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# Self-Determination and the Legality of Biafra's Secession Under International Law

PIUS L. OKORONKWO\*

## I. INTRODUCTION

The African continent has been wracked by an unending spate of civil wars. One such war, the Nigerian Civil War of 1967 to 1970, stemmed from Biafra's decision to establish itself as a sovereign state. In an exercise of the right of self-determination, Biafra unilaterally declared its independence from Nigeria on May 30, 1967.

Self-determination has been construed as the right of peoples to determine their own destiny and form of government. For example, self-determination can be based on a peoples' desire to be free from colonial rule. Self-determination may be exercised, *inter alia*, through the establishment of a sovereign independent state, by integration, or by association with another state. The exact meaning of self-determination is enmeshed in controversy.

Despite the plethora of international instruments recognizing the principle of self-determination, certain peoples continue to be in conflict with their parent states over the exercise of this right. Regrettably, no international instrument adequately defines the principle, nor identifies who is entitled to exercise the right. This

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makes it difficult to determine the precise scope and content of the right.

The imprecise nature of the right of self-determination, especially outside the colonial context, has led to uncertainties and inconsistencies in its application by various states, as well as by the United Nations. This inconsistency is the result of the inability to reconcile the principle of self-determination with the equally important principle of territorial integrity, and with the need to preserve peace in a particular area. Thus, neither the principle of self-determination, nor that of territorial integrity, is absolute. The preference of one over the other depends on the circumstances of each case.

This Article focuses on whether the right of self-determination of peoples includes a right of secession under the law, and whether such a right justifies Biafra's secession from Nigeria. Part II provides a historical and political background of the Nigeria conflict, and recounts the events that led to Biafra's declaration of independence and subsequent secession. Part III introduces the principle of self-determination and explores the varying interpretations that have contributed to the principle's complexity, thus frustrating its uniform application.

Part IV analyzes the principle of self-determination in international law, offering a comparison of the principle between and within several international instruments. Part IV also seeks to reconcile the apparent discrepancies in the guarantee of the right of self-determination. Part V examines the legality of Biafra's secession from Nigeria pursuant to international law.

This Article concludes that Biafra's unilateral secession from Nigeria was legally justified because: (1) Biafra had a historical claim to independence; (2) there were gross human rights violations against Biafrans; and (3) the Nigerian government discriminated against and failed to represent the Biafrans.

## II. BACKGROUND

A people who are threatened with extermination and are cabined and confined within unreasonable limits in a country to which they are supposed to belong cannot be said to be enjoying self-determination. Such a group may exercise self-determination up to the point of secession if they are able and willing to do so. The justification for this extreme step rests

both on the denial of human rights and the dim prospects for their future development.<sup>1</sup>

On May 30, 1967, Biafra, the Eastern region of Nigeria, unilaterally declared its independence. Biafra's declaration came after a series of complicated political upheavals that led to the death of many Biafrans. Factors precipitating Biafra's separation from Nigeria included oppression, injustice, and Biafra's historical claim to independence. A series of massacres and the expulsion of East Nigerians from regions other than East Nigeria catalyzed this movement.

### A. *The Terrorization of Eastern Nigeria*

In terms of both human and material resources consumed, the conflict between Nigeria and Biafra has been described as one of the most devastating, serious, and intense crises in Africa.<sup>2</sup> The genesis of this crisis was the fragile and unilateral amalgamation of the Northern and Southern protectorates of the Niger area by the British in 1914.<sup>3</sup> The British carried out this merger for the purpose of administrative convenience.<sup>4</sup> Before and after this unification, Britain had different administrative structures to the east, west, and north of the Niger, which resulted in the emergence of three separate governments.<sup>5</sup> This gave rise to a pluralistic society, including over 250 ethnic groups, comprised mainly of the Hausa, Yoruba, and Ibo peoples.<sup>6</sup>

Nigerians are a unique ethnic group as most Nigerians do not share significant commonalities. Hugh Clifford, a former British Governor General to Nigeria, observed that Nigerians exist in a "collection of self-contained and mutually independent Native

1. UMOZURIKE OJI UMOZURIKE, *SELF-DETERMINATION IN INTERNATIONAL LAW* 269 (1972).

2. Okwudiba Nnoli, *The Nigeria-Biafra Conflict: A Political Analysis*, in *NIGERIA: DILEMMA OF NATIONHOOD* 118 (Joseph Okpaku ed., 1972).

3. See K. W. J. Post, *Is There a Case for Biafra?*, 44 *INT'L AFF.* 26, 27-28 (1968); see also M. G. Kaladharan Nayar, *Self-Determination Beyond the Colonial Context: Biafra in Retrospect*, 10 *Tex. Int'l L. J.* 321, 324 (1975) (quoting A. Nwankwo & Ifejika, *The Making of A Nation: Biafra* 30 (1969)); Nayar, *supra* note 3, at 324 (quoting A. NWANKWO & IFEJIKA, *THE MAKING OF A NATION: BIAFRA* 30 (1969)).

4. See Tekena N. Tamuno, *Separatist Agitations in Nigeria Since 1914*, 8 *J. MOD. AFR. STUD.* 563, 565 (1970).

5. *Id.* at 565-66.

6. Nayar, *supra* note 3, at 325-26.

States, separated from one another... by vast distances, by differences of history and traditions, and by ethnological, racial, tribal, political, social and religious barriers."<sup>7</sup> Similarly, Obafemi Awolowo, former Premier of West Nigeria, and one time federal Minister of Finance, 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.<sup>8</sup>

The first Prime Minister of Nigeria, Abubakar Tafawa Balewa, stated, "Since the amalgamation of the Southern and Northern provinces in 1914, Nigeria has existed as one country only on paper. It is still far from being united."<sup>9</sup> Even at that time, the Hausa-Fulani-dominant North opposed the amalgamation and threatened to secede from the union.<sup>10</sup> The former Premier of Northern Nigeria, Sir Ahmadu Bello noted:

Lord Lugard and his amalgamation were far from popular amongst us at that time. There were agitations in favour of secession; we should set up on our own; we should cease to have anything more to do with the Southern people, we should take our own way.<sup>11</sup>

The Northerners preferred a separate country of their own and wanted nothing to do with the Southerners.<sup>12</sup> The British, however, did not consider the peoples' wishes in their decision to unify Nigeria. The forced union of North and South resulted in various separatist agitations from several parts of the country.<sup>13</sup> For instance, at the 1950 Ibadan Constitutional Conference to review the Richard's Constitution of 1946, the Northern delegates, led by the Emir of Zaria, threatened to secede from Nigeria unless the North received control of fifty percent of the seats at the

7. *Id.* at 324 (quoting Hugh Clifford in F. SCHWARZ, NIGERIA: THE TRIBES, THE NATION, OR THE RACE—THE POLITICS OF INDEPENDENCE 3 (1965)).

8. *Id.* at 325–26.

9. *Id.* at 324.

10. See Tamuno, *supra* note 4, at 565.

11. *Id.*

12. *Id.* at 568.

13. *Id.* at 567.

central Legislature.<sup>14</sup> The Northern delegates threatened secession despite the earlier agreement at the committee stage of the conference that the seats should be shared at a ratio of 45:33:33 for the Northern, Western and Eastern provinces, respectively.<sup>15</sup> Consequently, the British government conceded “parity of representation in the Nigerian Representative Council”<sup>16</sup> to the North.

In April 1953, the Northerners threatened to secede again following a self-government debate in the House of Representatives.<sup>17</sup> During the debate, the North ordered that Nigeria be granted independence “as soon as practicable.”<sup>18</sup> Because of this motion, the joint session of the Northern House of Assembly and the Northern House of Chiefs passed an eight-point program providing for a virtually independent regional government.<sup>19</sup> Endorsed by the North, this eight-point program confined the central government in the city of Lagos to function as “a non-political executive agency which would administer only external defense, foreign affairs, customs, and the West African Research Institute.”<sup>20</sup>

Following this crisis, however, the Colonial Secretary invited all the delegates to London to further discuss revising the Constitution.<sup>21</sup> An additional controversy ensued over whether Lagos should be characterized a “no-man’s land,” as suggested and supported by the East and the North, or whether it was an integral part of the Western region, as insisted by the West.<sup>22</sup> The Western region delegates, through their leader Awolowo, threatened to secede if Lagos was not made part of the West.<sup>23</sup>

In 1962, the country plunged into another quagmire following a leadership crisis in the Nigerian government that led to the imposition of a state of emergency in the Western region by the

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14. *Id.* at 568.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. VIVA ONA BARTKUS, *THE DYNAMIC OF SECESSION* 103 (1999).

20. *Id.*

21. Tamuno, *supra* note 4, at 568–69.

22. *Id.* at 569.

23. *Id.* at 570.

Northern-controlled federal government.<sup>24</sup> The country almost disintegrated after an unpopular candidate in the Western region, with the support of the central government, maneuvered himself into power and became Premier.<sup>25</sup> This development strengthened the Western region's resentment towards the government.<sup>26</sup>

Controversy threatened Nigerian unity again when 1963 census projected that the country's population had reached 55.6 million.<sup>27</sup> The National Council of Nigerian Citizens (NCNC), with its principal support base in the Eastern region, accused the Northern Peoples Congress (NPC) of over-inflating the Northern region's figures.<sup>28</sup> Each of the regions made similar allegations against one another.<sup>29</sup> This bitterness created tension that shook the very foundation of the country.<sup>30</sup>

While the tension over these events was still high, Nigeria plunged into yet another crisis that continued to threaten its unification. The root of this crisis was the December 1964 federal election.<sup>31</sup> Vote rigging, kidnapping, and murder marred this election.<sup>32</sup> As a result, the Southern parties boycotted the election.<sup>33</sup> Additionally, Dr. Michael Okpara, the leader of the NCNC, openly expressed the Eastern region's desire to secede from the federation.<sup>34</sup> In the election aftermath, Nigeria's then-President, Dr. Nnamdi Azikwe, was forced to state in a nationwide broadcast:

[I]t is better for us and for our admirers' [sic] abroad that we should disintegrate in peace and not in pieces. Should the politicians fail to heed this warning, then I will venture the prediction that the experience of the democratic Republic of

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24. A. Ikoku, *Proclamation of the Republic of Biafra*, 6 I.L.M. 665, 666 (1967).

