents of his said Imperial Majesty, the House of Austria, and its Heirs, and Successors; but chiefly between the Electors, Princes, and States of the Empire on the one side; and all and each of the Allies of his said Christian Majesty, and all their Heirs and Successors, chiefly between the most Serene Queen and Kingdom of Swedeland, the Electors respectively, the Princes and States of the Empire, on the other part. That this Peace and Amity be observ'd and cultivated with such a Sincerity and Zeal, that each Party shall endeavour to procure the Benefit, Honour and Advantage of the other; that thus on all sides they may see this Peace and Friendship in the Roman Empire, and the Kingdom of France flourish, by entertaining a good and faithful Neighbourhood.

law over previous agreements.[38] The Treaties also instated the rule of peaceful resolution of conflict,[39] and the right for foreign troops to peacefully cross over the territory of the contracting parties.[40]

For some, the Peace Treaty of Westphalia established solid foundations for international law and gave birth to the modern concept of the sovereign State. A State, no matter its size or its power, is equal to other sovereign States and has domestic laws applicable on its own territory.[41] For James Crawford in *The Creation of States in*

Id.; see also Eric David, *Brèves Remarques sur Les Origines du Droit International*, *in* THE ROOTS OF INTERNATIONAL LAW 437, 444–46 (Pierre-Marie Dupuy & Vincent Chetail eds., 2014).

38. Treaty of Westphalia, *supra* note 36, § CXXI. This Section provides:

> That it never shall be alledg'd, allow'd, or admitted, that any Canonical or Civil Law, any general or particular Decrees of Councils, any Privileges, any Indulgences, any Edicts, any Commissions, Inhibitions, Mandates, Decrees, Rescripts, Suspensions of Law, Judgments pronounc'd at any time, Adjudications, Capitulations of the Emperor, and other Rules and Exceptions of Religious Orders, past or future Protestations, Contradictions, Appeals, Investitures, Transactions, Oaths, Renunciations, Contracts, and much less the Edict of 1629. Or the Transaction of Prague, with its Appendixes, or the Concordates with the Popes, or the Interims of the Year 1548. or any other politick Statutes, or Ecclesiastical Decrees, Dispensations, Absolutions, or any other Exceptions, under what pretence or colour they can be invented; shall take place against this Convention, or any of its Clauses and Articles neither shall any inhibitory or other Processes or Commissions be ever allow'd to the Plaintiff or Defendant.

Id.

39. Treaty of Westphalia, *supra* note 36, § CXXIII. This Section provides:

> That nevertheless the concluded Peace shall remain in force, and all Partys in this Transaction shall be oblig'd to defend and protect all and every Article of this Peace against any one, without distinction of Religion; and if it happens any point shall be violated, the Offended shall before all things exhort the Offender not to come to any Hostility, submitting the Cause to a friendly Composition, or the ordinary Proceedings of Justice.

Id.

40. Treaty of Westphalia, *supra* note 36, § CXVIII ("Finally, that the Troops and Armys of all those who are making War in the Empire, shall be disbanded and discharg'd; only each Party shall send to and keep up as many Men in his own Dominion, as he shall judge necessary for his Security.").

41. THE ROOTS OF INTERNATIONAL LAW, *supra* note 37, at 400:

> [L]'on s'accorde généralement à faire remonter aux traités de Westphalie de 1648, venant clore la guerre de trente ans, la naissance d'une conception moderne de l'État souverain, articulée sur les principes de *territorialité, et d'égalité: chacun possède désormais l'exclusivité et la généralité des compétences à l'intérieur de son propre territoire, dans les mêmes conditions que tous les autres États, quelle que soit sa taille ou sa puissance réelle.*
>
> [We generally attribute to the Treaties of Westphalia of 1648, which ended a thirty-year war, the birth of the modern concept of a sovereign State, one that is founded on the principles of *territoriality and equality: each State has an exclusive mandate over its territory, in the same conditions as all States, and irrespective of its size or real power.*]

Id.

International Law, the effect of the Treaty of Westphalia was "to consolidate the existing States and principalities (including those whose existence or autonomy it recognized or established) at the expense of the Empire, and ultimately at the expense of the notion of the *civitas gentium maxima*—the universal community of mankind transcending the authority of States."[42]

B. Definition of Statehood

In *Statehood and the State-Like in International Law*, Rowan Nicholson examines the term "State" within the framework of personality. A State must have personality. Since there is no one definition of personality, at least not one that is universally accepted,[43] Nicholson offers the following definition: Personality is "an entity that is constructed as a fact by norms of international law and to which such norms give at least one right or duty."[44] He also provides definitions for the terms "norm," "fact," "right," and "duty." A norm, for Nicholson, is what dictates either conduct or an omission and allows the distinction between lawfulness and unlawfulness. For instance, a State should not use force against another State. In the case of use of force, this action is unlawful. In sum, "conduct norms are traditionally understood as ought-statements but can also be thought about in another way: as conditional statements that apply an irreducible binary distinction—the distinction between lawfulness and unlawfulness—to conduct."[45]

The second component in Nicholson's definition of personality is right and duty. Once again, basing his approach on Hohfeld's writings on legal conceptions, Nicholson argues that entities have a synallagmatic relationship, meaning each party is bound to perform certain conduct or provide something to the other party. While one has a duty to perform, the other has the right to receive this performance. Therefore, the relationship is correlative. Nicholson adds that "a freedom is just the absence of a duty,"[46] and that the absence of freedom implies a no-right.

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42. JAMES R. CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 10 (2d ed. 2006).

43. ROWAN NICHOLSON, STATEHOOD AND THE STATE-LIKE IN INTERNATIONAL LAW 24 (2019).

44. *Id.* at 4 (acknowledging that Nicholson bases his definition of personality on Wesley Newcomb Hohfeld's works from 1913 and 1917, where he makes the distinctions between legal concepts such as privilege, duty, right, liability, etc.); *see generally* Wesley N. Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning* [Part 1], 23 YALE L.J. 16 (1913); Wesley N. Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning* [Part 2], 26 YALE L.J. 710 (1917).

45. NICHOLSON, *supra* note 43, at 11.

46. *Id.* at 4.

In addition to these four correlative relations of right, duty, freedom, and no freedom, Nicholson examines one more relation between entities with personality: the relation of power, which Hohfeld defines as ability to "effect [a] particular change to legal relations, which might involve creating or terminating relations as well as modifying existing ones."[47] Nicholson gives the example of a State's power to agree to the deployment of another State's military on its soil.[48] It is important to note that this power relation must be mutual. In the absence of power of one entity over the other, Nicholson speaks of the term "disability."[49] This unbalanced relationship allows for one entity to have rights over another entity, which may generate immunities and possibly unlawful conduct. This is true, for instance, when a State has control over another State, but this control is not mutual. The controlling State can get away with certain unlawful conduct in the dominated State.

