

Washington University Global Studies Law Review

Volume 4

Issue 3 *Centennial Universal Congress of Lawyers Conference—Lawyers & Jurists in the 21st Century*

January 2005

Blood for Oil: Secession, Self-Determination, and Superpower Silence in Cabinda

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Recommended Citation

Brock Lyle, *Blood for Oil: Secession, Self-Determination, and Superpower Silence in Cabinda*, 4 WASH. U. GLOBAL STUD. L. REV. 701 (2005),
https://openscholarship.wustl.edu/law_globalstudies/vol4/iss3/16

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BLOOD FOR OIL: SECESSION, SELF-DETERMINATION, AND SUPERPOWER SILENCE IN CABINDA

INTRODUCTION

Joseph¹ spends his days huddled at a small desk in a rotting hotel in the Algerian district of Paris, writing fruitless missives to oil-drunken governments even after abandoning all hope for a response. He has been kidnapped several times and remains in hiding to avoid a more permanent fate. Joseph is a refugee of Cabinda, a tiny, suffering nation where the land holds a bubbling bounty kept just beyond the reach of its citizens—and where silence is worth its weight in oil.

Cabinda is considered either a small coastal nation bordered by the Congo and the Democratic Republic of the Congo, or Angola's eighteenth and northernmost province.² It is approximately 7,283 square kilometers and has a population of about 300,000.³ When Angola gained its independence from Portugal in 1975, it incorporated Cabinda into its territory despite protests from Cabindan separatist guerillas.⁴ The guerillas opposing this incorporation founded the Front for the Liberation of the Enclave of Cabinda (FLEC).⁵ The conflict has lasted more than thirty years and has seen significant losses and human rights violations on both sides. All of this shows little sign of abating, despite promises of autonomy and further talks.⁶ Beneath the blood and turmoil, undisturbed by the bullets and the screams, flows the "black blood" of the industrial world, which has coaxed the Western powers into a soft sanction of the status quo.

The uprising of Cabindan separatists throws into relief a much larger and more basic conflict. The right to self-determination is among the most fundamental concepts of international law, and is central to the U.N.

1. Joseph's name has been changed to protect his refugee status.

2. Unrepresented Nations and Peoples Organization, *Cabinda*, at <http://www.unpo.org/member.php?arg=13> (last visited Feb. 8, 2005); AD-HOC COMMISSION FOR HUMAN RIGHTS IN CABINDA, TERROR IN CABINDA: 1ST REPORT ON THE HUMAN RIGHTS SITUATION IN CABINDA 3 (Dec. 10, 2002), available at <http://www.cabinda.net/H.R.Report.Cabinda02.pdf> (last visited Feb. 8, 2005) [hereinafter TERROR IN CABINDA].

3. *Unrepresented Nations and Peoples Organization*, *supra* note 2.

4. TERROR IN CABINDA, *supra* note 2, at 3.

5. *Id.*

6. *Id.* (detailing numerous human rights violations in the enclave of Cabinda during recent years).

Charter.⁷ This right guarantees all peoples freedom from colonial or other occupying influence and the freedom to determine their own destiny.⁸ On the other hand, a nation's right to territorial integrity is inherent in the formation of nation states⁹—a right that prevents nations from splintering into powerless principalities.¹⁰ There are times, however, when the right of territorial integrity opposes the right of self-determination.¹¹ This conflict between freedom and unity is at the heart of Africa's struggle for peace, and Cabinda is on the front lines.

This Note will address whether Cabinda's right to self-determination supersedes Angola's need to maintain its territorial integrity, and, if so, to what extent self-determination should be given to Cabinda. Part I offers some historical background on Cabinda and its relationship with Portugal and Angola. Part II examines the legal underpinnings of the rights of self-determination and territorial integrity. Part III compares Cabinda to similarly-situated regions, including East Timor, Quebec, and Biafra. Part IV analyzes the legality of Cabinda's secession or autonomy from Angola. This Note concludes that Cabinda's right to self-determination supersedes Angola's right to territorial integrity, and that the United Nations should take a central role in conducting a referendum on Cabinda's independence.

I. BACKGROUND

Cabinda was part of the Kongo Kingdom when it was discovered by Portuguese explorer Diogo Cao in the fifteenth century.¹² His friendship with the Kongo king gave rise to a trading relationship between the two countries.¹³ In the nineteenth century, Portugal signed three treaties with

7. See U.N. CHARTER art. 1, para. 2 (stating, "[t]he Purposes of the United Nations are: . . . [t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples").

8. See Pius L. Okoronkwo, *Self-Determination and the Legality of Biafra's Secession Under International Law*, 25 LOY. L.A. INT'L & COMP. L. REV. 63, 73–74 (2002).

9. See U.N. CHARTER art. 2, para. 4 (stating "[a]ll Members shall refrain . . . from the threat or use of force against the territorial integrity or political independence of any state . . .").

10. Okoronkwo, *supra* note 8, at 79.

11. *Id.* at 107–08.

12. *Cabinda: History—Scramble for Cabinda*, WASH. POST ONLINE, at <http://www.washingtonpost.com/wp-adv/specialsales/spotlight/angola/article11.html> (last visited Feb. 8, 2005) [hereinafter *Scramble for Cabinda*].