25. *Id.*

26. *See id.*

27. Tamuno, *supra* note 4, at 574.

28. *Id.*

29. *Id.*

30. *Id.*

31. Ikoku, *supra* note 24, at 666.

32. *Id.*

33. *Id.*

34. Tamuno, *supra* note 4, at 574.

the Congo will be child's play if it ever comes to our turn to play such a tragic role.<sup>35</sup>

The central government's manipulation of the Western region election of October 11, 1965 also threatened Nigerian unity.<sup>36</sup> The central government installed a "puppet government" that existed only at the will of the Northern and Central governments.<sup>37</sup> Consequently, this enraged the Western electorate and led to a riot that caused a complete breakdown of law and order in the region.<sup>38</sup>

Nigeria was in a state of chaos. On January 15, 1966, young army officers, filled with patriotic zeal and the hope of preventing the nation from drifting toward disaster, took over the government in a military coup.<sup>39</sup> This military *coup d'état* ushered in the regime of Major General Aguiyi Ironsi, an Ibo, as the Head of State.<sup>40</sup> The new regime of Major General Ironsi promulgated Decree 34 of 1966, which abolished the federal government structure and introduced a unitary system of government.<sup>41</sup> The Western media, however, used propaganda to incite Northerners, who perceived the coup as a "plot designed" by the Ibos to destroy them and dominate the entire country.<sup>42</sup> In turn, this paranoia proved to be disastrous for the Easterners.

In retaliation, on May 29, 1966, the Northerners massacred thousands of Easterners living in the Northern region.<sup>43</sup> Consequently, this prompted the central government to set up an inquiry tribunal to investigate the cause of the unprovoked killings.<sup>44</sup> The Northerners, however, through their emirs, vowed not to appear before the tribunal and threatened to secede if forced to do so.

On July 29, 1966, exactly two months after the massacres, Northern army officers responded to the coup and organized

35. *Id.*

36. See Ikoku, *supra* note 24, at 666-67.

37. *Id.* at 666.

38. *Id.* at 665-67.

39. Post, *supra* note 3, at 29.

40. Ikoku, *supra* note 24, at 667.

41. Nayar, *supra* note 3, at 322.

42. Nnoli, *supra* note 2, at 21; see also BARTKUS, *supra* note 19, at 121-22.

43. See Ikoku, *supra* note 24, at 667; see also BARTKUS, *supra* note 19, at 122.

44. Ikoku, *supra* note 24, at 667.



another pogrom against the peoples of the Eastern region.<sup>45</sup> Major General Ironsi, along with several other military officers of the Eastern region, was killed in the uprising.<sup>46</sup> This time, however, both Northern soldiers and civilians took part in the killings.<sup>47</sup> Yakubu Gowon, the new Head of State, together with the leaders of the coup, initially demanded freedom to withdraw the North from Nigeria.<sup>48</sup> In Gowon's first nationwide broadcast, upon assuming office on August 1, 1966, he noted that "putting all considerations to test, political, economic as well as social, the basis for unity is not there, or is so badly rocked not only once but several times. I therefore feel that we should review the issue of our national standing."<sup>49</sup>

On September 29, 1966, another pogrom took place against Eastern Nigerians living outside the East Nigerian region.<sup>50</sup> A riot in the Northern region triggered the killings. Those responsible were disappointed that the North had not seceded and resented the idea of further involvement of the North with other parts of Nigeria.<sup>51</sup> Between May and October, over 50,000 Easterners lost their lives, several thousands were maimed, and over two million fled from other parts of Nigeria back to the East.<sup>52</sup>

The Easterners perceived the May, July, and September massacres as a deliberate plan, supported by the federal government, to eliminate them.<sup>53</sup> They believed the massacres were premeditated acts because they all occurred on the twenty-ninth day of the month.<sup>54</sup> Furthermore, the Northerners' violations of the Easterners' human rights went unpunished and uninvestigated.<sup>55</sup>

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45. *Id.*; see also BARTKUS, *supra* note 19, at 122.

46. Ikoku, *supra* note 24, at 667.

47. *Id.*

48. Charles R. Nixon, *Self-Determination: The Nigeria/Biafra Case*, 24 WORLD POL. 473, 477 (1972).

49. Yakubu Gowon, Address to Nigerians (Aug. 1, 1966), in LEE C. BUCHHEIT, SECESSION: THE LEGITIMACY OF SELF-DETERMINATION 165-66 (1978).

50. Ikoku, *supra* note 24, at 668; see also Nnoli, *supra* note 2, at 118.

51. Nixon, *supra* note 48, at 478.

52. Nnoli, *supra* note 2, at 121-22.

53. *Id.* at 476.

54. Ikoku, *supra* note 24, at 668.

55. Nixon, *supra* note 48, at 476.

### B. Biafra's Decision to Declare Its Independence

Despite all the atrocities committed against the Easterners, the leadership of the Eastern region continued to make very serious efforts toward a peaceful resolution of the conflict.<sup>56</sup> The federal government, however, continued to frustrate these efforts.<sup>57</sup> For example, the federal government did not fully implement the decision of the Representatives of Military Governors meeting in Lagos to repatriate troops to their region of origin.<sup>58</sup> Furthermore, on September 12, 1966, an ad hoc Constitutional Conference was convened to determine ways of resolving the crisis peacefully.<sup>59</sup> The conference consisted of delegates from the various governments of the regions. At the conference, the original memorandum submitted by the Northern region included, *inter alia* "the right of any State within the country to secede."<sup>60</sup> Similarly, the original memorandum of the Western region specified, *inter alia*, "[e]ach state should have a right unilaterally to secede from the Commonwealth at any time of its own choice."<sup>61</sup> Although both regions, through the persuasion of the Western countries, dropped the issue of secession in their later memoranda, these original memoranda clearly demonstrated that the right to secede had popular support in these regions.<sup>62</sup> Nevertheless, Gowon later unilaterally dismissed the Conference when the delegates were on the verge of recommending a loose form of association between the various regions of the country.<sup>63</sup>

As a result of these threats to the lives, property, and leadership of the Easterners, no venue could be secured in Nigeria

56. BARTKUS, *supra* note 19, at 121.

57. See Nixon, *supra* note 48, at 477; see also Ikoku, *supra* note 24, at 669.

58. See Ikoku, *supra* note 24, at 669; see also Nixon, *supra* note 48, at 477.

59. Ikoku, *supra* note 24, at 669; see also BARTKUS, *supra* note 19, at 122; BUCHHEIT, *supra* note 49, at 166.

60. Nixon, *supra* note 48, at 478 (quoting Paper by the Northern Nigeria Delegation, to the Ad Hoc Constitutional Conference (Sept. 12, 1966) printed in *Ad Hoc Conference on the Nigerian Constitution*, NIGERIAN CRISIS 1966, at 3-4 (1966) [hereinafter NIGERIAN CRISIS]); see also BARTKUS, *supra* note 19, at 122; Ikoku, *supra* note 24, at 669.

61. Nixon, *supra* note 48, at 478 (quoting Memorandum by the Western Nigeria and Lagos Delegations, to Ad Hoc Committee on Constitutional Arrangements for Nigeria (1966) printed in NIGERIAN CRISIS, *supra* note 60, at 26 (1966)); see also BARTKUS, *supra* note 19, at 122.

62. BARTKUS, *supra* note 19, at 122.

63. Ikoku, *supra* note 24, at 670.

for future meetings on how to resolve the crisis.<sup>64</sup> Eventually, the parties agreed to a two-day meeting at Aburi in Ghana beginning January 4, 1967.<sup>65</sup> Government representatives of the various regions and the federal government attended the meeting. The representatives decided that the country should adopt a confederal system of government.<sup>66</sup> However, the federal government again refused to implement such a system.<sup>67</sup>

Faced with inaction once again, the Eastern Region Consultative Assembly, put in place by the Richard Constitution of 1946,<sup>68</sup> convened on August 31, 1966 to consider alternative ways to handle the crisis.<sup>69</sup> The Assembly consisted of 335 members from the various provinces that made up the region.<sup>70</sup> One hundred and sixty-five members were from non-Ibo minority groups.<sup>71</sup> Beginning on August 31, 1966, the Assembly met periodically to assess the situation and to recommend an appropriate response to the conflict.<sup>72</sup>

On May 26, 1967, the Assembly met at Enugu and passed a resolution mandating the Governor of the region, Colonel Chukwuemeka Odumegwu Ojukwu, to declare the Eastern region an independent sovereign state by the name of Biafra at the "earliest practicable date."<sup>73</sup> Acting on the mandate of the peoples' representatives, Ojukwu declared the Eastern region a sovereign independent state on May 30, 1967.<sup>74</sup> By this time, the Eastern region had exhausted all peaceful avenues toward resolving the conflict. Consequently, on July 5, 1967, the federal government of Nigeria responded by declaring war on Biafra.<sup>75</sup>

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64. *Id.* at 669.

65. *Id.*

66. Nixon, *supra* note 48, at 477.

67. *Id.*

68. *Id.* at 481.

69. See Ikoku, *supra* note 24, at 670.

70. Nayar, *supra* note 3, at 326.

71. *Id.*

72. Nixon, *supra* note 48, at 479.

73. *Id.* at 479-80.

74. *Id.* at 475.

75. *Id.* at 476.

### III. THE PRINCIPLE OF SELF-DETERMINATION

Approximately 150 national liberation groups,<sup>76</sup> comprised of indigenous peoples and minorities alike, have articulated their grievances through varying degrees of the exercise of self-determination.<sup>77</sup> For those seeking complete autonomy, the results have varied. For example, in 1971, Bangladesh successfully seceded from Pakistan through the assertion of self-determination. To contrast, Biafra's similar attempt to secede from Nigeria failed.<sup>78</sup>

Individuals must choose to assert the right of self-determination through a free and genuine expression of their will.<sup>79</sup> Moreover, the exercise of this right must be without outside interference or any form of undue influence. Self-determination is defined as "the right of each people or nation [freely] without outside pressure, to determine their state affiliation, including the right to forming an independent state, and also to determine the forms of their internal political, economic, social and cultural life, which is guaranteed by international organisations and bodies."<sup>80</sup>

One purpose of self-determination is to remove a group from the political domination of another group, thus allowing the removed group to control its own destiny.<sup>81</sup> Self-determination, as a human right, creates an obligation to be observed in relation to peoples in dependent and independent states.<sup>82</sup> Although self-determination is described as "the realization of greater respect for human rights,"<sup>83</sup> it is perplexing that the principle has no commonly accepted definition in international law fora.<sup>84</sup>

76. S. Sathanathan, *Tamil-Eelam: Right to Self-Determination*, at <http://www.tamilnation.org/selfdetermination/990321satha.htm>. (Mar. 22-23, 1999).

77. See Thornberry, *supra* note 77, at 868 (citing *Indigenous Peoples A Global Quest for Justice, A Report of the Independent Commission on International Humanitarian Issues* (1987)).

78. See, e.g., D. B. Levin, *The Principle of Self-Determination of Nations in International Law*, SOVIET Y.B. INT'L L. 45, 46 (1962).