The last element in Nicholson's definition of personality, which is required for a State to exist, is facts. "In order to be a person, something must exist in some sense as a matter of fact."[50] Does this mean that the entity must have a physical presence? Nicholson answers that it is not required for the entity to exist physically, but its existence should be legally constructed as a reality. As Crawford points out, "[a] State is not a fact in the sense that a chair is a fact; it is a fact in the sense in which it may be said a treaty is a fact: that is, a legal status attaching to a certain state of affairs by virtue of certain rules or practices."[51] Therefore, a State must be constructed as a fact—as an entity with personality that performs acts or omissions according to norms.[52]

C. State Recognition: Effectiveness vs. Recognition Theories

A State must have personality—it must exist as a fact with rights and duties. However, how can other States recognize an entity's statehood? For Crawford, statehood recognition was not an issue before the middle of the 18th century, and "[t]he reason for this was clear: sovereignty, in its origin merely the location of supreme power within a particular territorial unit (*suprema potestas*), necessarily came from within and did not require the recognition of other States or princes."[53] In its early form, statehood recognition depended on

47. *Id.* at 18 (quoting Hohfeld [Part 1], *supra* note 44, at 44).
48. NICHOLSON, *supra* note 43, at 18.
49. *Id.*
50. *Id.* at 19.
51. CRAWFORD, *supra* note 42, at 5.
52. NICHOLSON, *supra* note 43, at 21.
53. CRAWFORD, *supra* note 42, at 12.

domestic laws and not on the will of other States. In the era of positive laws, this form of recognition was no longer valid, especially that statehood recognition implied rights and duties on an international level: "If a new State subject to international law came into existence, new legal obligations would be created for existing States. The positivist premise seemed to require consent to the creation of the State or to its being subjected to international law so far as other States were concerned."[54] Moving forward, statehood recognition was no longer a domestic affair, but one that is tied to international entities.

The question of statehood recognition generated a legal debate, and scholars of international law were divided between two theories: the constitutive theory and the declaratory theory. The constitutive theory, as defined by Crawford, is where a competent organ determines whether an entity is functioning properly within a system. In international law, this assessment can only be performed by other States who examine the entity in question and decide if it is functioning as a subject of their legal system.[55] Nicholson also calls this the effectiveness theory, which includes an entity's compliance with "criteria of effectiveness (including at least territory, population, and government)."[56] On the other hand, the declaratory theory—which Nicholson also refers to as the recognition theory—relies simply on when an entity is recognized as a State by other States. For this theory, "recognition of a new State is a political act, which is, in principle, independent for the existence of the new State as a subject of international law."[57]

1. The Effectiveness Theory

According to the effectiveness theory (as Nicholson calls it), for a State to exist and be considered as such, it must have three attributes: The State must exist as a fact and meet the effectiveness criteria; the State must have rights and duties as per customary law; and the State must contribute to the formation of customary law.

a. The State as a Fact

The Treaty of Westphalia and the 1933 Montevideo Convention on the Rights and Duties of States established some criteria that remain widely used today to define a State. Article I of the

54. *Id.* at 13.
55. *Id.* at 20.
56. NICHOLSON, *supra* note 43, at 92.
57. CRAWFORD, *supra* note 42, at 22; *see* ERIC WYLER, THEORY & PRACTICE OF STATEHOOD RECOGNITION: AN EPISTEMOLOGICAL APPROACH TO INTERNATIONAL LAW 50–62 (2013) (discussing recognition as a legal act or political act).

Montevideo Convention stipulates: "The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states."[58]

i. Territory

A State must have a territory on which to exercise exclusive domestic jurisdiction. Despite this requirement, "there appears to be no rule prescribing the minimum area of that territory."[59] The area can be small or large and does not have to include the entirety of the territory. Nicholson gives the example of 1918 Poland when the Polish National Committee proclaimed itself as a national government. While Germany recognized Poland's statehood, Russia refused to cede territory that should have been under Polish control. A German-Polish Arbitral Tribunal examined the case and proclaimed that Germany's recognition and Russia's non-recognition have no effect on Poland's existence as a State and its right to control its territory. What matters are "the conditions of possessing a territory, a people inhabiting the territory, and a public power which is exercised over the people and the territory."[60] Furthermore, the tribunal continued to say that "[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 accurately delimited, and that the State actually exercises public authority over that territory."[61]

According to Crawford, two possible disputes can arise from the territory criteria: one regarding the entire territory of a new State and one regarding its boundaries. In some cases, these two disputes may coexist. He provides the examples of Israel, Kuwait, Mauritania, and Belize, each of which experienced issues with the definition of their territories.[62]

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58. Montevideo Convention on the Rights and Duties of States art. 1, Dec. 26, 1934, 165 L.N.T.S. 19.

59. CRAWFORD, *supra* note 42, at 46.

60. Deutsche Continental Gas-Gesellschaft v. Polish State, 5 Ann. Dig. 11 (German-Polish Arbitral Trib. 1929), *reviewed by* LONGMANS, GREEN & CO., ANNUAL DIGEST OF PUBLIC INTERNATIONAL LAW CASES 13 (H. Lauterpacht ed., 1981).

61. *Id.* at 15.

62. CRAWFORD, *supra* note 42, at 49 (highlighting the Israeli question of its final borders with the disputed areas of the West Bank, Gaza, the Golan Heights, and the Shebaa Farms). *See generally* JOHN B. QUIGLEY, THE CASE FOR PALESTINE: AN INTERNATIONAL LAW PERSPECTIVE (2d ed. 2005); FRAGMENTED BORDERS, INTERDEPENDENCE AND EXTERNAL RELATIONS: THE ISRAEL-PALESTINE-EUROPEAN UNION TRIANGLE (Raffaella A. Del Sarto ed., 2015); YIGAL KIPNIS, THE GOLAN HEIGHTS: POLITICAL HISTORY, SETTLEMENT AND GEOGRAPHY SINCE 1949 (2013) (discussing the Israeli-Palestinian conflict); NAHLA YASSINE-HAMDAN & FREDERIC PEARSON, ARAB APPROACHES TO CONFLICT RESOLUTION: MEDIATION, NEGOTIATION AND SETTLEMENT OF POLITICAL

ii. People

A State must also have a permanent population occupying its territory. In its 2020 report, the World Bank shows the number of populations living in small States, and this number varies from approximately 13,000 in Nauru to 2,700,000 in Qatar.[63] This goes to show that "no minimum limit is apparently prescribed."[64] For Karen Knop, in *Statehood: Territory, People, Government*, the formula of State-territory-people is not always clear, and "there is no necessary correspondence between a state and a people."[65]

The criteria of territory and people can be expanded, thus stretching the limits of statehood. This would be the case of nationals residing in foreign States with voting rights in their home States or diplomatic immunities—these individuals bring a legal cover from their home State into their State of residency. In these examples, a State "exercise[s] jurisdiction outside its territory on the basis of nationality, thereby producing a jurisdiction that overlaps or sometimes even replaces that of the territorial state."[66] This also applies to migrant workers with rights and duties relating to both their States of origin and their hosting States. Therefore, the territory-people formula is not always limited to the universally recognized State borders and its residents, and statehood rights and duties can expand beyond a State's identified borders and its residents.

The territory-people formula in a State is also questioned in the contexts of colonization and occupation where "the people and territory governed are not part of the state. . . . Under the law of occupation, the occupying state governs, but does not acquire, the occupied territory."[67] Knop gives the example of Israel, which gov-

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DISPUTES (2017) (discussing the Iraqi-Kuwait border conflict of 1958–1961 and the Iraqi invasion of Kuwait in 1991); Miguel de Larramendi, *Mauritania's Challenges, in* POLITICAL REGIMES IN THE ARAB WORLD: SOCIETY AND THE EXERCISE OF POWER 122–25 (Ferran Izquierdo Brichs ed., 2013) (discussing the Senegal-Mauritanian border conflict of 1989); Zelena Jones, *Culture's Ties to The Land: The Belize-Guatemala Border Conflict's Implications for the Maya Communities in Light of the UN Declaration*, 29 WIS. INT'L L.J. 773, 806 (2012) (discussing Belize).

