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Introduction

‘International law’ refers to the law between states, it regulates the space where states (countries) as subjects of international law interact with other states through bilateral (one state to another) or multilateral treaties.[[1]](#footnote-1) This broad definition of international law shows us that to interact with or through international law one has to be a state. So the Question would be weather Africa consisted of states for the purposes of international law or something else that excluded them from international law. This Essay will explore these possibilities by examining what is a state and how did a state come into being.

**What is a state?**

Although a succinct definition of a state has eluded scholars of international law, there are 4 criteria contained in the *1933 Montevideo Convention on the Rights and Duties of States* that a state must adhere to for it to be thought of as a state, namely: [[2]](#footnote-2)

1. A permanent population
2. Defined territory
3. Government
4. Capacity to enter into relations with other states

These criteria are associated with the declaratory theory of statehood, which says that merely meeting the criteria a state comes into being.[[3]](#footnote-3) This theory though has a theoretical opponent: the constitutive theory which says, for a state to come into being it must be recognised by other states.[[4]](#footnote-4)

Indigenous African communities

We need to analyse the African communities prior to this time to see whether they fit the above statehood establishing systems.

In 1975 the ICJ when dealing with the matter of Western Sahara being terra nullius when Spain colonised it stated that Western Sahara was “inhabited by peoples which, if nomadic, were socially and politically organized in tribes and under chiefs competent to represent them”.[[5]](#footnote-5)The ICJ proceeded to point out that in most of Africa the colonial powers contracted with chiefs (more on the contracting later), this shows that Africa had such societal structures.[[6]](#footnote-6)

Berlin Act: where there is no terra nullius, there can be no occupation in the true sense of the word[[7]](#footnote-7)

1. Textbook page 29 [↑](#footnote-ref-1)
2. Textbook page 67 [↑](#footnote-ref-2)
3. Textbook page 68 [↑](#footnote-ref-3)
4. Textbook page 68, 71 [↑](#footnote-ref-4)
5. Textbook page 39 [↑](#footnote-ref-5)
6. Textbook page 39 [↑](#footnote-ref-6)
7. Textbook page 40 [↑](#footnote-ref-7)