79. See ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 131 (1995).

80. Levin, *supra* note 78, at 46.

81. W. OFUATEY-KODJOE, THE PRINCIPLE OF SELF-DETERMINATION IN INTERNATIONAL LAW 182 (1977).

82. See UMOZURIKE, *supra* note 1, at 52.

83. CASSESE, *supra* note 79, at 282.

84. R. A. Williams, Jr., *Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World*, 4 DUKE L.J. 660,

Notwithstanding the absence of such a definition, “[i]mpetus has been given to the advancement of the principle of self-determination of peoples as a legal right in recent times by its inclusion in the U.N. Charter where it is referred to rather than defined.”<sup>85</sup> Despite the inclusion of the principle in the U.N. Charter and other international instruments,<sup>86</sup> a controversy remains as to the principle’s meaning because none of these instruments adequately defines the concept.

Descriptions of self-determination vary in content.<sup>87</sup> Publicists and political leaders define the concept in various ways based on their individual perceptions. For example, former U.S. President Woodrow Wilson, the man credited for popularizing the concept of self-determination, identified it as “the right of every people to choose the sovereign under which they live, to be free of alien masters, and not to be handed about from sovereign to sovereign as if they were property.”<sup>88</sup> Implicit in this articulation of self-determination is the doctrine of popular sovereignty. Under this doctrine, a government is based on the will of the people, not that of a monarch: “People not content with their government should be able to secede and organize themselves as they wish.”<sup>89</sup> President Wilson believed that all people should

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663 (1990) [hereinafter Williams, *Indigenous Peoples' Survival*] (citing Hurst Hannum, *New Developments in Indigenous Rights*, 28 VA. J. INT'L L. 649 (1988) [hereinafter Hannum, *New Developments*]).

85. H. M. KINDRED ET AL., INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED IN CANADA 54 (6th ed., Edmond Montgomery Publication Ltd. 2000) [hereinafter KINDRED, INTERNATIONAL LAW].

86. U.N. CHARTER art. 1, para. 2, art. 55, para 1; see also International Covenants on Civil and Political Rights, (1966) art. 1, 999 U.N.T.S. 173; *OAU Ministerial Meeting on African Charter on Human and Peoples Rights*, arts. 19–20, OAU Doc. CAB/LEG/67/3/Rev.5 (Jan. 7–19, 1981) (also known as the Banjul Charter), reprinted in 21 I.L.M. 58, 59 (1982) [hereinafter *African Charter*]; *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 18, at 340–43, U.N. Doc. A/8018 (1970) [hereinafter *Declaration on Friendly Relations*].

87. Obiora Chinedu Okafor, *Self-Determination and the Struggle for Ethno-Cultural Autonomy in Nigeria: The Zangon-Kataf and Ogoni Problems*, 6 AFR. SOC'Y INT'L L. 88, 90 (1994).

88. Deborah Z. Cass, *Rethinking Self-Determination: A Critical Analysis of Current International Law Theories*, 18 SYRACUSE J. INT'L L. & COM. 21, 23–24 (1992).

89. John Howard Clinebell & Jim Thomson, *Sovereignty and Self-Determination: The Rights of Native Americans Under International Law*, 27 BUFF. L. REV. 669, 701 (1977–78)

have the right to choose their form of government.<sup>90</sup> Self-determination encompasses five basic characteristics: (1) government according to the will of the people; (2) the absence of internal or external domination; (3) the free pursuit of economic, social, and cultural development; (4) the enjoyment of fundamental human rights; and (5) the absence of discrimination on grounds of race, color, or political conviction.<sup>91</sup> This approach embraces the external and internal aspects of self-determination. Peoples can gain their independence and separate from the oppressor state.<sup>92</sup> It also recognizes the rights of minority and majority groups within the state to be free from domination by each other.

Customarily, international law has acknowledged self-determination as an inalienable fundamental human right. As observed by the United Kingdom Permanent Representative to the United Nations in 1983, “[s]elf-determination is usually referred to these days in the United Nations not as a principle, but rather as an ‘inalienable right’ in other words, it is a right which cannot be taken away. This right is derived principally from the U.N. Charter and the Covenants on Human Rights.”<sup>93</sup>

Consequently, the right of self-determination is tantamount to the right of freedom from alien oppressors, tyranny, totalitarian governments, and any other form of subjugation.<sup>94</sup> It is characterized as the “condition and the cornerstone of exercising all the other rights and enjoying all other human rights.”<sup>95</sup> Self-determination is further predicated on the right of peoples to

[hereinafter Clinebell & Thomson] (citing J. SUREDA, *THE EVOLUTION OF THE RIGHT OF SELF-DETERMINATION* 17 (1973)).

90. *THE PUBLIC PAPERS OF WOODROW WILSON* 2 (R. Baker & W. Dodd eds. 1926), cited in Clinebell & Thomson, *supra* note 89, at 702.

91. See UMOZURIKE, *supra* note 1, at 71.

92. GRIGORII IVANOVICH TUNKIN, *THEORY OF INTERNATIONAL LAW* 8 (William E. Butler trans., 1974), (citing Lenin, *Sotsialisticheskaiia Revoliutsiia i Pravo Natsii Na Samoopedelenie*, 27 *Polnoe Sobranie So Chinenii* 255).

93. Letter from Sir Anthony Parsons, U.K. Permanent Representative to the United Nations in New York, to the President of the Security Council (Apr. 28, 1982), in Geoffrey Marston, *United Kingdom Materials on International Law* 1983, 1984 *BRIT. Y.B. INT'L L.* 361, 396 [hereinafter Parsons Letter].

94. W. OFUTAHEY-KODOJOE, *THE PRINCIPLE OF SELF-DETERMINATION IN INTERNATIONAL LAW* 182 (1977).

95. Alexandre Kiss, *The Peoples' Right to Self-Determination*, 7 *HUM. RTS. L.J.* 165, 174 (1986).

control their destiny, and to liberate themselves from all forms of oppression, domination, subjugation, and any acts that violate their human rights. The concept of self-determination as an ideal is considered relevant to all peoples by the international community and is referenced in several instruments of international law, including the U.N. Charter.

#### IV. INTERNATIONAL INSTRUMENTS GUARANTEE THE RIGHT OF SELF-DETERMINATION

##### A. *The U.N. Charter*

After World War II, the principle of self-determination was reintroduced into international dialogue through the text of the U.N. Charter.<sup>96</sup> The principle is pronounced in Articles 1(2) and 55 of the U.N. Charter,<sup>97</sup> as well as in chapters XI and XII.<sup>98</sup>

Article 1(2) asserts that the purpose 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 appropriate measures to strengthen universal peace.”<sup>99</sup> Article 55 provides that the United Nations shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex language, or religion.”<sup>100</sup> In Article 56, the U.N. Charter creates an obligation for member states to cooperate in perpetuating respect for fundamental freedoms.<sup>101</sup> Moreover, members have accepted this obligation by ratifying the U.N. Charter in their respective territories.

Self-determination, as reflected in the U.N. Charter, embraces the right of peoples to be free from subjugation and includes the

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96. See OFUATEY-KODJOE, *supra* note 81, at 154.

97. Tom M. Franck, *Postmodern Tribalism and the Right to Secession*, in PEOPLES AND MINORITIES IN INTERNATIONAL LAW 7 (Catherine Brolmann, et al. eds., The Netherlands: Martinus Nijhoff Publishers 1993).

98. George Steven Swan, *Self-Determination and the United Nations Charter*, 22 INDIAN J. INT'L L. 264, 266 (1982).

99. U.N. CHARTER art. 1, para. 2.

100. *Id.* art. 55.

101. “All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.” U.N. CHARTER art. 56.

people's right to establish a regime of their own liking.<sup>102</sup> The report of the rapporteur to the drafting Commission of the U.N. Charter supports this position:

It was understood; that the principle of equal rights of people and that of self-determination are two component elements of one norm. That the respect of the norm is a basis for the development of friendly relations, and is in effect, one of the appropriate measures to strengthen universal peace. It was understood likewise that the principle in question, as a provision of the [U.N.] Charter, should be considered in function of other provisions. That an essential element of the principle in question is a free and genuine expression of the will of the people; and thus to avoid cases like those alleged by Germany and Italy. That the principle as one whole extends as a general basic conception to a possible amalgamation of nationalities if they so freely chose.<sup>103</sup>

The rapporteur's statement is authoritative in interpreting the meaning and content of the principle of self-determination. The U.N. Charter also accepts self-determination as a component of group human rights,<sup>104</sup> and as a human rights issue of universal application.<sup>105</sup>

Consequently, self-determination, as promised in the U.N. Charter, is a claimable right of all subjected peoples or communities.<sup>106</sup> The right is not limited to the categories of groups specified in Chapters XI and XII of the U.N. Charter.<sup>107</sup> Instead, all peoples whose rights have been subjugated in violation of international law can invoke the right of self-determination. The language of the U.N. Charter implies that peoples can secede from the parent state in exercising their right of self-determination.<sup>108</sup> The special rapporteur of the Subcommission

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102. See generally U.N. CHARTER.

103. UMOZURIKE, *supra* note 1, at 46 (citing Summary Report of Committee I/I, Doc. I/II of May 16, 1945, 6 U.N.C.I.O. Doc. 296).

104. See U.N. CHARTER art. 55.

105. See *id.*

106. See OFUATEY-KODJOE, *supra* note 81, at 181.

107. *Id.* at 128.

108. *Declaration on Friendly Relations*, *supra* note 86, at 340-43. "A state that subjugates any part of its people in violation of international law cannot be representing such people without discrimination and as such cannot be said to have complied with the provisions of this paragraph." *Id.*; see also *Re Reference by the Governor In Council*



on the Prevention of Discrimination and Protection of Minorities observes:

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 independent Sovereign States.<sup>109</sup>

*B. U.N. General Assembly Resolutions 1514(XV)  
and 1541(XV)*

On December 14 and 15, 1960, the General Assembly of the United Nations adopted Resolutions 1514(XV)<sup>110</sup> (Resolution 1514) and 1541(XV)<sup>111</sup> (Resolution 1541). The primary objective of these resolutions was the final and complete liberation of people still under colonial rule.<sup>112</sup>

Resolution 1514 reaffirms faith in the U.N. Charter's commitment to the principles of fundamental human rights and equality of nations, irrespective of size.<sup>113</sup> According to Resolution 1514, dependent peoples must be liberated from the bondage of colonialism. Resolution 1514 warns that denying peoples their right to self-determination may threaten world

Concerning Certain Questions Relating to the Secession of Quebec from Canada, [1998] D.L.R. 4th 385, 439-42 [hereinafter Reference re: Secession of Quebec].

109. Michael K. Addo, *Political Self Determination within the Context of the African Charter on Human and Peoples' Rights*, 32 J. AFR. L. 182, 191-92 (1988) (citing A. Cristescu, 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).

110. *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].

111. *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].

112. UMOZURIKE, *supra* note 1, at 70.

113. *Id.*

peace<sup>114</sup> and provides seven principles<sup>115</sup> to assist in rapidly eradicating colonial rule.