63. *Population, Total—Small States*, WORLD BANK DATA, https://tinyurl.com/yt68n54z [https://perma.cc/WZ8P-MZL8] (last visited July 3, 2023).

64. CRAWFORD, *supra* note 42, at 52. Crawford points out that the question of nationality is different than the number of populations permanently living on the State's territory. *Id.*

65. Karen Knop, *Statehood: Territory, People, Government*, *in* THE CAMBRIDGE COMPANION TO INTERNATIONAL LAW 95, 101 (James Crawford & Martti Koskenniemi eds., 2012).

66. *Id.* at 97.

67. *Id.* at 100.

erns the Palestinian people and territories that are not part of the State of Israel.[68]

The right for self-determination as guaranteed by the 1945 UN Charter and the 1966 International Covenant on Economic, Social, and Cultural rights also illustrates this misalliance of State-territory-people.[69] Some scholars have argued that colonization created artificial States since the determination of territory-people-government did not come from within but was often imposed by the colonial powers. This theory not only questions the Westphalian model of territory-people-government but has the potential of jeopardizing the legal existence of many States today. To respond to this threat, some scholars argue that these States have "earned sovereignty," which implies that the current notion of statehood has internalized the elements of territory-people-government as introduced by the international administration.[70]

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68. In 2003, the General Assembly asked the International Court of Justice for an advisory opinion on this question:

> What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the Report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 1 (July 9). On July 9, 2004, the court rendered its Advisory Opinion stating that the construction of the wall is illegal because it is occurring within the Palestinian territories—territories that are occupied and do not belong to the State of Israel. *Id.* ¶ 120. The court also held that this illegal construction violates the Palestinian peoples' right for self-determination. *Id.* ¶ 122. Additionally, it is interesting to note that the court did not refer to the Palestinian people as a State entity.

69. Article 1 of Chapter 1 on Purposes and Principles of the Charter of the United Nations stipulates that one of the purposes of the United Nations is "[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." U.N. Charter art. 1, ¶ 2. Article 1 of Part I of the 1966 International Covenant on Economic, Social and Cultural Rights stipulates:

> (1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. . . . (3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

International Covenant on Economic, Social and Cultural Rights art. 1, Dec. 16, 1966, 993 U.N.T.S. 3.

70. Knop, *supra* note 65, at 106. On the notion of earned sovereignty, see generally Michael P. Scharf, *Earned Sovereignty: Juridical Underpinnings*, 31 DENV. J. INT'L L. & POL'Y 373 (2003); Paul Williams, Abigail Avoryie & Carlie Armstrong, *Earned Sovereignty Revisited: Creating a Strategic Framework for Managing Self-Determination Based Conflicts*, 21 ILSA J. INT'L & COMPAR. L. 1 (2015).

Despite its historical ties to decolonization, the right of self-determination remains an important legal value today. Knop gives the example of Quebec, which requested to secede from Canada in 1998. The invasion of Iraq in 2003 is another example, as it raised the questions of the Iraqis' right of self-determination and the effectiveness of war in state-building.[71]

iii. Government

A State must also have a government—an effective government where powers are centralized. Crawford makes the point that international law does not define territory in a real estate sense, but rather considers it in the context of governmental power in its legislative, executive, and judicial branches: "Territorial sovereignty is not ownership of but governing power with respect to territory. There is thus a good case for regarding government as the most important single criterion of statehood, since all the others depend upon it."[72] As such, there is an overlap between statehood and government. It is interesting to note that Nicholson does not seem to favor this overlapping view. He points out that early international lawyers did not make the distinction between State and government. When a State recognized the new government of another State, it assumed that the conditions of statehood remained intact, and that the State in question continued to have control over its territory and people. Yet, for Nicholson, the two categories of State and government should be separated. The category of State is tied to the existence of an entity with all its rights and duties, and the category of government is related to identities of individuals who may act lawfully or unlawfully.[73]

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71. Knop, *supra* note 65, at 105.

72. CRAWFORD, *supra* note 42, at 56.

73. NICHOLSON, *supra* note 43, at 115–16. This theory seems to be supported by political scientists as well. In *Dysfunctional State Institutions, Trust, and Governance in Areas of Limited Statehood*, Tanja A. Börzel and Thomas Risse argue that there is a conflation of governance and statehood:

> [T]he "fragile states index," which is widely used to determine states at risk, associates governance indicators (basic infrastructure, economic development, and the like), regime type, and state capacity indicators. As a result, it becomes impossible to examine the relationship between statehood and (good) governance. Statehood is about the capacity to implement and enforce central decisions, including maintaining a monopoly over the means of violence. Governance refers to institutionalized modes of social coordination to solve collective action problems, and provide binding rules and regulations, as well as public good and services.

Tanja A. Börzel & Thomas Risse, *Dysfunctional State Institutions, Trust, and Governance in Areas of Limited Statehood*, 10 REGUL. & GOVERNANCE 149, 149–50 (2016).

Although it seems easy to recognize a government, it is much harder to identify an effective government. Crawford provides the example of the former Belgian Congo, which is the Democratic Republic of Congo today. Its effectiveness is at issue for multiple reasons: There was no preparation for its independence in 1960, there were several violent secession movements, the central government was divided into two factions, and the Belgian troops returned to Congo after independence for humanitarian aids—they were followed by the United Nations forces who entered Congo to maintain peace.[74]

For Crawford, it is hard to interpret the criteria of effective government. To understand the example of the Democratic Republic of Congo, he advances different theories. First, it is possible to say that Congo was not a State when it was recognized since it did not meet the criteria of effective government. As such, its recognition was premature. Second, it also may be that the recognition of its statehood was an unclear case of the constitutive theory. Finally, it is possible that the criteria of effective government were interpreted very loosely. Crawford concludes "[t]his third view is to be preferred. The point about 'government' is that it has two aspects: the actual exercise of authority, and the right or title to exercise that authority."[75]

Consequently, for an entity to have statehood, it must have a government and a general control over a population and a territory. If statehood is disputed, the criteria of effective government and territory will be examined more strictly by the international community. Furthermore, there is a distinction to be made between the creation of a new State and the survival of an already existing State. Crawford argues that "[i]n the former situation, the criterion of effective government may be applied more strictly."[76] In addition to the criteria of territory, people, and government, Crawford adds other requirements for statehood recognition: the capacity to enter into relations with other States, independence, and sovereignty.

iv. Capacity to Enter Into Relations with Other States

There is a debate over whether the capacity to enter into relations with other States is more a consequence of statehood than a criterion to its recognition. Putting this debate aside, the capacity to enter into relations remains tied to independence and an effective

74. CRAWFORD, *supra* note 42, at 57; *see generally* ALANNA O'MALLEY, THE DIPLOMACY OF DECOLONISATION: AMERICA, BRITAIN AND THE UNITED NATIONS DURING THE CONGO CRISIS 1960–1964 (J. Simon Rofe & Giles Scott-Smith eds., 2018); LAZLO PASSEMIERS, DECOLONISATION AND REGIONAL GEOPOLITICS: SOUTH AFRICA AND THE 'CONGO CRISIS', 1960–1965 (2019).