13. *Id.* Cabinda was one of Portugal's most important trading stations on the West African coast. This was principally a slave-trading enterprise. *Id.* By 1758, this relationship had grown so strong that King Mambuco Puna issued a royal decree granting Portugal exclusive trading rights in the area. The British and French had also established trading stations at the mouth of the Congo River in Cabinda by this time. *Id.*

the local people.¹⁴ The first two were with kingdoms south of the Congo River.¹⁵

The Treaty of Simulambuco¹⁶ incorporated the previous two treaties and established Cabinda as a Portuguese protectorate.¹⁷ This was a key foothold for Portugal because it was their only territory north of the Congo River.¹⁸ In return for native support of Portuguese colonization, Portugal agreed to preserve the territorial integrity of individual regions and to maintain the language, culture, and customs of the indigenous peoples.¹⁹ Meanwhile, Portugal was meeting with several other European states in Berlin to vivisect Africa into a fistful of private empires.²⁰ The Berlin Conference of 1884–1885 recognized the Treaty of Simulambuco and established Angola and Cabinda as Portuguese protectorates.²¹

By 1956, Cabinda was administratively linked to Angola but remained “geographically, linguistically, and ethnically” distinct.²² A decade later, a massive oil reserve was discovered off the Cabindan coast.²³ American and French oil corporations moved in and began pumping, giving oil revenues to Angola rather than Cabinda.²⁴

Both Cabinda and Angola remained Portuguese protectorates and cooperated toward a common goal of independence from Portugal.²⁵ In 1963, the FLEC was created with the goal of gaining independence from

14. THE CABINDA NETWORK, *History of Cabinda*, at <http://www.chez.com/cabinda/english/history.htm> (last visited Feb. 8, 2005). The treaties were the Treaty of Tchifuma with the Kakongo Kingdom on September 29, 1883; the Treaty of Tchikamba with the Loango Kingdom on November 26, 1884; and the Treaty of Simulambuco with the Ngoio Kingdom on February 1, 1885. *Id.*

15. *Id.* The Kakongo and Loango Kingdoms are part of the Democratic Republic of the Congo, which runs along Cabinda’s southern and eastern borders. Website of the Republic of Cabinda, *The Country of Cabinda*, at <http://www.cabinda.net/Cabinda02.html> (last visited Feb. 28, 2005).

16. Treaty of Simulambuco, Feb. 1, 1885, Port-Cabinda, at <http://www.cabinda.net/Cabinda1.html#tratado%20Simulambuco> (last visited Mar. 26, 2005).

17. THE CABINDA NETWORK, *supra* note 14. The treaty of Simulambuco was signed in response to the Conference of Berlin. The Cabindans insisted that Portugal maintain Cabinda’s territorial integrity and maintain the authority of its regional chiefs. *Scramble for Cabinda*, *supra* note 12.

18. THE CABINDA NETWORK, *supra* note 14. Portugal’s historical stronghold north of the Congo was carved away by more powerful nations, such as Britain, Belgium, and France. Cabinda was the sole remaining Portuguese territory north of the Congo, so Portugal was as eager to sign the Treaty of Simulambuco as were the Cabindans, albeit for different reasons. *Id.*

19. *Id.*

20. See *Scramble for Cabinda*, *supra* note 12.

21. See THE CABINDA NETWORK, *supra* note 14. Actually, only Angola had been considered a Portuguese colony because Cao discovered it. Cabinda was added as a protectorate only after the Treaty of Simulambuco. *Id.*

22. *Scramble for Cabinda*, *supra* note 12.

23. *Swimming in Oil*, WASH. POST ONLINE, at <http://www.washingtonpost.com/wp-adv/specialsales/spotlight/angola/article2.html> (last visited Mar. 7, 2005).

24. *Id.*

25. *Scramble for Cabinda*, *supra* note 12.

Portugal, joining the existing Angolan Nationalist group, UNITA.²⁶ A civil war resulted, lasting from 1961 to 1974.²⁷ Meanwhile, the Organization for African Unity (OAU), which was responsible for outlining post-colonial territorial boundaries, ranked Angola as the thirty-fifth state to be decolonized and Cabinda as the thirty-ninth, recognizing a clear distinction between the two.²⁸

In 1971, Portugal drafted a new constitution that maintained the distinction between Angola and Cabinda.²⁹ Soon thereafter, in 1974, the Portuguese government fell, and its colonies took steps toward independence.³⁰ In 1975, representatives of the Angolan Liberation Movement were invited to the southern Portuguese town of Alvor to negotiate that independence.³¹ However, no representatives of FLEC were present, and Cabinda, which had been an ally in the fight for freedom, was offered up as a spoil of war.³²

Article 3 of the Alvor Accords³³ legitimized the annexation of Cabinda as a province of Angola.³⁴ At the time, Cabinda was producing nearly all of Angola's oil, which accounted for close to half of the nation's gross national product.³⁵ Cabindans unilaterally rejected the Alvor Accords and declared their independence from Angola.³⁶ In November 1975, Angolan

26. João Gomes Porto, *Cabinda: Notes on a Soon to be Forgotten War*, INST. FOR SECURITY STUD., Aug. 4, 2003, at <http://www.reliefweb.int/library/documents/2003/iss-ang-4aug.pdf> (last visited Feb. 8, 2005).

27. See ONWAR.COM, *Armed Conflict Events Data: Angolan War of Independence 1961–1974*, at <http://www.onwar.com/aced/data/alpha/angola1961.htm> (last visited Feb. 8, 2005). The Angolan war of independence resulted in an estimated 9,000 Portuguese casualties and some 30,000 insurgent deaths. *Id.*

28. Cabinda: Official Site of the Cabindese Government in Exile, *History of the Cabinda*, at <http://www.cabinda.org/histoireang.htm> (last visited Feb. 8, 2005). In 2002, the Organization for African Unity was reorganized into the African Union, modeled loosely after the European Union. Henry Owuor, *Building on the European Model: Challenges for the African Union*, 49 WORLD PRESS REV. 10, 7 (July 24, 2002), available at <http://www.worldpress.org/Africa/688.cfm> (last visited Feb. 28, 2005). Its purpose is to maintain the unity and independence of its fifty-three member states, which include Angola but not Cabinda. *African Union: African Union in a Nutshell*, at <http://www.african-union.org/home/Welcome.htm> (last visited Feb. 28, 2005).

29. CABINDA NETWORK, *supra* note 14.

30. *Id.*

31. Porto, *supra* note 26, at 10.

32. *Id.*

33. Alvor Agreement on Angolan Independence, Jan. 15, 1975, Port.-Angl., art. 3 (on file with The Washington University Global Studies Law Review).