Paragraph 2 of Resolution 1514 affirms the right of colonial peoples to determine their destiny freely. The notion that the people are not mature enough for self-government is outmoded and unacceptable.<sup>116</sup> Paragraph 6 of Resolution 1514, however, seems to limit the guarantee of this right.<sup>117</sup> This limitation raises the crucial question of whether the principle of territorial integrity limits the right of self-determination in the decolonization process.<sup>118</sup>

The principle of territorial integrity in paragraph 6 of Resolution 1514 prevents the dismemberment of colonial territories prior to gaining their independence.<sup>119</sup> A colonial power is prohibited from severing the wealthiest part of a non-self-governing territory before granting independence to those less viable.<sup>120</sup> The preparatory work of the drafting committee bears testimony to this fact.<sup>121</sup> During the drafting of paragraph 6, "many delegates construed the paragraph as a prohibition against the dismemberment of non-self-governing units by the administering power prior to independence."<sup>122</sup> The General Assembly of the United Nations condemned the actions of the United Kingdom as a violation of paragraph 6 when the United Kingdom detached the British Indian Ocean territories from the colonies of Mauritius and Seychelles before granting the colonies independence.<sup>123</sup>

It appears that the principle of territorial integrity was intended "to preserve the unity of a territory soon to become

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114. *Id.*

115. *Id.* at 71.

116. Resolution 1514, *supra* note 110, at 67. "All peoples have a right to self-determination: by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." *Id.*

117. *Id.* "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations." *Id.*

118. S. K. N. Blay, *Self-Determination Versus Territorial Integrity in Decolonization*, 18 N.Y.U. J. INT'L L. & POL. 441, 442 (1986).

119. *Id.* at 445-46.

120. *Id.* at 446.

121. *Id.*

122. *Id.*

123. *Id.*

independent in order to enable it to exercise self-determination as a single unit.”<sup>124</sup> The principle of territorial integrity, however, was not intended to preclude people within a sovereign state from exercising their right to self-determination through secession.<sup>125</sup> This is evident because Resolution 1514 applies only to people living within a colonial territory.<sup>126</sup>

The process of implementing self-determination is specified in Resolution 1541. As provided in principle VI of Resolution 1541, a non-self-governing territory could achieve self-government by: (a) emergence as a sovereign independent State; (b) free association with an independent State; or (c) integration with an independent State.<sup>127</sup> When a colonial territory chose to become independent, it was not necessary to ascertain the wishes of the people by means of a popular vote.<sup>128</sup> Perhaps the rationale was that this mode of exercising the right of self-determination was not prone to manipulation by the colonial power.

If a colonial territory is associated with an independent state, Resolution 1541 demands that such association be the result of a free and voluntary choice of the people, as expressed through an informed and democratic process.<sup>129</sup> In the case of integration with an independent state, however, the exercise of the right of self-determination must follow a process. Specifically, the exercise must be the result of freely expressed wishes of the territory's people acting with full knowledge of the change in their status. Their wishes must be expressed through informed and democratic processes impartially conducted and based on universal adult suffrage. When deemed necessary, the United Nations could supervise these processes.<sup>130</sup>

The purpose of this stringent process of integration was to allow those under colonial rule to appreciate their new status after integration. It was likely used to avoid a situation where the administering power could exploit and manipulate the people based on their lack of education.

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124. *Id.* at 447.

125. *See* Nayar, *supra* note 3, at 338.

126. *See* Resolution 1514, *supra* note 110, at 66.

127. Resolution 1541, *supra* note 111, at 29.

128. CASSESE, *supra* note 79, at 73.

129. *Id.*

130. Resolution 1541, *supra* note 111, at 30.

Many colonial territories have achieved full self-government through the use of Resolutions 1514 and 1541. These two resolutions, however, apply only to peoples under colonial bondage, and not to citizens of sovereign independent states.

### C. *The International Covenants of 1966*

In 1966, the United Nations adopted the International Covenant on Economic, Social, and Cultural Rights,<sup>131</sup> and the International Covenant on Civil and Political Rights<sup>132</sup> (collectively, International Covenants). The International Covenants came into effect in 1976, guaranteeing the right of self-determination.<sup>133</sup>

Article 1 of the International Covenants provides that “all peoples have the right of self-determination.<sup>134</sup> By virtue of this right, they may freely determine their political status and pursue their economic, social, and cultural development.”<sup>135</sup> Article 1 further provides that “[t]he 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.”<sup>136</sup> Pursuant to these International Covenants, the right of self-determination enables peoples to establish their political status freely. The International Covenants also incorporate internal and external aspects of the right. The external aspect embraces the right of a nation to be free from external influence or domination.<sup>137</sup> The internal aspect embodies the right to participate in the democratic process in “one’s own

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131. *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, art. 1, 993 U.N.T.S. 3, 5 [hereinafter *International Economic Covenant*].

132. *International Covenant on Civil and Political Rights*, Dec. 19, 1966, art. 1, 999 U.N.T.S. 171 [hereinafter *International Civil Covenant*].

133. *International Economic Covenant*, *supra* note 131, at 5; *International Civil Covenant*, *supra* note 132, at 173.

134. *International Economic Covenant*, *supra* note 131, at 5; *International Civil Covenant*, *supra* note 132, at 173.

135. *International Economic Covenant*, *supra* note 131, at 5; *International Civil Covenant*, *supra* note 132, at 173.

136. *International Economic Covenant*, *supra* note 131, at 5; *International Civil Covenant*, *supra* note 132, at 173.

137. Hurst Hannum, *Rethinking Self-Determination*, 34 VA. J. INT’L L. 1, 25 n.105 (1993) [hereinafter Hannum, *Rethinking Self-Determination*].

government.”<sup>138</sup> Additionally, by guaranteeing self-determination as a group human right, both articles “safeguard human rights.”<sup>139</sup>

The right of self-determination in Article 1 of the International Covenants is available to all people regardless of whether they are in colonial bondage or living in metropolitan states. The preparatory documents give credence to this assertion.<sup>140</sup> During the debate at the Third Committee, delegates of several countries indicated that they understood “all peoples” to embrace not only those in a colonial situation but also those living in sovereign independent states.<sup>141</sup> Furthermore, “the view of the working party that submitted the final draft to the Third Committee in 1955” provides further support that “all peoples” has a broad interpretation.<sup>142</sup> Before submitting the final draft, the working party changed the words “and all nations” used in the original draft prepared by the Commission on Human Rights, to “all peoples.”<sup>143</sup> The Soviet Union delegate protested this change, contending the original draft “better [expressed] the fundamental principle of self-determination.”<sup>144</sup> Despite this opposition, the working party declared that the term “peoples” included nations and other groups, consistent with the spirit and intent of the original draft by the Commission on Human Rights.<sup>145</sup>

The general spirit and content of Article 1, combined with the preparatory work, demonstrates that Article 1 applies to: “(1) entire populations living in independent and sovereign states, (2) entire populations of territories that have yet to attain independence, and (3) populations living under foreign military occupation.”<sup>146</sup> Robert McCorquodale, a distinguished commentator, however, held a somewhat different view. In his opinion, “[A]rticle 1 of the International Covenant on Civil and Political Rights and state practice reject the notion that peoples can only be defined as all the inhabitants of a state—hence the

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138. *Id.*

139. Conference on Yugoslavia Arbitration Commission, Opinion No. 2, Jan. 11, 1992, 31 I.L.M. 1497, 1498.

140. Addo, *supra* note 109, at 186.

141. *Id.* at 187.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. CASSESE, *supra* note 79, at 59.

application of the right of self-determination to noncolonial territories.”<sup>147</sup> Demonstrating yet another view, the Supreme Court of Canada, in the recent *Quebec Secession* case held:

It is clear that “a people” may include only a portion of the population of an existing state. The right to self-determination has developed largely as a human right, and is generally used in documents that simultaneously contain references to “nation” and “state”. The juxtaposition of these terms is indicative that the reference to “people” does not necessarily mean the entirety of a state’s population. To restrict the definition of the term to the population of the existing states would render the granting of a right to self-determination largely duplicative, given the parallel emphasis within the majority of the source documents on the need to protect the territorial integrity of existing states, and would frustrate its remedial purpose.<sup>148</sup>

The right, as reflected in the International Covenants, belongs to all people, and there is no distinction between those under colonial rule and those in a sovereign independent state.<sup>149</sup> Specifically, “The duty to ‘promote the realization of the right of self-determination’ is imposed upon all states parties and not merely upon colonial powers.”<sup>150</sup>

Consequently, the right to self-determination under the International Covenants is a continuing right that does not end with achieving independence.<sup>151</sup> States are under an obligation to comply with Article 1 of the International Covenants at all times by respecting the peoples’ right to self-determination.<sup>152</sup> This position is reinforced by the “western view that... self-determination ought to be considered a universal right to which

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147. Robert McCorquodale, *Human Rights and Self-Determination, in THE NEW WORLD ORDER: SOVEREIGNTY, HUMAN RIGHTS AND THE SELF-DETERMINATION OF PEOPLES* 9 (Mortimer Sellers ed., 1994).

148. Reference re: Secession of Quebec, *supra* note 108, at 437.

149. Nayar, *supra* note 3, at 334.

150. *Id.* (citing G.A. Res. 2200A, 21 U.N. GAOR Supp. 16, at 49, U.N. Doc. A/6136 (1996); see also Kiss, *supra* note 95, at 174. “It also results from the inclusion of the right to self-determination in the Covenants that this right is to be applied all over the world, by all the States parties the Covenants, in all situations, not only to colonies, occupied territories, or to South Africa.” *Id.*

151. CASSESE, *supra* note 79, at 54–55.

152. *Id.* at 55.

the people of the independent and sovereign States were entitled.”<sup>153</sup>

Under this interpretation, dependent territories can “freely . . . decide their international status,” either by forming a new state or by associating or integrating with an existing sovereign state.<sup>154</sup> Similarly, peoples under a sovereign independent state can secede or separate from their parent state. The position of some countries during the debate regarding inclusion of self-determination in the International Covenants bears testimony to this view. For example, the delegates from New Zealand argued, “if self-determination was intended to be recognized as a right, the right should be commensurate with the principle and should include the right of secession.”<sup>155</sup> Similarly, Australia posited that Article 1 would allow minorities to determine their own status freely.<sup>156</sup>

During the debates, both the Netherlands and the United Kingdom contended that “self-determination of peoples” implies not only the right of colonies to become independent, but also the right of groups within existing states to secede or separate.<sup>157</sup> According to the Netherlands and the United Kingdom, if self-determination does not include the right to secession, then Articles 1(1) of both Covenants on Human Rights would be rendered meaningless, since “each confers the right of self-determination on ‘all peoples,’ and makes no distinction between colonial peoples and ethnic minorities within a state.”<sup>158</sup> It is clear, therefore, that the right of self-determination guaranteed by the International Covenants has universal application. Colonial people, as well as those in sovereign independent states, can invoke the right.