75. CRAWFORD, *supra* note 42, at 57.

76. *Id.* at 59.

government. In order words, it cannot exist if the entity is not independent (or recognized as such) with a functioning government. To support this argument, Crawford gives the example of the proposed General Assembly resolution calling for the Palestine Liberation Organization and the South West Africa People's Organization to have observer status under the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of Universal Character.[77] The United Kingdom voted against the proposed resolution, stating:

> [T]he Convention of 1975 applies only to States. It does not apply to national liberation movements and its scope cannot be widened by resolution so as to extend to them. . . . [T]here is no justification for the resolution to call upon States to accord to certain national liberation movements, functional privileges and immunities. An entity other than a State cannot be regarded as the same as the government of a State. A national liberal movement does not have the same ability as a government to provide the guarantee of good conduct and behaviour which a host country is entitled to require.[78]

v. Independence

Independence is simultaneously "a central criterion for statehood"[79] and a State right. Article 3 of the 1933 Montevideo Convention on the Rights and Duties of States stipulates that a State has the right to protect its integrity and its independence.[80] Without independence, an entity may not be considered a State and instead is regarded as part of another dominant State. Further, unilateral declarations of independence violate the territorial integrity of the host State.[81]

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77. G.A. Res. 43/160[A], Observer Status of National Liberation Movements Recognized by the Organization of African Unity and/or the League of Arab States (Dec. 9, 1988).

78. Geoffrey Marston, *United Kingdom Materials on International Law 1984*, 55 BRITISH Y.B. INT'L L. 405, 446 (1985), *quoted in* CRAWFORD, *supra* note 42, at 61.

79. CRAWFORD, *supra* note 42, at 62.

80. Montevideo Convention on the Rights and Duties of States, *supra* note 58, art. 3.

81. Some scholars have argued that international law prohibits secession to protect territorial integrity. *See* Alexander Orakhelashvili, *Statehood, Recognition and the United Nations System: A Unilateral Declaration of Independence in Kosovo*, 12 MAX PLANCK Y.B. U.N. L. 1, 13 (2008). As Orakhelashvili points out, the international legal system has seen multiple successful and unsuccessful attempts of unilateral declarations of independence. *Id.* at 6. For example, Bangladesh seceded from Pakistan. *Id.* After serious human rights violations and crimes, multiple States recognized Bangladesh as an independent State, and it was admitted into the United Nations in 1974. *Id.* Biafra attempted to secede from Nigeria. *Id.* However, it was reintegrated into Nigeria in 1970 due to the civil war and the rise of violence. Orakhelashvili concludes that "the principle of territorial integrity has survived post-1989 parade of declarations of independence, and international law

If statehood is granted in this context, it might trigger some legal consequences including the legal responsibility of the grantor.[82]

To define independence, Crawford refers to the frequently-cited 1931 case of the *Austro-German Customs Union*[83] where the Permanent Court of International Justice was asked to examine whether the proposed customs union between Germany and Austria complied with the Austrian obligations as dictated by the Treaty of Saint-Germain and the Protocol of Geneva. The court held that the proposed customs were unlawful. The advisory opinion determined that the customs union had the potential of threatening Austria's economic independence. Judge Anzilotti's definition of independence became a well-cited paragraph:

> The independence of Austria within the meaning of Article 88 is nothing else but the existence of Austria, within the frontiers laid down by the Treaty of Saint-Germain, as a separate State and not subject to the authority of any other State or group of States. Independence as thus understood is really no more than the normal condition of States according to international law; it may also be described as sovereignty *(suprema potestas)*, or external sovereignty, by which is meant that the State has over it no other authority than that of international law. . . . It follows that the legal conception of independence has nothing to do with a State's subordination to international law or with the numerous and constantly increasing states of *de facto* dependence which characterize the relation of one country to other countries. It also follows that the restrictions upon a State's liberty, whether arising out of ordinary international law or contractual engagements, do not as such

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does not authorize the unilateral secession of the territory from the state." *Id.* at 8. Jure Vidmar, in *Unilateral Declarations of Independence in International Law*, argues that unilateral declarations of independence may be a domestic affair, and that international law steps in only to accept or reject such declaration. Jure Vidmar, *Unilateral Declarations of Independence in International Law*, *in* STATEHOOD AND SELF-DETERMINATION: RECONCILING TRADITION AND MODERNITY IN INTERNATIONAL LAW, *supra* note 1, at 60–78. So, it is important to distinguish between the unilateral declaration of independence itself and its consequences on an international level. Vidmar argues that international law is neutral in regard to the unilateral declaration of independence:

> [O]nly the question of *acceptance* of a declaration of independence is (partly) regulated by international law. It is a matter of the law of state responsibility that under some circumstances a declaration of independence must not be accepted. At the same time, international law does not foresee any circumstances in which states would be under an obligation to accept a declaration of independence.

Id. at 63.

82. CRAWFORD, *supra* note 42, at 63.

83. Customs Regime Between Germany and Austria, Advisory Opinion, 1931 P.C.I.J. (ser. A/B) No 41 (Sept. 5).

> in the least affect its independence. As long as these restrictions do not place the State under the legal authority of another State, the former remains an independent State however extensive and burdensome those obligations may be.[84]

Crawford concludes that independence requires two elements: the existence of an entity within identifiable borders, and its separation from the authority of another State or States. Consequently, an independent State is subject to international law alone and no other authority above it.[85] Furthermore, Crawford makes the distinction between formal and actual independence. Formal independence demonstrates the absence of real independence and "the entity should be regarded as not independent."[86] By contrast, real or actual independence is "the minimum degree of real governmental power at the disposal of the authorities of the putative State."[87] Crawford examines multiple situations including three that derogate from actual independence. First, "when an entity comes into existence in violation of certain basic rules of international law, its title to be a 'State' is in issue."[88] The second case is when a State or government is created in an occupied territory under belligerent conditions, and the third case is when a State is under substantial control of another State.

Crawford describes the third scenario as follows: "[A]n entity, even one possessing formal marks of independence, which is subject to foreign domination and control on a permanent or long-term basis is not 'independent' for the purposes of statehood in international law."[89] Two potential conflicts arise from this definition. The first issue is how to determine whether the substantial external domination is indeed foreign and not domestic. The second issue is how one can determine whether the external domination is, in fact, domination and not just influence.

To resolve the first issue, Crawford argues that it is important to observe the facts and understand the capacity in which the different entities are acting.[90] The second issue arises in three situations. First, it arises in the case of protectorates who depend on other States.[91]

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84. *Id.* at 57–58, *quoted in* CRAWFORD, *supra* note 42, at 65–66. *See generally* Alexander P. Fachiri, *The Austro-German Customs Union Case*, 13 BRITISH Y.B. INT'L L. 68 (1932).

85. CRAWFORD, *supra* note 42, at 66.

86. *Id.* at 88, *quoted in* NICHOLSON, *supra* note 43, at 96.

87. *Id.* at 72, *quoted in* NICHOLSON, *supra* note 43, at 96.

88. *Id.* at 74.

89. *Id.* at 76.