34. See THE CABINDA NETWORK, *supra* note 14.

35. *Cabinda: Oil—Block Buster*, WASH. POST ONLINE, at <http://www.washingtonpost.com/wp-adv/specialsales/spotlight/angola/article12.html> (last visited Mar. 7, 2005). Cabinda is not as essential to Angola's economy as it was in the 1960s and 1970s; Angola has since discovered significant oil fields off its own coast. *Id.*

36. CABINDA NETWORK, *supra* note 14.

troops, supported by Cuban and Soviet forces, occupied Cabinda and declared it Angola's eighteenth province.³⁷ In response, FLEC conducted an insurrection against Angolan troops, often attacking government soldiers with guerilla-style tactics, such as kidnapping oil company employees, in an attempt to heighten public awareness.³⁸

Angola argues it simply wants to maintain its territorial integrity.³⁹ The presence of oil casts doubt on Angola's pure intentions, because Angola has little economic incentive to allow Cabinda's secession.⁴⁰ Cabinda's wells supply over sixty percent of the oil revenues that account for forty-two percent of Angola's gross national product and ninety percent of the state budget.⁴¹ For many years Cabinda received none of these profits, and its citizens found themselves struggling to feed their families while living in sight of monstrous oil rigs.⁴²

The situation is seeing moderate improvement. Ten percent of Cabindan oil revenues now go into the province's coffers rather than Angola's national fund.⁴³ Some FLEC members engage in discussions with Angola regarding self-determination, although the process has not resulted in a peace agreement.⁴⁴

During a visit to Washington, D.C. in February 2003, Angolan President Jose Eduardo dos Santos said that he supported a referendum on Cabindan autonomy.⁴⁵ However, he stated he intended to consult the Angolan people as well, who likely will be loath to relinquish sixty percent of their nation's oil revenues.⁴⁶ FLEC said that it would only

37. *Id.*

38. *Let the People Decide*, WASH. POST ONLINE, at <http://www.washingtonpost.com/wp-adv/specialsales/spotlight/angola/article10.html> (last visited Feb. 8, 2005). "FLEC split apart in the 1980s, with the formation of FLEC-FAC and FLEC Renovada [FLEC-R], each pursuing different strategies on how to fight for independence." *Id.*

In recent years, FLEC-FAC and FLEC-R have continued their kidnapping practices. See Porto, *supra* note 26, at 8.

39. See generally Elizabeth M. Jamilah Koné, *The Right of Self-Determination in the Angolan Enclave of Cabinda*, at <http://www.africa.upenn.edu/Workshop/kone98.html> (last visited Feb. 27, 2005).

40. *Id.*

41. *Cabinda: Oil—Block Buster*, *supra* note 35.

42. Justin Pearce, *Poverty and War in Cabinda*, BBC NEWS, Oct. 27, 2002, at http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/2361143.stm (last visited Feb. 8, 2005).

43. *Let the People Decide*, *supra* note 38.

44. *Id.*

45. *Id.*

46. *Id.*

consider an East Timor-type referendum, which would grant Cabinda total independence.⁴⁷

II. SELF-DETERMINATION VERSUS TERRITORIAL INTEGRITY

A dynamic conflict exists between a people's right to self-determination and a nation's territorial integrity; a conflict between freedom and unity.

A. *The Right of Self-Determination*

Articles 1(2) and 55 of the U.N. Charter refer to the right of self-determination.⁴⁸ Part of the problem in implementing this right is that it lacks a commonly accepted definition.⁴⁹ Many definitions of self-determination include the following characteristics: (1) a government based on the will of the people; (2) freedom from internal and external dominance; (3) freedom to pursue economic, cultural, and social development; (4) the right to enjoy fundamental human rights; and (5) the absence of discrimination based on ethnicity or political beliefs.⁵⁰ The International Court of Justice (I.C.J.) defines the right of self-determination as an *erga omnes* right, meaning it applies to all people.⁵¹ Self-determination has also been called an inalienable right.⁵² In extreme circumstances, the right of self-determination includes a right to secede.⁵³

47. *Id.*

48. Article 1(2) states that the purpose of the United Nations is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take appropriate measures to strengthen universal peace." U.N. CHARTER art. 1, para. 2. Article 55 states that relations are "based on respect for the principle of equal rights and self-determination." U.N. CHARTER art. 55, para 1.

49. Okoronkwo, *supra* note 8, at 73 (internal citations omitted).

50. *Id.* at 75.

51. Case Concerning East Timor (Port. v. Austl.), 1995 I.C.J. 90 (June 30), at 102. "The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court . . . it is one of the essential principles of contemporary international law." *Id.* The *erga omnes* character does not allow the International Court of Justice to act when there is an evaluation of lawfulness of conduct of a nation not a party to the case. *Id.*

52. Okoronkwo, *supra* note 8, at 75.

53. The special rapporteur of the Subcommission on the Prevention of Discrimination and Protection of Minorities further elucidated the definition:

The principle of equal rights and self-determination, as laid down in the *Charter of the United Nations*, does not grant an unlimited right of secession to populations living in the territory of an independent sovereign state, and such a right cannot be regarded as a provision of *lex lata*. The right of secession unquestionably exists, however, in a special, but very important case: that of peoples, territories, and entities subjugated in violation of international law. In such cases, the peoples concerned have the right to regain their freedom and constitute themselves

B. *Right of Territorial Integrity*

Inherent in the organization of a country is the right to keep that country together. This right is also included in the Charter of the United Nations.⁵⁴ Particularly in the infant nations of post-colonial Africa, countries have a keen interest in preserving their right of territorial integrity.⁵⁵ There must be a balance, therefore, between the inalienable right of self-determination and the right to maintain a nation's territorial integrity, because territorial integrity was not intended to preclude the right to self-determination.⁵⁶ On one hand, too strict a reading of territorial integrity creates an internationally sanctioned form of fascism, a nation where the people have no freedom to disagree. On the other hand, too broad a definition of self-determination makes it impossible to keep countries together. Therefore, the threshold for secession based on self-determination should be very high to avoid fractionalization based on minor divergences of interest.