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153. *Id.* at 109.

154. *Id.* at 57–58.

155. U.N. GAOR 3d Comm. 10th Sess. 649th mtg., Agenda Item 28, ¶ 9, U.N. Doc. A/C.3/SR.649 (1955).

156. U.N. GAOR 3d Comm., 10th Sess., 647th mtg., Agenda Item 28, ¶ 23, U.N. Doc. A/C.3/SR.647 (1955).

157. Hannum, *Rethinking Self-Determination*, *supra* note 137, at 24 n.98.

158. Nayar, *supra* note 3, at 341.

#### D. *The Declaration on Friendly Relations*

In 1970, at its 25th anniversary session, the General Assembly of the United Nations put forth the Declaration on Friendly Relations (Declaration),<sup>159</sup> which affirms the principles of self-determination.<sup>160</sup> The Declaration provides a broad right of self-determination, which is framed in such a manner as to outlast its application in the “dismantling of colonialism.”<sup>161</sup> Furthermore, when “implementing the principle, a people are free to determine the political status that best suits their circumstantial demands.”<sup>162</sup>

Although the Declaration is a resolution of the U.N. General Assembly, the Declaration has binding legal force. First, the Declaration is an authoritative interpretation of the U.N. Charter; it was not intended to set up new norms, only to elaborate on the meaning of the existing U.N. Charter norms.<sup>163</sup> The Declaration has been “described as the most important single statement representing what the members of the United Nations agree to be the law of the U.N. Charter on the seven principles with which it deals.”<sup>164</sup> Second, the Declaration is a product of “consensus in the Special Committee” that drafted it, and the U.N. General Assembly unanimously adopted it.<sup>165</sup> Arguably, “the Declaration constitutes an *opinio juris* sufficient for the establishment of a customary rule of international law.”<sup>166</sup> Finally, the preamble clearly expresses the Declaration’s intent to be binding.<sup>167</sup> Paragraph 1 of the Declaration states:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all

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159. *Declaration on Friendly Relations*, *supra* note 86, at 340–43.

160. C. D. Johnson, *Toward Self-Determination: A Reappraisal as Reflected in the Declaration on Friendly Relations*, 3 GA. J. INT’L & COMP. L. 145, 145 (1973) [hereinafter Johnson, *Self-Determination*].

161. *Id.* at 153.

162. *Id.*

163. Nayar, *supra* note 3, at 335 (citing Rosenstock, *The Declaration of Principles of International Law Concerning Friendly Relations: A Survey*, 65 AM. J. INT’L L. 713, 714 (1971)).

164. *Id.*

165. *Id.*

166. C. R. Ezetah, *International Law of Self-Determination and the Ogoni Question: Mirroring Africa’s Post-Colonial Dilemma*, 19 LOY. L.A. INT’L COMP. L. REV. 834 (1997), noted in Frederic Kirgis, *The Degrees of Self-Determination in the United Nations*, 88 AM. J. INT’L L. 304, 306 (1994).

167. Nayar, *supra* note 3, at 336.



peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.<sup>168</sup>

This paragraph guarantees the right of self-determination to all peoples and imposes a duty on states to respect this right.<sup>169</sup> In paragraph 2, the Declaration reaffirms the duty of every state to promote the principles of equal rights and self-determination and "to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the U.N. Charter regarding the implementation of the principle."<sup>170</sup> All states, colonial or noncolonial, have the duty to promote the principle of self-determination.<sup>171</sup> Paragraph 3 of the Declaration imposes a duty on all states to jointly and separately promote universal respect for the observance of human rights and fundamental freedoms.<sup>172</sup> Thus, the Declaration provides further support for the principle of self-determination as a human right.<sup>173</sup>

The duty imposed on states, however, goes beyond the colonial context.<sup>174</sup> Paragraph 4 of the Declaration sets forth ways to implement the right of self-determination, analogous to provision VI of Resolution 1541. These methods include the establishment of a sovereign and independent state and free association or integration with independent state. Before exercising the right of self-determination, the people must come to a consensus regarding which political status is their ultimate goal.<sup>175</sup> Unlike Resolution 1541, however, there is no requirement to use an informed democratic process in order to ascertain the people's wishes to integrate or associate with the independent state.<sup>176</sup>

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168. *Id.* (citing *Declaration on Friendly Relations*, *supra* note 86, at 340-43).

169. See Bereket Habte Selassie, *Self-Determination in Principle and Practice: The Ethiopian-Eritrean Experience*, 29 COLUM. HUM. RTS. L. REV. 91, 97 (1998).

170. Nayar, *supra* note 3, at 336 (citing *Declaration on Friendly Relations*, *supra* note 86, at 340-43).

171. *Id.*

172. *Declaration on Friendly Relations*, *supra* note 86, at 340-43.

173. Hannum, *Rethinking Self-Determination*, *supra* note 137, at 17.

174. Johnson, *Self-Determination*, *supra* note 160, at 149.

175. *Declaration on Friendly Relations*, *supra* note 86, at 340-43.

176. CASSESE, *supra* note 79, at 73.

Paragraph 5 of the Declaration prohibits states from using force to deprive peoples of their right to self-determination.<sup>177</sup> The United Kingdom strongly opposed this prohibition during the debate preceding the drafting of the Declaration.<sup>178</sup> The United Kingdom representatives argued that such a prohibition “could not be understood as precluding such limited police action as might be essential to maintain or restore law and order.”<sup>179</sup> Several representatives, however, took exception to the United Kingdom’s position and worked assiduously to include paragraph 5 in the final draft of the Declaration.<sup>180</sup>

Paragraph 5 prohibits the use of force to deprive peoples of their right to self-determination. Additionally, Paragraph 5 also recognizes that “in their actions against and resistance to such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the [U.N.] Charter.”<sup>181</sup> At the special committee to draft the Declaration, South Africa’s delegate was apprehensive in accepting the right of peoples to seek and receive assistance from a third state in their efforts toward liberation. He contended that states might launch attacks on other states.<sup>182</sup> The U.S. representative, however, clarified the issue by submitting that it “did not constitute a general license for international traffic in arms.”<sup>183</sup>

The crucial question is to what extent a state can afford to assist people fighting for self-determination. States acting in compliance with paragraph 5 can give financial and technical assistance as well as military equipment to peoples fighting self-determination wars. States can also send troops to aid such peoples in their liberation efforts.<sup>184</sup> Some commentators contend that states cannot justifiably send troops to national liberation movements engaged in self-determination wars.<sup>185</sup>

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177. *Declaration on Friendly Relations*, *supra* note 86, at 340–43.

178. Johnson, *Self-Determination*, *supra* note 160, at 150.

179. *Id.*

180. *Id.*

181. *Declaration on Friendly Relations*, *supra* note 86, at 340–43.

182. Johnson, *Self-Determination*, *supra* note 160, at 151.

183. *Id.*

184. *Declaration on Friendly Relations*, *supra* note 86, at 340–43.

185. CASSESE, *supra* note 79, at 152.

Although Article 2(4) of the U.N. Charter precludes the use of force against a state's territorial integrity, such protection would only be available to a state acting in accordance with the principle of self-determination. "[T]he oppressed people" in exercising their right could challenge a state that is not acting in accordance with this principle. In such a case, assistance from troops, pursuant to Article 56 of the U.N. Charter and paragraph 5 of the Declaration, does not violate Article 2(4) of the U.N. Charter, but furthers the purpose of the United Nations.<sup>186</sup> It is noted that, "the critical question in a decentralised system is not whether coercion has been applied but whether it has been applied in support or against community order and basic policies, and whether it was applied in ways whose net consequences include increased congruence with community goals and minimum order."<sup>187</sup>

Paragraph 7 is one of the most important provisions of the Declaration because it makes "a bold attempt to reconcile the conflict between the principles of self-determination and territorial integrity of states."<sup>188</sup> Paragraph 7, generally described as a "safeguard clause,"<sup>189</sup> states:

Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.<sup>190</sup>

The implication of this provision is that the state's power to invoke the principle of territorial integrity is contingent upon the

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186. Obiora Chinedu Okafor, *Self-Determination and the Use of Force in Contemporary International Law: An African Perspective* 248-49 (1994) (unpublished LL.M. thesis, University of Nigeria, Enugu) (on file with author) [hereinafter Okafor LL.M. Thesis].

187. W. Michael Reisman, *Coercion and Self-Determination: Construing Charter Article 2(4)*, 78 AM. J. INT'L. L. 642, 645 (1984).

188. Nayar, *supra* note 3, at 337.

189. James Crawford, *State Practice and International Law in Relation to Secession*, 69 BRIT. Y.B. INT'L L. 85, 113 [1998].

190. *Declaration on Friendly Relations*, *supra* note 86, at 340-43.

government representing the whole population.<sup>191</sup> In other words, paragraph 7 made the principle of territorial integrity “a rebuttable presumption that can only be invoked by states that act in accordance with the principle of self-determination.”<sup>192</sup> “The logical reading of the Declaration is that a state must possess a government representing the whole people for it to be entitled to protection of its territorial integrity against secession.”<sup>193</sup>

The preparatory documents amply support this interpretation. For instance, according to the U.S. proposal to the U.N. Committee on Friendly Relations in 1966, “the principle of equal rights and self-determination of peoples was of particular importance since respect for it was indispensable for the existence of a community of nations in which the other principles could be respected.”<sup>194</sup>

The United Kingdom took a similar stance, supported by many other countries, including Canada, France, Australia, Japan, and the Netherlands.<sup>195</sup> Although opposition came from other countries,<sup>196</sup> Italy introduced a compromise:

States enjoying full sovereignty and independence, and possessed of a government representing the whole of their population, shall be considered to be conducting themselves in conformity with the principle of equal rights and self-determination of peoples as regards that population. Nothing in the foregoing paragraphs shall be construed as authorizing

191. Claudia Saladin, *Self-Determination, Minority Rights and Constitutional Accommodation: The Example of Czech and Slovak Federal Republic*, 13 MICH. J. INT'L L. 172, 186 (1991).

192. Gerry J. Simpson, *The Diffusion of Sovereignty: Self-Determination in the Post-Colonial Age*, in McCorquodale, *supra* note 147, at 54.

193. Ved P. Nanda, *Revisiting Self-Determination as an International Law Concept: A Major Challenge in the Post-Cold War Era*, 3 ILSA J. INT'L & COMP. L. 443, 449 (1997).

194. *Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation Among States*, G.A. Res. 2181 (XXI), U.N. GAOR 6th Comm., 68th mtg. at 4, 21, U.N. Doc. A/AC.125/SR.68 (1967) [hereinafter Resolution 2181].