90. *Id.*

91. Crawford gives the example of the Malay States before 1948, when the Sultan agreed that all political foreign relations and administrative issues will go through the British Government. *Id.* at 77. Subsequently, this raises the issue of the Sultan's immunity in British courts. *Id.*

Second, it is seen in the case of puppet States and governments, which Crawford defines as "nominal sovereigns under effective foreign control, especially in cases where the establishment of the puppet State is intended as a cloak for illegality."[92] Finally, the conflict exists in the context of partial independence.

To a certain extent, protectorates are easy to determine since they are often related to colonial history and colonial powers. The relation of puppet State/government is more complex to identify. For Crawford, belligerent occupation, illegal intervention, and the threat or use of force are situations that are assumed to lead to a puppet State/government relationship. Factors taken into account when determining the puppet character of a state include:

> [T]hat it was imposed on, and rejected by the vast majority of the population it claimed to govern; that in important matters it was subject to foreign direction or control; that it was staffed, especially in more important positions, by nationals of the dominant State. It was not regarded as relevant that certain individuals or groups (including minority groups) in the territory concerned carried out normal administrative functions, or constituted the formal government, if the elements mentioned above were present.[93]

Crawford adds that acts imposed by the puppet State/government must be considered void, except in the context of belligerent occupation, in which case the laws of occupation apply.

Finally, the question of how to determine if an external domination is, in fact, actual control and not just influence arises in the context of partial independence, or what Crawford calls "purported grants of colonial independence . . . where there is evidence that real control has not been transferred."[94] It is interesting to note that Crawford gives the examples of Syria and Lebanon in 1942 through 1946. After World War I and the collapse of the Ottoman Empire, these two entities were placed under French mandate until 1943 for Lebanon and 1946 for Syria. In 1941, the French Delegate-General approved limited independence for Syria only for the purpose of war requirements. Although the United Kingdom recognized Syria and Lebanon, the United States refused to do so. It was only after the full transfer of rights, prerogatives, and duties that the United States recognized the two States of Syria and Lebanon.

The French troops remained in the Levant after the proclamation of independence, and yet their presence was not considered

92. *Id*. at 78.
93. *Id.* at 80–81.
94. *Id.* at 83.

as an obstacle to the recognition of Lebanon and Syria's statehood. According to Crawford, the examples of Syria and Lebanon are important as they demonstrate two facts: First, independence is important for statehood recognition; second, statehood can be maintained even with foreign troops on the ground if the local government exercises local control.[95]

In all the cases above on independence, one must prove that actual independence is lacking and that a foreign entity is systematically and permanently controlling all the decision-making, which is not a small task; it would be difficult to prove in the absence of a foreign occupation or unlawful military intervention.

vi. Sovereignty

In 1928, Arbitrator Max Huber noted in his award in the *Island of Palmas* case, "[s]overeignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State."[96] In *The Creation of States in International Law*, Crawford considers sovereignty as the sixth criterion of statehood. He notes that the term is often used in political discourse and observes that some scholars employ the term in lieu of the term "independence." In *Sovereignty as a Legal Value*, Crawford argues that sovereignty is an important State attribute, and it must be protected. He defines the term as "supreme power within the state."[97] On a domestic level, a State has powers, and these powers are separated between the legislative, executive, and judicial branches, but all together form a sovereign State.[98] International law does not concern itself with this internal division of powers, but rather regards the State as one sovereign entity. Sovereignty thus "is the standard

95. CRAWFORD, *supra* note 42, at 85.

96. Island of Palmas Case (Neth. v. U.S.), 2 R.I.A.A. 829, 838 (Perm. Ct. Arb. 1928).

97. James Crawford, *Sovereignty as a Legal Value*, *in* THE CAMBRIDGE COMPANION TO INTERNATIONAL LAW, *supra* note 65, at 118.

98. In *Sovereignty as a Legal Value*, Crawford defines these governmental powers as:

> [G]overnmental authority [that] extends to determining who may enter the territory, who belongs to the state as its nationals, what the law of the state shall be on any matter and how (or when) it is to be enforced, what taxes shall be paid and on what the proceeds shall be spent, what armaments the state shall have and how they will be deployed, and so on across the spectrum of possible matters for government. As a general matter, this authority is exclusive: normally, governmental activity carried out on the territory of another is only lawful if performed there with the latter's consent, e.g. in the context of visiting forces, or overflight by civil or military aircraft.

Id. at 121.

operating assumption of a decentralized international system."[99] This is certainly an interesting dichotomy since sovereignty is an international law concept founded on an entity dependent on domestic law.

Crawford makes the distinction between a sovereign State and non-State entities such as individuals, non-governmental agencies, and international governmental organizations. They all have rights and duties under international law. International governmental organizations can also make treaties. However, none of these entities have sovereignty, since they do not possess all required elements for statehood. It is true that an international governmental organization can speak in the State's name, but its mandate remains limited and not representative of sovereignty. As such, sovereignty is an exclusive State attribute.[100]

Additionally, sovereignty is a protected right under international law. Article 2, Section 4 of the United Nations Charter stipulates: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[101] Despite this protection, international law is assumed to be weak for its inability to hold some States accountable and impose sanctions in certain contexts (like use of force against another State or human rights violations). Some have argued that sovereignty is, in fact, a fictional trait of statehood, and if it truly exists, it is gradually eroding due to foreign interventions, privatizations, and globalization. Some even go so far as to employ the term "failed State" to refer mostly to third-world States in crisis. To these critics, Crawford responds that "[r]eports of the death of sovereignty are much exaggerated."[102] As for the expression "failed State," Crawford strongly rejects it as it conflates statehood and government in crisis. He adds, "[t]o talk of states as 'failed' sounds like blaming the victims."[103]

While some scholars limit the theory to three components of territory-people-government, others, like Crawford, have expanded the formula and added the capacity to enter treaties, independence, and sovereignty. Regardless of how narrow or broad the definition of the State as a fact is, many scholars criticize it as inadequate for the 21st century; some consider the Westphalian model outdated and have called for its revision. Nicholson is critical of the chronological conundrum it creates: How can one require an entity to have

99. *Id.* at 132.
100. *Id.* at 119.
101. U.N. Charter art 2, ¶ 4.
102. Crawford, *supra* note 97, at 132.
103. *Id.* at 127.

exclusive jurisdiction over its territory, people, and government to be recognized as an independent State and be able to have international relations when these items come after the State proclamation?

b. The State Must Have Rights and Duties as per Customary Law

In addition to territory-people-government, capacity to enter into relations with other States, and independence, an entity must proclaim its statehood by either claiming independence from another State or claiming to have rights and duties as a State. Nicholson gives the example of Australia and other British dominions. Although they satisfied the criteria of territory-people-government, they were not considered States until after 1919 when they formally claimed their statehood and independence.[104]

Independence and sovereignty can be considered fundamental rights to statehood. Article 3 of the 1933 Montevideo Convention stipulates:

> The political existence of the State is independent of recognition by the other States. Even before recognition, the State has the right to defend its integrity and independence; to provide for its conservation and prosperity; and consequently, to organise itself as it sees fit, to legislate upon its interests, to administer its services, and to define the jurisdiction and competence of its courts. The exercise of these rights has no limitation other than the exercise of the rights of other States according to international law.[105]

In this context, Nicholson raises an interesting legal question: What if an entity refuses to make the statehood claim and yet benefits from some State attributes? Providing the example of the Islamic States of Iraq and Syria, Nicholson argues that this lacuna would allow an entity to evade international law and all States' responsibilities.

c. The State Must Contribute to the Formation of Customary Law

Finally, the third element of the effectiveness theory dictates that a State must contribute to the formation of customary law. Once again, Nicholson notes the chronological paradox of such statement where a State creates norms and norms create a State, asking the following question: "If states are defined by a customary norm, how can that customary norm derive its validity from states?"[106]

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104. NICHOLSON, *supra* note 43, at 98.