In U.N. General Assembly Resolutions 1514⁵⁷ and 1541,⁵⁸ the right to self-determination was held to apply only in colonial situations.⁵⁹ Later court decisions expanded this to apply to people who are oppressed by foreign occupying powers or otherwise denied the free exercise of self-determination.⁶⁰ Secession is only allowed in cases of gross human rights violations.⁶¹

independent Sovereign States.

Okoronkwo, *supra* note 8, at 77–78 (citing Michael K. Addo, *Political Self Determination Within the Context of the African Charter of Human and Peoples' Rights*, 32 J. AFR. L. 182, 191–92 (1988) (citing A. Cristeseu, Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, *The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments* (1981), ¶ 173, U.N. Doc. E/CN.4/sub/2/404/Rev.1)).

54. U.N. CHARTER art. 2, para. 4. "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 . . ." *Id.*

55. Okoronkwo, *supra* note 8, at 79–80.

56. *Id.* at 80.

57. *Declaration on the Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. No. 16, ¶ 2, U.N. Doc. A/4684 (1960) [hereinafter Resolution 1514].

58. *Declaration on Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1541 (XV), U.N. GAOR, 15th Sess., Supp. No. 16, art. 1, ¶ 2, U.N. Doc. A/4684 (1961) [hereinafter Resolution 1541].

59. See Okoronkwo, *supra* note 8, at 78–81 (analyzing Resolutions 1514 and 1541).

60. See *Case Concerning East Timor* (Port. v. Austl.), 1995 I.C.J. 90 (June 30); Reference re *Secession of Quebec*, [1998] 2 S.C.R. 217.

61. Okoronkwo, *supra* note 8, at 106.

III. CASE STUDIES

Several nations have seceded or attempted to secede from oppressive powers based on the doctrine of self-determination. East Timor, also a Portuguese colony, did so successfully as a non-self-governing territory in 1975.⁶² Quebec attempted to secede from Canada several times, but in 1998 the Canadian Supreme Court ruled against such secession.⁶³ Biafra attempted and failed to secede from Nigeria during a bloody three-year civil war.⁶⁴ The facts surrounding Cabinda's claim to independence closely resemble some of the events in Biafra. While Biafra's right to self-determination was superseded by the old maxim of "might makes right," Cabinda provides an opportunity to see how far diplomacy has progressed over four decades.

A. East Timor

The tiny island of Timor, situated to the southwest of Indonesia, has long been controlled by large colonial powers.⁶⁵ Divided between the Dutch and the Portuguese during the colonial era, the western portion became part of Indonesia in 1946, while the eastern half remained under Portuguese control until 1975.⁶⁶ Soon after East Timor's first elections in 1975, neighboring Indonesia orchestrated a *coup d'état*, resulting in a bloody civil war.⁶⁷ Indonesia sent in military forces in December of the same year to occupy the region, proclaiming the area as Indonesia's twenty-seventh province.⁶⁸ The United Nations condemned the Indonesian invasion,⁶⁹ but its pronouncements had little effect.⁷⁰ By May 1976,

62. ANTONIO CASSESE, SELF DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 224 (1995).

63. Reference re Secession of Quebec, [1998] 2 S.C.R. 217, 220–21.

64. Okoronkwo, *supra* note 8, at 110, 113.

65. CASSESE, *supra* note 62, at 224.

66. *Id.*

67. Barbara Cochrane Alexander, *East Timor: Will There be Justice?*, HUM. RTS. BRIEF (Fall 2000), at 5. The Revolutionary Front for the Independence of East Timor (Fretilin), predictably, demanded total independence, while the Anti-Communist Movement (MAC) advocated integration with Indonesia. CASSESE, *supra* note 62, at 224.

68. Alexander, *supra* note 67, at 5.

69. See, e.g., G.A. Res. 53, U.N. GAOR, 31st Sess. (1976), reprinted in 1976 U.N.Y.B. 754; *Timor: Consideration by the Security Council*, 1976 U.N.Y.B. 752; *The Question of East Timor*, 1977 U.N.Y.B. 263; *Declaration on Granting Independence to Colonial Countries and Peoples*, 1977 U.N.Y.B. 828, 867; G.A. Res. 34, U.N. GAOR 4th Comm., 32d Sess. (1977), reprinted in 1977 U.N.Y.B. 890 (reaffirming the people of East Timor's right to self-determination by a vote of 67 to 26); *Trusteeship and Decolonization: Other Colonial Territories: East Timor Question*, 1981 U.N.Y.B. 1095, 1182; G.A. Res. 50, U.N. GAOR, 36th Sess. (1981), reprinted in 1981 U.N.Y.B. 1185 (reaffirming "the inalienable right of the people of East Timor to self-determination and

Indonesia had installed a puppet “Regional Popular Assembly” that passed a resolution in favor of East Timor’s incorporation into Indonesia.⁷¹

Indonesia maintained that the people of East Timor had exercised their right to self-determination through the Regional Popular Assembly.⁷² On the other hand, Portugal, recognized by the United Nations as the administering power in the region, maintained that the approval of East Timor’s integration with Indonesia had not been an accurate representation of the “free and genuine will” of the people.⁷³ The conflict between Portugal’s claim to administrative control in East Timor and Indonesia’s *de facto* control of the region came to a head in 1989 with a natural resource contract disagreement, referred to as the Timor Gap Dispute.⁷⁴ The International Court of Justice ruled in 1995 that the Court could not determine Indonesia’s treaty-making power over East Timor or the lawfulness of Indonesia’s occupation of East Timor because it lacked jurisdiction over Indonesia.⁷⁵

In 1999, the U.N. Security Council brokered a deal with Portugal and Indonesia to allow the people of East Timor to vote on a special autonomy

independence” by a vote of 54–42–46).