195. Resolution 2181, *supra* note 194, U.N. GAOR 6th Comm., 69th mtg. at 14, 18, U.N. Doc.A/AC.125/SR.69 (1967); U.N. GAOR 6th Comm., 70th mtg. at 6, U.N. Doc.A/AC.125/SR.70 (1967); U.N. GAOR 6th Comm., 105th mtg. at 53, U.N. Doc.A/AC.125/SR.105 (1967); U.N. GAOR 6th Comm., 106th mtg. at 64, 74, U.N. Doc.A/AC.125/SR.106 (1967); U.N. GAOR 6th Comm., 107th mtg. at 82–85, U.N. Doc. A/AC.125/SR.107 (1967); see CASSESE, *supra* note 79, at 115.

196. CASSESE, *supra* note 79, at 116.

any action which would impair, totally or in part, the territorial integrity, or political unity, of such States.<sup>197</sup>

A further amendment introduced the phrase "without distinction as to race, creed, or colour."<sup>198</sup> Therefore, the preparatory work provides eloquent testimony to the interpretation of paragraph 7 of the Declaration. Additionally, where a state violates paragraph 3 by failing "to promote respect for the observance of human rights and fundamental freedoms . . . that state would not be conducting itself 'in compliance with the principle of equal rights and self-determination of peoples.'"<sup>199</sup> Consequently, the peoples concerned would be at liberty to exercise their right of self-determination through secession.<sup>200</sup> Legal commentator, Dr. Obiora Okafor, wrote:

[A] people who have a right against their own government will do so obviously on the basis that they are exercising their inalienable right to self-determination. A government, which is not based on the consent of the governed, can only be maintained by massive human rights violations and brutal repressions. Such a government will at best be unrepresentative and at worst fascist. Such a government is clearly not conducting itself according to the principle of self-determination of all peoples.<sup>201</sup>

Similarly, acclaimed scholar M.G. Kaladharan Nayar, asserted, "It further follows from this paragraph that peoples within a sovereign and independent state may exercise their right of self-determination, including secession, when the government of that state does not comply with the principle of equal right and self-determination of peoples, and therefore, does not represent the people."<sup>202</sup>

The Declaration prohibits the use of force against the territorial integrity of another state in the same manner as Article 2(4) of the U.N. Charter.<sup>203</sup> Paragraph 5 of the Declaration, read in conjunction with paragraph 7, demonstrates that oppressed

197. *Id.* at 116 (quoting U.N. Doc. A/AC.125/L.80).

198. Nayar, *supra* note 3, at 337.

199. *Id.*

200. *Id.* at 338.

201. Okafor LL.M. Thesis, *supra* note 186, at 248-49.

202. Nayar, *supra* note 3, at 337.

203. *Declaration on Friendly Relations*, *supra* note 86, at 340-43.

peoples may attack a state that does not conduct itself in accordance with this principle.<sup>204</sup> When such peoples receive military support from a third-party state, the oppressed state cannot be deemed to have contravened paragraph 1 of the Declaration dealing with the use of force against state territorial integrity, or Article 2(4) of the U.N. Charter.<sup>205</sup> Moreover, the Declaration stipulates, “[n]othing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the [U.N.] Charter concerning cases in which the use of force is lawful.”<sup>206</sup> Arguably, supplying troops to assist peoples fighting for self-determination claims is lawful because such action furthers the purposes of the United Nations.

Consequently, it is difficult to accept Professor Cassese’s view that third-party states cannot send military troops in aid of peoples embroiled in a self-determination war. Such assistance conforms with the letter and spirit of the U.N. Charter and other relevant international instruments pertaining to self-determination.<sup>207</sup> Although third-party states are permitted to assist those fighting self-determination wars, they are prohibited from assisting in repression of peoples fighting for self-determination.<sup>208</sup> As Antonio Cassese rightly observes, “In the case of wars for self-determination, third states must refrain from helping the State but are authorised to provide assistance . . . to national liberation movements.”<sup>209</sup>

While providing for the right of self-determination, the U.N. Charter also stipulates that the United Nations, in support of this right, shall not intervene in matters that are essentially within the domestic jurisdiction of any state.<sup>210</sup> Additionally, the United Nations may not require the state to submit such matters for settlement.<sup>211</sup> Arguably, these provisions do not limit the right of self-determination. First, according to the practice of United

204. Okafor LL.M. Thesis, *supra* note 186, at 248.

205. *See id.* at 248–49.

206. *Declaration on Friendly Relations*, *supra* note 86, at 340–43.

207. U.N. CHARTER, art. 56; *see also Declaration on Friendly Relations*, *supra* note 86, at 340–43.

208. CASSESE, *supra* note 79, at 152.

209. *Id.* at 153.

210. *See* HAROLD S. JOHNSON, SELF-DETERMINATION WITHIN THE COMMUNITY OF NATIONS 49 (1967) [hereinafter JOHNSON, COMMUNITY OF NATIONS].

211. U.N. CHARTER, art. 2, para. 7.

Nations members, a matter is not considered to be within the "domestic jurisdiction" of a state if it: (1) amounts to breach of international law; (2) constitutes an infringement of the interests of another state; (3) amounts to a gross violation of human rights; (4) constitutes a threat to international peace; or (5) pertains to development of self-government in a colony.<sup>212</sup> Second, the right of self-determination, recognized in various international law fora, has acquired the status of customary international law. As observed by the International Court of Justice in *East Timor (Port. v. Austl.)*:

[I]n the Court's view, Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from the United Nations practice, has an *erga omnes* character, is irreproachable. 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.<sup>213</sup>

The *erga omnes* character of the right of self-determination mandates that states within the international community have a legal obligation to fulfill this right.<sup>214</sup> Consequently, the right of self-determination embodied in customary international law cannot be affected by Article 2(7), which limits only rights derived from the U.N. Charter.<sup>215</sup>

The third reason the domestic jurisdiction principles in the U.N. Charter do not limit self-determination is that self-determination is included in Article 1 of the U.N. Charter as one of the purposes of the United Nations, while the domestic jurisdiction safeguard is contained in Article 2 as one of the governing principles of the organization.<sup>216</sup> Further, during the technical committee's discussion of the drafting of the U.N.

212. MICHAEL BARTON AKEHURST, *A MODERN INTRODUCTION TO INTERNATIONAL LAW* 207 (6th ed., Routledge 1992) (1970).

213. Concerning East Timor (*Port. v. Austl.*), 1995 I.C.J. 90, at 102, ¶ 29 (Judgment of June 30).

214. See KINDRED, *INTERNATIONAL LAW*, *supra* note 85, at 59.

215. George Steven Swan, *Self-Determination and the United Nations Charter*, 22 INDIAN J. INT'L L. 264, 268 (1982) (citing Johnson, *Self-Determination*, *supra* note 160, at 160).

216. Nayar, *supra* note 3, at 341.

Charter, the committee drew a distinction between the “purposes” and the “principles” of the U.N. Charter:

The “Purposes” constitute the *raison d'être* of the Organization. They are the aggregation of the common ends on which our minds met; hence, the cause and object of the [U.N.] Charter to which member states collectively and severally subscribe. The chapter on “Principles” sets, in the same order of ideas, the methods and regulating norms according to which the Organization and its members shall do their duty and endeavour to achieve the common ends. Their understandings should serve as actual standards of international conduct.<sup>217</sup>

Consequently, where there is conflict between the right to self-determination and the domestic jurisdiction principle, self-determination should prevail because a means cannot be interpreted to frustrate an end.<sup>218</sup>

Reading Article 1(1) in conjunction with paragraph 7 of the Declaration, however, suggests that peoples living in metropolitan states cannot invoke the right of self-determination to secede. Instead, before exercising their right to secede, such peoples must demonstrate serious human rights violations or the risk of physical extermination.<sup>219</sup> Thus, peoples in a metropolitan state may only invoke the right of self-determination to secede if their government does not represent their interests and discriminates against them.<sup>220</sup>

There is no doubt that the right of self-determination guaranteed by the Declaration has universal application. Secession constitutes one of the modes of exercising the right.<sup>221</sup> The African states employed the principle of self-determination enunciated in these legal organs in the decolonization of European

217. *Id.* at 341–42 (quoting U.N. Doc. 944, I/1/34(1); 6 U.N.C.I.O. Docs. 446–47 (1945)).

218. *Id.* at 342.

219. See *Declaration on Friendly Relations*, *supra* note 86, at 340–43; see also Reference re: Secession of Quebec, *supra* note 108, at 441.

220. See *Declaration on Friendly Relations*, *supra* note 86, at 340–43; see also Reference re: Secession of Quebec, *supra* note 108, at 441.

221. See Nayar, *supra* note 3, at 337. Cassese, one of the avowed opponents of secession, admitted that the *Declaration* authorized secession: “Although secession is implicitly authorised [sic] by the *Declaration*, it must however be construed, as with all exceptions.” CASSESE, *supra* note 79, at 153.



territories.<sup>222</sup> African leaders recognized the need for a "regional human rights instrument" to establish this principle.<sup>223</sup>

*E. The African Charter on Human and Peoples' Rights*

In 1981, the Assembly of Heads of States and Government of the Organization of African Unity adopted the African Charter on Human and Peoples' Rights (African Charter).<sup>224</sup> Articles 19 and 20 of the African Charter guarantee the right of self-determination to all peoples.<sup>225</sup> Article 19 provides, "All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another."<sup>226</sup> Article 20 provides:

- (1) All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
- (2) Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
- (3) All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.<sup>227</sup>

It is clear from the text of the African Charter that the right of self-determination benefits a larger group than just colonized and oppressed peoples. Stated more succinctly, the provisions that pertain to self-determination "do not have any words or phrases to suggest a restricted meaning of the 'all peoples' phrase and that being the case . . . the ordinary meaning already indicated should

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222. See, e.g., *African Charter*, *supra* note 86.

223. See, e.g., *id.*

224. *Id.*; see also Addo, *supra* note 109, at 182.

225. *African Charter*, *supra* note 86.

226. *Id.*

227. *Id.* at 59.

prevail, i.e., a broader interpretation to cover not only colonial peoples but also peoples living in independent African countries.<sup>228</sup>

Peoples living under any repressive government can invoke the right of self-determination guaranteed in Articles 19 and 20 notwithstanding the international status of the state.

Moreover, Article 20(1) recognizes self-determination as an inalienable right, which cannot be eradicated.<sup>229</sup> It further acknowledges the right of peoples to “corporate existence.”<sup>230</sup> Any attempt at physical extermination of a group constitutes a breach of this provision.<sup>231</sup> In exercising this right of self-determination under the African Charter, peoples in such a situation may secede, especially if it is the only practical method to secure their existence.<sup>232</sup> “At the normative level, the 1982 African Charter on Human and Peoples’ Rights clearly provides for the right of oppressed minorities and other peoples to various kinds of self-determination, up to and including secession from an established state.”<sup>233</sup>

Under the African Charter, a state that denies a peoples’ access to participate in government breaches the principle of equality adumbrated in Article 19.<sup>234</sup> Under such circumstances, the right to self-determination can be exercised through secession. The state cannot legitimately invoke the principle of sovereignty and territorial integrity to prevent such secession because the state would lose its power to govern such people. A state that does not promote participation in government “but instead represses the people, destroys their culture and economically exploits them . . . loses legitimacy as a government and can not prevail on its claim of territorial integrity.”<sup>235</sup> Thus, it is fundamentally important for states to encourage access to a democratic process.