105. Montevideo Convention on Rights and Duties of States, *supra* note 58, art. 3, *quoted in* NICHOLSON, *supra* note 43, at 101.

106. NICHOLSON, *supra* note 43, at 103.

To answer this question, Nicholson advances five possible answers, none of which are conclusive. First, one must suspend judgment and accept the statement as is. This task is easier said than done, especially for inquisitive souls. The second possible answer argues that some customary laws are not ordinary, such as natural laws. The problem with this theory is that it raises a second question without necessarily answering the first one: If one agrees that some laws are not ordinary, who determines the validity of these laws? Sextus Empiricus's skepticism is the third answer where one is asked to suspend judgment to avoid error for issues that cannot be resolved, which Nicholson calls "relativism." The fourth solution proposes that some rules generate big social pressure beyond, which one does not need to investigate or seek. While this solution may be acceptable, it generates a similar question to the second solution: Who determines these rules and how can they be identified? Finally, the fifth solution is circularity, which suggests that some customary norms define certain entities as States, and once established, these States create customary norms. In other words, "[c]ustom creates states; states create custom."[107]

Nicholson asks whether the theory of effectiveness is sufficient or necessary. He notes that it is hard to find evidence in favor or against this theory since almost all States are well established. However, he argues that effectiveness is necessary for statehood. In fact, the statehood status is maintained if the terms of the effectiveness theory are barely maintained. Nicholson gives the example of Somalia.[108] Despite its general absence from international law, the statehood of Somalia continues to be recognized since Somalia maintains territory-people- government. Albeit unsuccessful, it also continues to have rights and duties, and to participate in creating customary laws. One can conclude that, once a State is recognized as such, it is hard to fall out of this recognition.

2. Recognition Theory

a. Declaration of Statehood

Some scholars of international law favor the theory of recognition over effectiveness. Some go even further and argue that recognition of an entity as a State is enough, and that effectiveness is irrelevant. For instance, on July 9, 2011, "Japan recognized the

107. *Id.* at 105.

108. Nicholson also gives the example of the Vatican City which is treated as a State due to a very broad interpretation of the statehood criteria. *Id.* at 111.

Republic of South Sudan as a new state,"[109] and so did the United States of America, who in a statement recognized "South Sudan as a sovereign, independent state . . . following its secession from Sudan."[110] Historically, this approach was due to the dynastic legitimacy when monarchs inherited their powers, governed over land and people, and were recognized by other entities as the one source of authority. As such, "although some entities are strong or important enough that others have little practical choice but to recognize them, it is still by recognition that they are constituted as states."[111]

Nicholson raises the question of whether the theory of recognition is enough to establish statehood. On the one hand, sovereign States have the right whether to recognize the statehood of another entity. On the other hand, their recognition might be based on facts interpreted differently by each State. For instance, this is the case of Palestine where international lawyers and scholars analyze facts differently. On November 15, 1988, Yasir Arafat, the Chairman of the Palestine Liberation Organization, proclaimed the independence of the Palestinian State. Although the proclamation recognized the State of Israel, it did not precisely define the borders of the Palestinian territories. In his speech, Mr. Arafat announced, "[t]he Palestine National Council announces in the name of God, in the name of the people, of the Arab Palestinian people, the establishment of the state of Palestine in our Palestinian nation, with holy Jerusalem as its capital."[112]

In 2012, the United Nations General Assembly granted Palestine the status of non-member observer State as 139 member States have accorded recognition to the State of Palestine.[113] In 2014, Sweden affirmed that Palestine has met the statehood criteria.[114] This is what Nicholson calls "state-in-context," where an entity is

109. *Statement of the Foreign Minister of Japan on the Independence on the Republic of South Sudan*, MINISTRY OF FOREIGN AFFS. OF JAPAN (July 9, 2011), https://tinyurl.com/y6udaude [https://perma.cc/QX2G-QMUZ].

110. Bureau of African Affairs, *U.S. Relations with South Sudan*, U.S. DEP'T OF STATE (Oct. 24, 2022), https://tinyurl.com/54dhbhcs [https://perma.cc/4FPG-BBKF].

111. NICHOLSON, *supra* note 43, at 115.

112. Youssef M. Ibrahim, *P.L.O. Proclaims Palestine to be an Independent State; Hints at Recognizing Israel*, N.Y. TIMES (Nov. 15, 1988), https://tinyurl.com/mr3v-fafb [https://perma.cc/5FNT-VR94]. *See also History of the Question of Palestine*, UN.ORG, https://tinyurl.com/294wsvwz [https://perma.cc/VS7G-5KT6] (last visited Sept. 3, 2023).

113. *General Assembly Grants Palestine Non-Member Observer State Status at the United Nations*, UN NEWS (Nov. 29, 2012), https://tinyurl.com/5s3sbvsc [https://perma.cc/4NAK-KHV6]; *Diplomatic Relations*, PALESTINEUN.ORG, https://tinyurl.com/4bshrd6n [https://perma.cc/TFR7-7AVJ] (last visited Sept. 6, 2023).

114. Swedish Ministry for Foreign Affairs, *Sweden Recognizes Palestine and Increases Aid* (Oct. 30, 2014), https://tinyurl.com/mvfuwb92 [https://perma.cc/J3QT-DWYN].

recognized as a State by some States but not by others.[115] The issue with this approach is that it gives the recognition theory a quantitative value—suggesting that statehood recognition depends on the number of States recognizing the entity.

b. Implicit Statehood Recognition

In *How to Recognize a State (And Not): Some Practical Considerations*, Tom Grant raises another interesting issue regarding recognition, one that is relevant to the Israel-Lebanon Maritime Border Agreement.[116] Recognition may be clearly expressed in an agreement (like the Abraham Accords between the UAE, Israel, and the United States) or in a declaration (as shown in the South Sudan example). However, the situation gets complicated when a State does not formally recognize an entity as a State, but its practices suggest otherwise. How do we know whether the act is intended as an act of statehood recognition, especially when international law does not require a specific form for recognition? In other words, how can the international community determine a State's intention in a tacit act?

To illustrate this issue, Grant provides the example of Singapore and its relations with Taiwan. On October 31, 2000, a passenger airliner operated by Singapore Airlines crashed at take-off in Taiwan, killing several people. Families of the deceased and those injured began proceedings in Singapore against Singapore Airlines, which counter-argued that the Taiwan Civil Aeronautics Administration was responsible for the crash. The Taiwan Civil Aeronautics Administration falls under the Ministry of Transport and Communications of the Government of Taiwan. As such, it claimed State immunity and requested that the Ministry of Foreign Affairs of Singapore issue a certificate recognizing Taiwan's statehood and subsequent immunity. The Ministry of Foreign Affairs in Singapore refused. The Singapore Court of Appeal had to decide whether these extensive relations between Singapore and Taiwan imply recognition. The Court of Appeal decided that the relations did not imply recognition since

115. For Nicholson:

> [I]f an entity acquires statehood solely under the recognition norm and if the entity is recognized universally, the term 'state' can be used without further qualification; but if the entity is recognized by just one or several states, it is better to use the term 'state-in-context'. States-in-context can be thought of as another category of state-like entities (in addition to states properly so called) that have personality in international law.