70. CASSESE, *supra* note 62, at 224.

71. *Id.* In response, the Indonesian legislature enacted Law 7/76, which officially made East Timor the twenty-seventh province of Indonesia. *Id.*

72. *Id.* at 225. Lest Indonesia’s argument appear smug in the face of history, it was not the only nation to espouse such a view. In a 1978 U.N. General Assembly meeting, the representative of Malaysia stated:

The people of East Timor had on previous occasions expressed and even documented their genuine desire to attain independence through integration with Indonesia. In accepting their request the Malaysian Government is satisfied that the government of Indonesia had gone to the extremes to [*sic*] carefully make sure that the request was in accordance with [the] wishes of the people, for we are convinced they would not have acceded to it were it against their wishes . . . It remains our position that the people of East Timor have already exercised their right of self-determination through the legitimate People’s Assembly.

Id. at 226 n.30 (quoting Press Release of the Permanent Mission of Malaysia to the UN, New York, 1978, 2–3, 4.).

73. CASSESE, *supra* note 62, at 225.

74. Case Concerning East Timor (Port. v. Austl.), 1995 I.C.J. 90 (June 30), at 102 [hereinafter *East Timor Case*]. See Julie Sforza, *The Timor Gap Dispute: The Validity of the Timor Gap Treaty, Self-Determination, and Decolonization*, 22 SUFFOLK TRANSNAT’L L. REV. 481, 484 (1999).

Portugal instituted proceedings in the International Court of Justice (I.C.J.) in 1991 against Australia seeking a declaration from the Court that Portugal’s status with respect to East Timor and the rights of the people of East Timor to self-determination, territorial integrity and unity, and permanent sovereignty over its wealth and natural resources opposed Australia’s treaty on the Timor Gap.

Id. at 485.

75. *East Timor Case*, 1995 I.C.J. at 102. The I.C.J. thus determined it did not have jurisdiction over the matter. The same dilemma had crippled the U.N. for so many years, as any action regarding East Timor in its present state would constitute a tacit acceptance of the *de facto* controlling power. *Id.*

within the Republic of Indonesia.⁷⁶ If the people of East Timor rejected this special autonomy, the alternative was total independence.⁷⁷ Registered voters voted overwhelmingly to transition toward independence.⁷⁸

Under the watchful eye of the U.N., East Timor is now tottering toward independence.⁷⁹ East Timor is an excellent example of a U.N.-led referendum leading to an expression of the self-determination of the people.

B. Quebec

One of Canada's ten provinces, Quebec has a population of about six and a half million people, eighty percent of whom are French speakers.⁸⁰ In the 1960s, Quebec began to assert itself as an industrial power and consequently demanded greater influence in the economic and commercial decisions of the province.⁸¹ They also attempted to gain a more widespread use of the French language.⁸²

In 1980, the majority of Quebec's citizens voted, against secession from Canada.⁸³ Despite this setback, Quebec continued to push for independence. In 1988, the Canadian House of Commons ratified the

76. Alexander, *supra* note 67, at 5. This deal between Indonesia and Portugal is often referred to as the May 5 Agreement. *Id.*

77. *Id.*

78. *Id.* On September 3, 1999, U.N. Secretary-General Kofi Annan announced that 78.5 percent of the East Timorese population had voted to reject Indonesia's offer of special autonomy, choosing rather to transition toward complete independence. *Id.* In the months leading up to the vote, pro-integration militia, supported by Indonesian military, had intimidated and terrorized the East Timorese population in an effort to sway their vote and keep the region under Indonesian control. *Id.* Violence escalated sharply in the month following the outcome of the vote, resulting in systematic mass murder, forcible displacement of East Timorese citizens, sexual assault of women, and destruction of seventy percent of the country's public and private property. *Id.*

79. The nation is now attempting to build a viable economy and prosecute the guilty parties for these atrocities. *Id.* As of late 2000, they had not been prosecuted, mainly because Indonesia did not have the legal capacity or will to do so. *Id.*

80. CASSESE, *supra* note 62, at 248. In a nation that still considers itself a subject of the British throne, Quebec is an anomaly. It was originally settled by the French in 1608, but was conquered by British troops in 1759 during the French and Indian War. *Id.* The 1763 Treaty of Paris, which ended the Seven Years War in Europe, transferred sovereignty of Quebec from France to Great Britain. When Britain created Canada as a state a hundred years later, Quebec was included. *Id.*

81. *Id.* This was termed the "Quiet Revolution" and was initiated by the French-speaking middle class in an attempt to gain a greater representation of Francophone interests. *Id.*

82. *Id.* This resulted in the passage of Bill 22 in 1974, making French the official language of the province. Two years later, the separatist *Parti Québécois* won control of the province's legislative body on the platform of a public referendum on secession. *Id.*

83. *Id.* at 248-49. The concern among many of the citizens voting against secession was that separation from Canada would sacrifice their economic prosperity. *Id.* at 249.

Meech Lake Accord, which granted several key powers to Quebec.⁸⁴ However, the Accord failed to obtain ratification by all ten provinces and eventually broke down.⁸⁵ Quebec continued to push for secession, pushing through nationwide referenda in 1992 and 1995, but both times the vote was against sovereignty. Indeed, even the citizens of Quebec voted in the negative.⁸⁶

In 1998, the Quebec government asked the Supreme Court of Canada whether Quebec could secede under Canada's Constitution or under international law principles of self-determination.⁸⁷ The court ruled against Quebec's constitutional argument because its own citizens had voted against secession several times.⁸⁸ In reply to Quebec's second contention,

84. *Id.* In 1987, the Quebec government announced it would agree to adhere to the Constitutional Act of 1982 if the Canadian government met the following five conditions:

(1) explicit constitutional recognition of Quebec as a distinct society; (2) the constitutional guarantee of broader powers in the field of immigration; (3) the limitation of federal spending power with respect to programmes falling under Quebec's exclusive jurisdiction; (4) changes in the constitutional amendment procedure enshrined in the [Constitution Act of 1982]; (5) Quebec's participation in appointing judges from Quebec to sit in the Supreme Court of Canada.

Id. (citing *Report of the Commission on the Political and Constitutional Future of Quebec*, Quebec, March 1991, 31–32).