228. Addo, *supra* note 109, at 186.

229. Parsons Letter, *supra* note 93, at 396.

230. Addo, *supra* note 109, at 190.

231. *Id.*

232. See OSITA C. EZE, HUMAN RIGHTS IN AFRICA: SOME SELECTED PROBLEMS 96, 120 (1984); see also UMOZURIKE, *supra* note 1, at 269.

233. OBIORA CHINEDU OKAFOR, RE-DEFINING LEGITIMATE STATEHOOD: INTERNATIONAL LAW AND STATE FRAGMENTATION AFRICA 138 (2000).

234. See Addo, *supra* note 109, at 190.

235. Eva Herzer, *The Right to Self-Determination: The Legal Cornerstone to Tibet’s Future* (May 13, 2000), at <http://www.heartibet.org/herzer.html> (last visited Mar. 11, 2003).

### F. *The Vienna Declaration and Programme of Action*

In 1993, the World Conference on Human Rights adopted the Vienna Declaration and Programme of Action (Vienna Declaration).<sup>236</sup> Reaffirming Article 1 of the International Covenants,<sup>237</sup> the Vienna Declaration stipulates that the denial of the right of self-determination constitutes a violation of human rights.<sup>238</sup> Furthermore, in its preamble, the Vienna Declaration reaffirms the commitment of U.N. members in Article 56 of the Charter.<sup>239</sup> In sum, the Vienna Declaration asserts self-determination as a group human right.<sup>240</sup>

### G. *The Declaration on Occasion of the Fiftieth Anniversary of the United Nations*

In 1995, the United Nations adopted the Declaration on Occasion of the Fiftieth Anniversary of the United Nations (Anniversary Declaration).<sup>241</sup> The Anniversary Declaration, in recognizing the right to self-determination, stipulates that the member states will:

Continue to reaffirm the right of self-determination of all peoples, taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and recognize the right of peoples to take legitimate action in accordance with the Charter of the United Nations to realize their inalienable right of self-determination.<sup>242</sup>

The Anniversary Declaration recognizes self-determination as an inalienable right that cannot be derogated.<sup>243</sup> Ordinarily,

236. *The Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/24 (1993), reprinted in *WORLD CONFERENCE ON HUMAN RIGHTS: THE VIENNA DECLARATION AND PROGRAMME OF ACTION 25 (1993)* [hereinafter *Vienna Declaration*].

237. *Id.*; Reference re: *Secession of Quebec*, *supra* note 108, at 436.

238. *Vienna Declaration*, *supra* note 236.

239. *Id.* at pmb1.

240. *See id.*

241. *Declaration on the Occasion of the Fiftieth Anniversary of the United Nations*, G.A. Res. 50/6, U.N. GAOR, 50th Sess., at 1, U.N. Doc. A/Res/50/6 (1995) [hereinafter *Anniversary Declaration*].

242. *Id.* at 2-3.

243. *See id.*

U.N. General Assembly resolutions have no binding effect.<sup>244</sup> Arguably, Resolutions 1514 and 1541, the Vienna Declaration, and the Anniversary Declaration, may be characterized as General Assembly resolutions that are binding. These resolutions have been “voted for by overwhelming majorities of members of the General Assembly frequently over a period of time giving rise to a general *opinio juris*, and as such, constitute a norm of customary international law.”<sup>245</sup> In *South West Africa*, the International Court of Justice held that a single resolution might be recommendatory while the repetition may transform it into a customary rule of law.<sup>246</sup>

The foregoing discussion demonstrates the wealth of international law instruments that guarantee the right of peoples to self-determination. The right, as guaranteed in most of these instruments, has universal application, as it applies to both colonial and noncolonial situations.<sup>247</sup> The most controversial aspect of self-determination, however, is identifying the possessor of the right.<sup>248</sup> This problem is crucial in determining the scope and content of the right.

## V. SCOPE AND CONTENT OF SELF-DETERMINATION

### A. *Claiming the Right of Self-Determination*

Until now, there has been no generally accepted meaning of “peoples,” “nations,” “self,” “unit,” “nationality,” “distinct community” or similar terminology used to describe our diverse political and social existence.<sup>249</sup> Even former U.S. President Woodrow Wilson could not define “self,” in the context of the right of self-determination, despite his popularization of the concept.<sup>250</sup>

244. See U.N. CHARTER, arts. 10–11, 13–14.

245. See *South West Africa Cases*, (Eth. v. S. Afr.; Liber. v. S. Afr.) 1960 I.C.J. 6, 323, ¶ 59.

246. See *id.* at 323.

247. See, e.g., Addo, *supra* note 109, at 187; M. G. Kaladharan, *Self-Determination Beyond the Colonial Context: Biafra in Retrospect*, 10 TEX. INT’L L.J. 321, 334, 336 (1975).

248. JOHNSON, COMMUNITY OF NATIONS, *supra* note 210, at 49.

249. See, e.g., Rupert Emerson, *Self-Determination* 65 AM. J. INT’L L. 459, 462 (1971).

250. See, e.g., CASSESE, *supra* note 79, at 22 n.31 (quoting R. LANSING, THE PEACE NEGOTIATIONS: A PERSONAL NARRATIVE 97 (1921)).

President Wilson's own cabinet fiercely criticized him, including his Secretary of State, Robert Lansing, who questioned whether Wilson clearly understood the idea of self-determination.<sup>251</sup> Regarding President Wilson's understanding of the term, Lansing wondered "[W]hat unit has he in mind? Does he mean a race, a territorial area, or a community? Without a definite unit which is practical, application of this principle is dangerous to peace and stability."<sup>252</sup>

Without a commonly accepted definition, the meaning attached to "peoples" for the purposes of exercising the right of self-determination has become largely "context-dependent."<sup>253</sup> The right of self-determination provided for in the various international instruments is meant to enable the people to determine their political status and to pursue freely their economic, social, and cultural development.<sup>254</sup> The right of self-determination, however, recognized in Resolutions 1514 and 1541 and chapters XI and XII of the U.N. Charter, is only applicable to peoples in colonial situations.<sup>255</sup> In *Western Sahara*, the International Court of Justice stated that the Declaration on the Granting of Independence to Colonial Countries and Peoples and Resolution 1514 characterize the principle of self-determination as a right of emancipation from a colonial situation.<sup>256</sup> Further, the court states that Resolution 1514 provided the basis for decolonization, while Resolution 1541 complemented it by stipulating the possible outcome to be either "emergence as a sovereign independent State, free association with an independent State, or integration with an independent State."<sup>257</sup>

The U.N. Charter, Declaration, International Covenants, Vienna Declaration, African Charter, and other legal instruments

251. *Id.*

252. *Id.*

253. Okafor LL.M. Thesis, *supra* note 186, at 137.

254. Resolution 1514, *supra* note 110, at 66, ¶ 2; *see also Declaration on Friendly Relations*, *supra* note 86, at 340-43; *International Civil Covenant*, *supra* note 132, art. 1, ¶ 1, 999 U.N.T.S. at 173; *International Economic Covenant*, *supra* note 131, art. 1, ¶ 1, 993 U.N.T.S. at 5; *Vienna Declaration*, *supra* note 236, art. 1, ¶ 2; *Anniversary Declaration*, *supra* note 241, at 5; *African Charter*, *supra* note 86, arts. 19-20.

255. *See* U.N. CHARTER, arts. 73-85; Resolution 1514, *supra* note 110, at 66; Resolution 1541, *supra* note 111, at 29.

256. *Western Sahara Case*, Advisory Opinion, 1975 I.C.J. 24, ¶ 55.

257. *Id.* ¶57.

apply the right of self-determination beyond the colonial context.<sup>258</sup> The Supreme Court of Canada supported this view:

The recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through *internal* self-determination—a people's pursuit of its political, economic, social and cultural development within the framework of an existing state. A right to *external* self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme cases and, even then, under carefully defined circumstances.<sup>259</sup>

The preparatory work involved in formulating these resolutions bolsters the assertion that they apply beyond the colonial context.<sup>260</sup> For instance, in its report to the U.N. General Assembly, the special committee charged with drafting the Declaration asserted that the “first paragraph should contain a general statement of the principle [of self-determination], stressing its universality.”<sup>261</sup> During the Drafting Committee debate, the United States took the position that the right to self-determination “was recognized as belonging to ‘all peoples,’ not only to dependent peoples.”<sup>262</sup>

In June 1945, however, the Secretariat of the Coordination Committee responsible for drafting the Charter submitted a memorandum that explains the use of the word ‘peoples’:

No difficulty appears to arise from the use of the word “peoples” which is included in the Technical Committee texts whenever the idea of “all mankind” or “all human beings” is to be emphasized . . . [T]he word “peoples” is used in connection with the phrase “self-determination of peoples.” This phrase is in such common usage that no other word seems appropriate.

258. Addo, *supra* note 109, at 186; Nayar, *supra* note 3, at 324; *see also id.* at 336 (citing *Declaration on Friendly Relations*, *supra* note 86, ¶ 1); *Anniversary Declaration*, *supra* note 241, at 1–2; *Vienna Declaration*, *supra* note 236, art. 1, ¶ 2; OFUATEY-KODJOE, *supra* note 81, at 154.

259. Reference re: Secession of Quebec, *supra* note 108, at 437–38.

260. *See, e.g.*, Resolution 2181, *supra* note 194, U.N. GAOR, 24th Sess., Supp. No. 19, at 63, U.N. Doc. A/7619 (1969).

261. Resolution 2181, *supra* note 194, U.N. GAOR, 24th Sess., Supp. No. 19, at 63, U.N. Doc. A/7619 (1969).

262. CASSESE, *supra* note 79, at 110–11, n.15 (quoting ¶ 25, U.N. Doc. A/C.6/SR.1180 and noting Portugal and Spain as other countries that supported the U.S. position at ¶27, U.N. Doc. A/C.6/SR.1182).