NICHOLSON, *supra* note 43, at 92.

116. *See generally* Tom Grant, *How to Recognize a State (And Not): Some Practical Considerations, in* SOVEREIGNTY, STATEHOOD AND STATE RESPONSIBILITY 192 (Christine Chinkin & Freya Baetens eds., 2015).

Singapore has always been careful not to recognize Taiwan as a State either formally or informally. The court continued, "[f]or there to be implied recognition, the acts must leave no doubt as to the intention to grant it."[117]

In *Cyprus v. Turkey*,[118] the European Court of Human Rights held a similar position stating that the acknowledgment of a court system in a territory does not imply recognition. In 1974, Turkey occupied Northern Cyprus and proclaimed the Turkish Republic of Northern Cyprus ("TRNC") in 1983. This prompted the United Nations Security Council to adopt Resolution 541, which considered the statehood declaration to be "legally invalid."[119]

Cyprus filed three complaints with the European Commission of Human Rights, alleging human rights violations including discrimination against the Gypsy community, ill-treatment, arbitrary detention, and enforced disappearance of Greek Cypriots by the Turkish administration in Northern Cyprus. One of the legal questions that needed to be addressed was the nature of the Turkish courts in Northern Cyprus: Are they domestic courts that therefore imply recognition of the statehood of the Turkish Republic in Northern Cyprus? To respond, the court stated "that it is evident from international practice and the condemnatory tone of the resolutions adopted by the United Nations Security Council and the Council of Europe's Committee of Ministers that the international community does not recognise the 'TRNC' as a State under international law."[120] The court continued that international law has recognized the legitimacy of legal documents obtained in from entities like the TNRC in the past,[121] and that the absence of legal institutions in this context would be a disservice for the community.[122] However, the court clarified that its conclusion on this matter "in no way amounts to a recognition, implied or otherwise, of the TRNC's claim to statehood."[123]

In the case of Lebanon and Israel, their histories are marked by wars as well as territorial and maritime disputes. As mentioned earlier, the two States are still at war, and Lebanon has not officially recognized the State of Israel. However, Lebanon has signed multiple documents that refer to the State of Israel, the Maritime Border

117. Civil Aeronautics Admin. v. Sing. Airlines, [2004] S.G.C.A. 3 (Sing.), *quoted in* Grant, *supra* note 116, at 199 n.32.

118. Cyprus v. Turkey, 2001-IV Eur. Ct. H.R. 1 (2001).

119. S.C. Res. 541, ¶ 2 (Nov. 18, 1983).

120. *Cyprus*, 2001-IV Eur. Ct. H.R. ¶ 61, *quoted in* Grant, *supra* note 116, at 199.

121. *Id.* ¶ 90.

122. *Id.* ¶ 92.

123. *Id.* ¶ 238.

Agreement being the most recent example of such documents. Does this practice imply Lebanese recognition of Israeli statehood?

In 1949, and shortly after the proclamation of the State of Israel in 1948, Israel and Lebanon signed the General Armistice Agreement facilitated by the United Nations, which designated the 1923 Palestine-Lebanon boundaries as the Armistice Demarcation Line.[124] Although the text of the agreement refers to Palestine and employs the broad term "parties," its title clearly states that the two signatories are Lebanon and Israel. Furthermore, the agreement enumerates the two States' various rights and duties, including the obligations to respect each other's territory and not use force against each other.

Many violations followed this agreement, and in 1967, Israel renounced it. In fact, Israel wanted to adjust its borders with Lebanon to divert the Litani River, which is in Lebanese territory. Israel claimed that Lebanon was wasting its water. Lebanon interpreted this renouncement as a sign of Israel's intention to invade and annex the part of Lebanon which includes the Litani River.[125] The 1949 agreement was not a peace treaty between the two States of Israel and Lebanon. However, what is interesting about this document is the implicit Lebanese recognition of Israel as an entity that has legal personality, rights and duties, and the ability to enter agreements—in other words, an entity that has all the elements of a State.

In June 1982, Israel invaded Lebanon. On May 17, 1983, both States signed an agreement that called for the withdrawal of the Israeli Defense Forces from Beirut, the termination of the war, the recognition of the State of Israel, and the establishment of peaceful diplomatic relations between the two States. Article I stated:

> (1) The Parties agree and undertake to respect sovereignty, political independence, and territorial integrity of each other. They consider the existing international boundary between Israel and Lebanon inviolable.
> (2) The Parties confirm that the state of war between Israel and Lebanon has been terminated and no longer exists.
> (3) Taking into account the provisions of paragraphs I and 2, Israel undertakes to withdraw all its armed forces from Lebanon in accordance with the Annex of the present Agreement.[126]

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124. S.C. Res. S/1296 (Mar. 23, 1949).

125. FREDERIC C. HOF, GALILEE DIVIDED: THE ISRAEL-LEBANON FRONTIER, 1916–1984, at 37–38 (2021).

126. Agreement Between Israel and Lebanon, May 17, 1983, Isr.-Leb., *reprinted in* 1 THE ARAB-ISRAEL COLLECTION: ANNUAL REPORTS 308, 308–11 (Yonah Libermann & Willem-Jan van der Wolf, eds. 1995).

This agreement is a clear Lebanese declaration and recognition of Israel's statehood. Unfortunately, following the assassination of the Lebanese President Gemayel,[127] the 1983 agreement was repealed and the Syrian Arab Armed Forces, which occupied Lebanon at the time, prevented its implementation.

After the 2006 war between Hezbollah fighters and Israel, the United Nations Security Council adopted Resolution 1701 which called for the full cessation of hostilities, the deployment of the Lebanese Armed Forces in south Lebanon, and the establishment of a demilitarized zone between the Blue Line and the Litani River.[128] The resolution repeatedly mentions Lebanon and Israel and their respective governments. The resolution was unanimously adopted by the Lebanese government with no reservation, and is often mentioned in governmental communications. It is true that Lebanon is far from fully implementing Resolution 1701, especially when it comes to Hezbollah's disarmament.[129] However, this legal and verbal commitment to a text that mentions the Israeli State fourteen times makes one wonder whether it can be interpreted as implicit recognition of statehood.

Finally, both Israel and Lebanon signed the Maritime Border Agreement which was brokered by the United States. Members of the two States did not meet in person, and mediation was facilitated by the Amos Hochstein, the American envoy for energy affairs. The legal nature of the agreement is unclear, as its details have not been officially released to the public. On October 31, 2022, after signing the Maritime Border Agreement, Lebanon deposited a list of geographical coordinates of points pursuant to Article 16, Paragraph 2, and Article 75, Paragraph 2 of the UNCLOS, which was published by the United Nations.[130] In Lebanon, many scholars have criticized the secrecy surrounding the agreement and argued that it violates the Lebanese Constitution. For these scholars, the agreement is an international treaty, and as such, it should be ratified by the President with the consent of the Head of Government and the Council of Ministers.[131] Furthermore, the agreement deals with natural resources

127. Colin Campbell, *Gemayel of Lebanon is Killed in Bomb Blast at Party Offices*, N.Y. TIMES (Sept. 15, 1982), https://tinyurl.com/bdhfdpn9 [https://perma.cc/BG6J-9PTG].