85. *Id.* at 249. When the amendments were offered for ratification, Manitoba and New Brunswick refused to ratify them on the grounds that they failed to protect Quebec's English-speaking minority and Newfoundland retracted its ratification based on a concern that the Premier of Quebec had essentially ignored a Canadian Supreme Court decision prohibiting French-only signs. *Id.*

86. *Perspective and History of Quebec Nationalism*, UNI.CA, at <http://www.uni.ca/history.html> (last visited Feb. 21, 2004). The 1992 referendum was defeated fifty-four percent to forty-six percent. The second referendum, in 1995, was defeated fifty-one percent to forty-nine percent. *Id.*

87. Reference re Secession of Quebec, [1998] 2 S.C.R. 218. The first question was whether under the Constitution of Canada, the National Assembly, legislature, or government of Quebec could secede from Canada unilaterally. The second question was whether international law gives the National Assembly, legislature, or government of Quebec the right to effect the secession of Quebec from Canada unilaterally, and whether there is a right to self-determination under international law that would give the right to effect secession unilaterally. The final question was, in the event of a conflict between domestic and international law regarding the right to secede, unilaterally whether the National Assembly, legislature, or government of Quebec take precedence in Canada. *Id.*

88. *Id.* at 220–21.

A clear majority vote in Quebec on a clear question in favour of secession would confer democratic legitimacy on the secession initiative which all of the other participants in Confederation would have to recognize . . . Quebec could not, despite a clear referendum result, purport to invoke a right of self-determination to dictate the terms of a proposed secession to other parties to the federation. [Such a vote could not override] the principles of federalism and the rule of law, rights of individuals and minorities, or the operation of democracy in the other provinces or in Canada as a whole Negotiations would need to address the interests of the other provinces, the federal government and Quebec and indeed the rights of all Canadians within and outside Quebec, and specifically the rights of minorities. The negotiation process would require the reconciliation of various rights and obligations by negotiation between two legitimate majorities, namely, the majority of the population of Quebec, and that of Canada as a whole.

secession on the basis of international law, the court enumerated three situations in which international law would uphold a nation's right to "external self-determination" or secession: former colonies; situations of oppression, for example a people suffering foreign military occupation; or where a definable group is denied meaningful government access to pursue political, economic, social and cultural development.⁸⁹

The court then determined that according to this understanding of international law, "Quebec does not meet the threshold of a colonial people or oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development."⁹⁰

Although frequently defeated, Quebec continues to fight for secession. The vocal secessionist minority still exercises significant influence over the Premier of Quebec and still holds considerable sway over the population as a whole, though not enough to pass a referendum.⁹¹ There is a distinct possibility that this cycle will repeat several more times. As such, Quebec is a good illustration of the limits of the right of self-determination. Additional lessons may be learned from the Canadian Supreme Court's opinion, which clearly outlines the elements required for secession.

C. *Biafra*

In 1914, when British colonial administrators introduced a plan to amalgamate the Northern and Southern protectorates of the Niger region, the plan was decidedly unpopular.⁹² The Northern protectorate, though still a colony, gave serious consideration to the idea of secession.⁹³ Britain,

Id.

89. *Id.*

The right to secession arises only under the principle of self-determination of people at international law where "a people" is governed as part of a colonial empire; where "a people" is subject to alien subjugation, domination or exploitation; and possibly where "a people" is denied any meaningful exercise of its right to self-determination within the state of which it forms a part . . . A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other states.

Id.

90. *Id.*

91. CASSESE, *supra* note 62, at 250–51.

92. Okoronkwo, *supra* note 8, at 63, 65.

93. LEE C. BUCHHEIT, SECESSION: THE LEGITIMACY OF SELF-DETERMINATION 164 (1978).

however, continued with the plan, joining the North and South to form a nation that the Prime Minister of Nigeria, Abubakar Tatawa Balewa, described as “existing as one country only on paper.”⁹⁴ Within these new borders were three distinct and often hostile ethnic groups: the Hausa-Fulani in the Northern region of the country, the Yoruba in the Western region, and the Ibo in the Eastern region.⁹⁵ The regions were separated by differences in language, culture, religion, and economic development, which only amplified the animosity between them.⁹⁶ By the time Nigeria gained its independence from Britain in 1960, the three main tribes were threatening secession as the “trump card” in a jealous, irrational, and often bloody battle for control.⁹⁷

Even before Nigeria became independent, the tentative stalemate was often inflamed by the perceived advancement of any side.⁹⁸ Unfortunately, independence did not quell the rising tide of animosity and suspicion. Instead, with no controlling outside power, the neighboring regions grew more jealous of one another.⁹⁹ Tensions also increased due to difficulties suffered by the newly-liberated federation in agreeing on representation.¹⁰⁰

On January 16, 1966, several young Ibo military officers staged a coup and installed Major General Aguiyi Ironsi as head of state.¹⁰¹ Of course,

94. See Okoronkwo, *supra* note 8, at 66.

95. BUCHHEIT, *supra* note 93, at 162.

96. *Id.*

97. *Id.* at 164. See also Okoronkwo, *supra* note 8, at 66. Obafemi Awolowo, former Premier of West Nigeria, stated:

Nigeria is not a nation. It is a mere geographical expression. There are no “Nigerians” in the same sense as there are “English,” “Welsh,” or “French.” The word “Nigerian” is merely a distinctive appellation to distinguish those who live within the boundaries of Nigeria from those who do not.

Id.

98. *Id.* at 66–71. At the 1950 Ibadan Constitutional Conference, the Northern delegates threatened to secede unless the North received control of fifty percent of the seats in the country’s central Legislature. Three years later, the North again threatened to secede, following a debate about self-government in the House of Representatives. Subsequently, the West threatened to secede over the issue of whether the capital city of Lagos should be considered a “no-man’s land” belonging to none of the regions, or remain an integral part of the Western region, as it always had been. *Id.* at 66–67.

99. *Id.* at 66–71. In 1962, following the rise of an unpopular Western candidate to the rank of Premier, the North declared a state of emergency and reclaimed control of the government, fueling the flame of Western resentment. When the national census came out a year later, the East accused the North of artificially inflating its population, sparking a volley of accusations from every region. *Id.* at 67–68.

100. *Id.* at 68–69. The 1964 federal election was marred by vote-rigging, kidnapping, and murder, resulting in the Southern parties boycotting the election and the East openly expressing its desire to secede. The next year, the Northern-dominated central government manipulated the Western regional election and installed a puppet government, enraging the Western electorate and sparking a riot that plunged the nation into chaos. *Id.*

101. *Id.*

this triggered jealousy and paranoia in the North and the West, leading to a second coup on July 29, the assassination of Major General Ironsi, and the installation of Lieutenant-Colonel Yakubu Gowon, a Northerner.¹⁰²

This Northern paranoia finally boiled over in September and October of 1966, leading to the murder of at least 10,000 Ibos and the expulsion of many more.¹⁰³ As violence in the North escalated, Lieutenant-Colonel Gowon feebly attempted to pacify the aggrieved East and to reconstruct the tattered nation.¹⁰⁴

The United Nations refused to intervene, claiming the incident was under the jurisdiction of the Organization for African Unity—who also refused responsibility—arguing it was an “‘internal affair,’ the solution of which was primarily the responsibility of the Nigerians themselves.”¹⁰⁵ Because the international community refused to become involved, several nations took advantage through arms profiteering by offering weapons and allegiances to the highest bidder.¹⁰⁶

The Eastern region’s declaration of secession from Nigeria in 1967, creating the independent nation of Biafra, hardly came as a surprise.¹⁰⁷ Lieutenant-Colonel Gowon’s government responded by declaring war on Biafra, resulting in a bloody civil war.¹⁰⁸ Despite defeat to Nigeria, Biafra’s claim to self-determination and secession seems valid. The Ibo people attempted to exercise their right to self-determination by seceding from Nigeria, which decision was authorized by the only two functioning political bodies in the Eastern region, the Consultative Assembly and the Advisory Committee of Chiefs and Elders.¹⁰⁹

The Biafrans were justified in their belief that secession was a valid method of self-determination because all the regions, the North in particular, had frequently used such threats to alter their relationships with

102. BUCHHEIT, *supra* note 93, at 165.

103. *Id.* at 166.

104. *Id.* at 166–67.

105. *Id.* at 169. The United Nations claimed that no member state had brought the issue before the General Assembly, although the unspoken assumption was that the Assembly would simply refuse to discuss it if mentioned. *Id.*

106. *Id.* at 170–71. France was reported to have supplied the Biafrans with arms indirectly through the Ivory Coast and Gabon. Portugal allowed the Biafrans to use Lisbon as a base for propaganda and purchasing arms. On the other hand, Britain, as the former colonial power, retained its attachment with the federal government and provided weapons, justifying their actions as diplomatic. *Id.*

107. *Id.* at 167–68.

108. *Id.* at 168.

109. *Id.* at 173. A joint session of these bodies produced a resolution mandating Lieutenant-Colonel Odumegwu Ojukwu, commander of the Eastern region, “to declare at the earliest practicable date Eastern Nigeria a free, sovereign and independent state by the name and title of the *Republic of Biafra.*” *Id.* See also Proclamation of the Republic of Biafra, May 30, 1967, 6 I.L.M. 665, 678–79.

others and influence important decisions.¹¹⁰ In addition, the Biafrans had a legitimate claim to oppression after the Northerners killed fifty thousand of their citizens and drove two million from their homes.¹¹¹ Biafra also had historical distinction, as its members had a different culture, language, and religion from the rest of the nation, and historically had been separate before colonization.¹¹²

Unfortunately, Biafra illustrates what happens when law fails: societies revert to trial by combat.¹¹³ In a world where authority is derived from physical power rather than democratic processes, Biafra deserves to be free, but does not have the military strength to secede. Biafra exemplifies the ugly alternative to referenda and diplomacy—where justice falls victim to power.

IV. ANALYSIS

A. *Angola's Arguments against Secession*

Angola makes three arguments in favor of unifying Angola and Cabinda. First, Angola makes an historical argument, citing the 1956 Alvor Accords linking Cabinda administratively with Angola.¹¹⁴ Angola's second argument is that Cabinda is neither a colony nor under foreign military occupation according to the guidelines set by the Canadian Supreme Court decision.¹¹⁵ Cabindans, according to Angola, cannot be considered a people because they do not significantly differ from Angolans, nor are they sufficiently united among themselves.¹¹⁶ Angola further argues that Cabindans have a meaningful voice in their own government. In fact, several Cabindans have held high positions in Angola's government.¹¹⁷ Angola's third argument against Cabindan

110. BUCHHEIT, *supra* note 93, at 173–74.

111. *Id.* at 174.

112. *Id.* at 162.

113. Arising in the wake of the Norman Conquest as a purportedly viable judicial tool, trial by combat engaged the plaintiff and the defendant in combat “on the theory that God’s intervention would give victory to the side of justice.” John A. Makdisi, *The Islamic Origins of the Common Law*, 77 N.C. L. REV. 1635, 1659 (1999).

114. *See supra* note 20. Article 3 of the Alvor Accords stated that “Angola forms one indivisible unit, within its present geographical and political boundaries, and in this context Cabinda is an unalienable component part of Angolan territory.” Alvor Accords, *supra* note 33, art. 3.

115. Reference re Secession of Quebec [1998] 2 S.C.R. 217. *See supra* note 60, § III.C.

116. *See CABINDA NETWORK, supra* note 14. There is some evidence that Angola is now beginning to import families into Cabinda to legitimize this claim. This attempt to breed out the differences between Angola and Cabinda further illustrates the existence of differences between the two. *See Porto, supra* note 26.