128. S.C. Res. 1701, ¶¶ 1–8 (Aug. 11, 2006).

129. David Daoud, *Lebanon is Incapable of Implementing UN Security Council Resolution 1701*, ATL. COUNCIL (July 29, 2019), https://tinyurl.com/5hb7fv4u [https://perma.cc/NJ6Q-AXAQ].

130. Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, U.N. Maritime Zone Notification 161.2022.LOS (Oct. 31, 2022), https://tinyurl.com/2p95acmc [https://perma.cc/83JX-5G3J].

131. LEBANESE CONSTITUTION, May 23, 1926, art. 52.

and service of public utility which, according to Article 89 of the Lebanese Constitution, requires a law and the Parliament's approval.[132]

Setting aside this legal controversy internal to Lebanon, the agreement was published by several news outlets, including Al Jazeera and Haaretz. The first part of the agreement refers to the "the negotiations to delineate the maritime boundary between the Republic of Lebanon and the State of Israel. . . ."[133] The agreement refers to Israel 42 times with no reservation from Lebanon. A press statement from U.S. Secretary of State Antony J. Blinken reads "[t]he United States congratulates the Governments of Israel and Lebanon for finalizing their agreement, facilitated by the United States, to establish a permanent maritime boundary."[134]

It can be argued that Lebanon has implicitly recognized the State of Israel in the Maritime Border Agreement. The legal nature of the agreement is up for discussion. It took the form of letters (likely memoranda of understanding) exchanged between the United States and Lebanon and the United States and Israel. As the two States are at war, Lebanon did not sign a bilateral treaty or a contract directly with Israel; however, Lebanon signed an agreement that references the government-people-territory of Israel.

To celebrate the Maritime Border Agreement, Israel Prime Minister Yair Lapid announced that it was a political achievement because "it is not every day that an enemy state recognises the State of Israel, in a written agreement, in front of the entire international community."[135] Former Lebanese President Michel Aoun responded by denying that Lebanon recognizes Israel's statehood through the Maritime Border Agreement; he announced that "[d]emarcating the southern maritime border is technical work that has no political implications."[136] It is hard to interpret these words, especially when Lebanon's actions carry a different meaning. For some, statehood recognition should always come from authorities who are able to represent the State on an international level,[137] because it is a custom dictated in Article 7, Paragraph 2 of the 1969 Vienna Convention on

132. *Id.* art. 89.

133. *Full Text: Final Version of Israel-Lebanon Maritime Border Deal*, HAARETZ (Oct. 12, 2022), https://tinyurl.com/mr2arr9r [https://perma.cc/45Y5-P45D].

134. *Statement by Secretary Blinken: Historic Agreement Establishing a Permanent Israel-Lebanon Maritime Boundary*, U.S. EMBASSY IN LEBANON (Oct. 27, 2022), https://tinyurl.com/4zz8j6dk [https://perma.cc/CEK3-BC9H].

135. *Has Lebanon Recognized Israel by Striking a Maritime Border Deal*?, ALJAZEERA (Oct. 27, 2022), https://tinyurl.com/2a6urwj2 [https://perma.cc/P9YN-3C59].

136. *Id.*

137. Grant, *supra* note 116, at 204.

the Law of Treaties.[138] If this is indeed the case, the Lebanese President's statement clearly means that the State of Lebanon does not recognize Israeli statehood.

However, Lebanon's actions go against this political proclamation and show a long history of either signing or recognizing legal documents that refer to the State of Israel, starting with the 1949 Armistice Agreement. In other words, Lebanon has signed, acknowledged, or referred to documents that mention Israel as a legal entity with legal personality, people, government, territory, and capacity to engage in relations with other States.

For Grant, continuous contact between two entities does not necessarily mean statehood recognition. France did not recognize Vietnam as a State in 1954, despite the lengthy negotiations and contact between the two entities.[139] Also, entering into an agreement with an entity does not imply statehood recognition. As pointed out previously, Taiwan was not recognized as a State, despite its numerous agreements with Singapore. However, the precedents of Taiwan and the Turkish Republic of Northern Cyprus may not be extended to the Lebanese-Israeli scenario. Unlike Taiwan and the Turkish Republic of Northern Cyprus, Israel is an internationally recognized State.

There is no consensus in international law on how to interpret a State's intention and tacit acts of statehood recognition and, while some acts are considered a form of recognition, others are not. Lebanon argues that Israel is an armed non-State actor that occupies the State of Palestine. A non-State actor is defined in opposition to a State actor.[140] It is a state-like entity (to borrow Nicholson's expression) that shows similarity to States "including territorial control, and thus [] the potential to exercise the full panoply of powers, rights and obligations of states. At the same time, quasi-states . . . are defined

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138. Article 7, paragraph 2 of the 1969 Vienna Convention on the Law of Treaties stipulates:

> In virtue of their functions and without having to produce full powers, the following are considered as representing their State: (a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty; (b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited; (c) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

Vienna Convention on the Law of Treaties art. 7, ¶ 2, May 23, 1969, 1155 U.N.T.S. 331.

139. Grant, *supra* note 116, at 202.

140. Yaël Ronen, *Entities That Can Be States But Do Not Claim to Be*, *in* STATEHOOD AND SELF-DETERMINATION: RECONCILING TRADITION AND MODERNITY IN INTERNATIONAL LAW, *supra* note 1, at 23–24.

by their voluntary self-exclusion from the category of states."[141] For Lebanon, Israel is an occupying force that exists as a fact, has legal personality, and has the capacity to enter into relations with State actors. However, it does not have the elements necessary to be recognized as an independent and sovereign State, meaning it lacks territory, people, and government.

Clearly, this is an empty political statement—one that does not match the legal pattern in Lebanon. If Lebanon does not recognize Israeli statehood politically, it implicitly has done so legally. Alone, the Israeli-Lebanese Maritime Border Agreement does not carry the meaning of statehood recognition. However, considering Lebanon's history and pattern of either recognizing or signing legal documents that refer to Israeli statehood, it is possible to conclude as such. The ambiguity of this situation is compounded by the lack of precision in international law where there is no formula that defines statehood or sets a procedure for recognizing statehood.

CONCLUSION

This Article has examined the legal definition of "State" and the theories of statehood recognition. It has analyzed the territorial and maritime border disputes between Lebanon and Israel and resolved the question of whether the Israeli-Lebanese Maritime Border Agreement implies Lebanese recognition of Israeli statehood. The effectiveness and the recognition theories of statehood are unreliable and, as such, cannot fully explain the Lebanese-Israeli case. For Crawford, in *The Creation of States in International Law*, neither theory fully explains the reality on the ground, and they reduce statehood recognition to diplomacy, which should not be the case.[142] The general debates on how to recognize statehood and whether the Israeli-Lebanese Maritime Border Agreement constitutes implicit statehood recognition are still ongoing and far from being fully resolved. The evolution of positive laws, the wave of decolonization, and the establishment of most States in the early 20th century complicate the matter. The international legal community does not have a precedent to rely on, and it cannot violate Lebanon's sovereignty and force the recognition of Israeli statehood.

141. *Id.* at 24.
142. CRAWFORD, *supra* note 42, at 5.

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