117. *Scramble for Cabinda, supra* note 12. For example, Cabindans have served as Angola’s

secession is that Cabinda is an essential part of Angola's economy, without which Angola would be left destitute. At present, Cabinda is the richest province in Angola.¹¹⁸

B. Cabinda's Arguments for Secession

Cabinda's first argument in favor of secession is based on its historical claims to independence. Aside from the Alvor Accords, Cabinda was widely recognized as distinct from Angola.¹¹⁹ Although Cabinda was annexed to Angola at the Alvor Accords, Cabinda was not invited to the Accords and therefore had no power to prevent this annexation.¹²⁰

Cabinda bases its legal claims for independence on the right of self-determination as defined by the Canadian Supreme Court, which only allowed secession in cases of colonial occupation, foreign domination or exploitation, and "possibly where 'a people' is denied any meaningful exercise of its right to self-determination within the state of which it forms a part."¹²¹ The Angolan occupation subjects Cabinda to alien subjugation and domination.¹²² Major oil exportation and huge profits for Angola leave little doubt that Angola is exploiting Cabinda.¹²³ In addition, numerous human rights abuses in the area range from unlawful detention and torture, to gang rape and murder.¹²⁴ As a result, Cabinda is entitled to a referendum on self-determination, and the United Nations is the only organization in a cognizable position to intervene.¹²⁵

interior minister, defense minister, and as Angolan ambassadors in Great Britain and Canada. *Id.*

118. *Cabinda: Oil-Block Buster*, *supra* note 35.

119. In 1885, the Treaty of Simulambuco established Cabinda as a Portuguese protectorate; in exchange, Portugal promised to maintain Cabinda's territorial boundaries and preserve its language, culture, and customs. In 1963, the Organization for African Unity recognized the distinction between Cabinda and Angola by ranking them as two separate states remaining to be decolonized. The 1971 Portuguese Constitution maintained a similar distinction. See CABINDA NETWORK, *supra* note 14.

120. *Id.* The Angolan government has rejected the Alvor Accords on several occasions, preventing any recourse to that line of argument. See Timothy Bancroft-Hinchey, *Heir to Portuguese Throne Explains Case for Cabinda Independence*, PRAVDA.RU (Russian online news service), Mar. 26, 2001, at <http://english.pravda.ru/portugal/2001/03/26/3156.html> (last visited Feb. 8, 2005).

121. Reference re Secession of Quebec, [1998] 2 S.C.R. 222.

122. Porto, *supra* note 26.

123. For more than twenty-five years, all profits from oil extracted from Cabinda went directly to Angola's coffers. In an attempt to quell the uprising, Angola now returns ten percent of oil profits directly to Cabinda. See *Let the People Decide*, *supra* note 38.

124. AD-HOC COMMISSION FOR THE HUMAN RIGHTS SITUATION IN CABINDA, *supra* note 2, at 9. The report details numerous instances of rape, torture, murder, and unlawful detention, offering specific proof for the claim of human rights abuses in Cabinda.

125. To this point, the United Nations has not discussed Cabinda's claims to self-determination. However, human rights abuses arising from the conflict with Angola have gained the attention of the U.N. Commission on Human Rights. In fact, at its March 2003 Conference in Geneva, a representative

C. Application of Case Studies to Cabinda

Like East Timor, Cabinda is a former Portuguese colony.¹²⁶ Both nations were occupied by foreign forces following their independence. However, while Indonesia had no military connection with East Timor, Cabinda was occupied by its ally, Angola. The resolution of the East Timor case, a referendum sponsored by the United Nations, would be a hopeful end to the Cabindan conflict as well.

Quebec, despite its linguistic difference from the rest of Canada, did not meet the criteria for secession because secession was not the will of Quebec's citizens.¹²⁷ As in East Timor, the people of Quebec had several opportunities to vote in referenda; each time they voted against secession. Again, such a vote in Cabinda would be a logical resolution to the conflict with Angola. The case of Quebec also illustrates that self-determination has limits, and not every people will choose to secede under its auspices.

Biafra is an unfortunate example of Cabinda's fate if such a referendum does not occur. Angola, like Nigeria, has superior military power versus the Cabindian armies and can exert its will over the Cabindan people by brute force. However, to allow power to determine influence is to ignore everything the United Nations was created to protect.

CONCLUSION

Cabinda's secession from Angola is legitimate based on its geographic, cultural, and linguistic distinctiveness; its historical autonomy; the international body of law supporting self-determination; and the numerous and well-documented human rights violations inflicted on Cabindan citizens. Despite the fact that such secession will damage Angola's economy, the people of Cabinda have a right to profit from their own natural resources and to determine their own destiny.

As a result, the Cabindan people should, like the East Timorese and the Quebecois, have the opportunity to determine whether to remain a part of

of FLEC was invited to address the committee on Cabinda's claims to autonomy. *See* Press Release, UN Commission on Human Rights, Foreign Minister of France to Commission on Human Rights: The World is Living Dramatic Events with the Iraq Crisis (Mar. 24, 2003), at <http://www.wnhchr.ch/hurricane/hurican.nsf/0/6352D43E27F429E3C1256CF3005A44B2?opendocument> (last visited Apr. 14, 2005).

126. *See History of Cabinda*, *supra* note 14; CAGESSE, *supra* note 62, at 224.

127. *See supra* note 86 and accompanying text. In contrast to Quebec, all indications show that the people of Cabinda overwhelmingly (and almost unanimously) support a referendum on independence. *See* TERROR IN CABINDA, *supra* note 2, at 3.

Angola or become a separate nation. For this referendum to become reality, however, the United Nations must take action. The United Nations must take an active role in this referendum to ensure that the vote is an accurate expression of the will of the Cabindan people. The Cabindan people have a right to self-determination, and at present, that right is overshadowed by Angola's financial gain. For the United Nations to remain relevant in the twenty-first century, it must fulfill its mission by guaranteeing choices to oppressed peoples struggling for freedom against economically superior oppressors.

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* B.A. (2002), Brigham Young University; J.D. (2005), Washington University School of Law. I would like to thank Professor A. Peter Mutharika for his counsel in approaching this topic, as well as the editors and staff of the *Washington University Global Studies Law Review* for countless hours of dedicated work behind the scenes. I would also like to thank my parents, Brad and Allyson, without whom this would not have been possible, and my wife Laura, without whom this would not have been worthwhile.