The question was raised in the Coordination Committee as to whether the juxtaposition of "friendly relations among nations" and "self-determination of peoples" is proper. There appears to be no difficulty in this juxtaposition since "nations" is used in the sense of all political entities, states and non-states, whereas "peoples" refers to groups of human beings who may, or may not, comprise states or nations.<sup>263</sup>

Therefore, the term "self," as used in the U.N. Charter, refers to groups of human beings that may or may not be comprised of states or nations. In other words, all groups of human beings are entitled to exercise the right of self-determination. Similarly, the preparatory documents of the International Covenants bear eloquent testimony to the fact that the right of self-determination applies beyond colonial situations.<sup>264</sup> For instance, during debate at the drafting stage, Afghanistan posited that self-determination "would have to be proclaimed even in a world from which colonial territories had vanished."<sup>265</sup> Similarly, the western states insisted, "if the right to self-determination were incorporated in the Covenants, it should also apply to the peoples of sovereign States oppressed by their own governments."<sup>266</sup>

The objections by some notable states to India's reservations of Article 1 of the International Covenants further the universal acceptance of the right of self-determination.<sup>267</sup> The Netherlands reaction is instructive on the matter. "The right of self-determination as embodied in the [International] Covenants is conferred upon all peoples . . . [A]ny attempt to limit the scope of this right or attach conditions not provided for in the relevant instruments would undermine the concept of self-determination itself . . . ." <sup>268</sup>

263. UNITED NATIONS, DOCUMENTS OF THE UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATIONS, U.N. Doc. WD/381, CO/156, 18 U.N.C.I.O. Docs. 657-58 (1945).

264. See, e.g., *Draft International Covenants on Human Rights*, U.N. GAOR, 10th Sess., 644th mtg., Agenda Item 28, art. 10, UN Doc. A/C.3/SR.644 (1955).

265. *Draft International Covenants on Human Rights*, U.N. GAOR, 10th Sess., 644th mtg., Agenda Item 28, art. 10, UN Doc. A/C.3/SR.644.

266. CASSESE, *supra* note 79, at 51.

267. See, e.g., U.N. CENTRE FOR HUMAN RIGHTS, HUMAN RIGHTS-STATUS OF INTERNATIONAL INSTRUMENTS, INT'L COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS at 19, U.N. Doc. ST/HR/5, U.N. Sales No. E.87.XIV.2 (1987).

268. *Id.*

The preparatory documents are silent as to the scope of the African Charter. The text of the African Charter, however, explicitly provides that the right beyond the colonial context<sup>269</sup> is the right of self-determination to all colonial or oppressed peoples.<sup>270</sup> “Colonial” and “oppressed” are not co-extensive in Article 20(2).<sup>271</sup> “Oppressed people” covers a wider spectrum than colonial and “must mean non-colonised peoples who are oppressed.”<sup>272</sup> Oppressed peoples can use any means at their disposal to achieve freedom. As stated in the Anniversary Declaration, the right of self-determination recognized by the African Charter is an inalienable right that cannot be derogated.<sup>273</sup> Similarly, the referenced charters and declarations recognized self-determination as a group human right.<sup>274</sup> According to the Supreme Court of Canada, “[t]he right to self-determination has developed largely as a human right.”<sup>275</sup> Therefore, “violations of self-determination are violations of human rights.”<sup>276</sup>

The word “peoples” in the African Charter was deliberately left undefined to avoid confusion.<sup>277</sup> Nevertheless, “peoples” within the context of the African Charter refers to “groups within independent African states.”<sup>278</sup> This literal reading conforms to international principles of treaty interpretation.<sup>279</sup>

“Self” has been defined as a “[c]ollection of individuals having a legitimate interest which is primarily political, but may also be economic, cultural, or of any other kind.”<sup>280</sup> “Self” can also represent an identifiable group of people having common legitimate aims.<sup>281</sup> The group includes the whole population of a

269. See *African Charter*, *supra* note 86, art. 20, ¶ 2.

270. *Id.*

271. See Okafor LL.M. Thesis, *supra* note 186, at 138.

272. OKAFOR, RE-DEFINING LEGITIMATE STATEHOOD, *supra* note 233, at 121, n.96 (2002); see also *African Charter*, *supra* note 86, art. 20, ¶ 2.

273. See *African Charter*, *supra* note 86, art. 20, ¶ 1.

274. See U.N. CHARTER art. 1, para. 2; see also *id.* art. 55; Resolution 1541, *supra* note 111 art. 1, ¶ 2; see also *Declaration on Friendly Relations*, *supra* note 86, at 340–43; *African Charter*, *supra* note 86, art. 20, ¶ 1; *Vienna Declaration*, *supra* note 237, art. 1, ¶ 2.

275. Reference re: Secession of Quebec, *supra* note 108, at 437.

276. Thornberry, *supra* note 77, at 883.

277. Addo, *supra* note 109, at 184.

278. *Id.* at 185.

279. See *id.*

280. See UMOZURIKE, *supra* note 1, at 195.

281. *Id.* at 272.



state, but can also represent part of the population of a state.<sup>282</sup> Under certain circumstances, it may represent the population of multiple states.<sup>283</sup>

One view holds that only a “[s]elf-conscious *politically coherent* community that is under the political subjugation of another community,” is entitled to exercise the right of self-determination.<sup>284</sup> The purpose of self-determination is to “remove a community from the political domination of another group and permit it to gain control of its own destiny” and “to remedy or eradicate a deprivation.”<sup>285</sup> Self-determination applies to peoples that have been “deprived of the ability to govern themselves by some other political entity.”<sup>286</sup> This interpretation of “self” suggests that the claimant group can only exercise the right of self-determination by secession or by gaining autonomy from the dominant group. This interpretation may be too restrictive, for groups may decide to integrate with parent or other states, as did Hawaii and Alaska upon their integration with the United States.

In *Greco-Bulgarian*, the Permanent Court of International Justice outlined some of the common characteristics and interests a people seeking self-determination may share. The Court defined “self” as:

[A] group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.<sup>287</sup>

A people, however, need not be homogenous, for there is no requirement that only a single people comprise a state.<sup>288</sup> The preparatory documents showed that during the debate at the

282. *Id.* at 195; *see also* Reference re: Secession of Quebec, *supra* note 108, at 437.

283. UMOZURIKE, *supra* note 1, at 195.

284. OFUATEY-KODJOE, *supra* note 81, at 156.

285. *Id.* at 155–56.

286. *Id.* (quoting Michael S. Carter, *Ethnic Minority Groups and Self-Determination: The Case of Basque*, 20 COLUM. J.L. & SOC. PROBS. 55, 61 (1986)).

287. Advisory Opinion No. 17, Interpretation of the Convention Between Greece and Bulgaria Respecting Reciprocal Emigration, 1930 P.C.I.J. (ser. F) No. 17, at 4, 21.

288. Hannum, *Rethinking Self-Determination*, *supra* note 137, at 36.

drafting of the International Covenants, delegates regarded peoples either as colonial peoples<sup>289</sup> or as peoples oppressed by their tyrannical government.<sup>290</sup> Under Chapter XI of the U.N. Charter, territorial-based peoples may exercise the right of self-determination.<sup>291</sup> Resolution 1514 and the Declaration's recognition of the right of self-determination, through integration or association of peoples based on equality with another state, further bolster this fact.<sup>292</sup> The people do not need to be concentrated in a particular territory, but may claim a particular territory. The memorandum of the Coordination Committee of the U.N. Charter does not suggest that the people who are entitled to exercise the right of self-determination must be homogenous.<sup>293</sup>

"Peoples" can also be seen as "a social entity that have common ancestry, history, religion, language, culture... and possess an awareness or state of mind that they are not just a population but have a sense of identity."<sup>294</sup> The term "self" encompasses the idea that a group should possess common characteristics and be conscious of their identity.<sup>295</sup> The claimant need not be oppressed or threatened with physical extermination, and should be distinguished by its evasion of assimilation by the dominant group.<sup>296</sup>

The most far-reaching and pervading meaning of "peoples" includes "[a]ll oppressed peoples whether under colonial or internal oppressive domination are entitled to assert the right to self-determination and come therefore within the definition of peoples or nations for the purposes of the legal concept of self-determination."<sup>297</sup> Further:

[T]he central idea that animates any claim for self-determination by whatever name called or by whosoever made is that of 'alienation.' The claimant invariably perceives present rule as colonial, alien or oppressive, and is therefore, alienated.

289. See Mexico Proposal to Human Rights Commission, at 241 U.N. Doc. A/C.3/SR.310 (1950).

290. See *id.*

291. U.N. CHARTER, art. 55.

292. *Declaration on Friendly Relations*, *supra* note 86, at 340-43.

293. See, e.g., Hannum, *Rethinking Self-Determination*, *supra* note 137, at 36.

294. Nanda, *supra* note 193, at 446.

295. *Id.*

296. *Id.*

297. Okafor LL.M. Thesis, *supra* note 186, at 138.

The crucial question therefore is to ask whether there is widespread alienation amongst an identifiable group exhibiting socio-political and/or economic solidarity and attributable to the behavior of another group towards it? If this sort of alienation exists then that former group itself becomes a 'self' entitled to "determine" subject to other evaluative and practical criteria for implementation.<sup>298</sup>

For an entity to qualify as "peoples," it must possess both objective and subjective characteristics. Some of the objective elements the group may possess are: (1) common history; (2) common territory or geographical location; (3) cultural, linguistic, racial or ethnic ties; or (4) religious or ideological ties.<sup>299</sup> Collectively, these elements only satisfy the objective element of "self" and cannot qualify a group as "peoples," unless the group members are subjectively conscious of their distinctiveness.

This subjective element of "self" encourages peoples to fight for their common destiny. A group must have common grievances or interests that they wish to protect or preserve. Consequently, any group can qualify as "peoples" and attain the right of self-determination if the groups experiences: (1) external or internal domination;<sup>300</sup> (2) oppression;<sup>301</sup> (3) serious or grave human rights violations;<sup>302</sup> (4) foreign or alien subjugation;<sup>303</sup> (5) great repression;<sup>304</sup> (6) threat of physical extermination;<sup>305</sup> or (7) denial of representation and participation in the government of the state.<sup>306</sup>

In order to satisfy the requirements of the various international instruments, the method by which self-determination is expressed must conform to the freely expressed will of the people.<sup>307</sup> For instance, exercising the right of self-determination led to Puerto Rico's association with the United States and the

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298. *See id.* at 138.

299. Nanda, *supra* note 193, at 446.

300. *See Declaration on Friendly Relations, supra* note 86, at 340.

301. Reference re: Secession of Quebec, *supra* note 108, at 442.

302. *Declaration on Friendly Relations, supra* note 86, at 340.

303. *See id.*

304. *See Declaration on Friendly Relations, supra* note 86, at 340.

305. UMOZURIKE, *supra* note 1, at 269.

306. *See Declaration on Friendly Relations, supra* note 86, at 340-43; *see also Vienna Declaration, supra* note 237, art. 1, ¶ 2; Reference re: Secession of Quebec, *supra* note 108, at 440-41.

307. UMOZURIKE, *supra* note 1, at 193.

Cook Islands' association with New Zealand.<sup>308</sup> Similarly, Greenland merged with Denmark through the exercise of self-determination.<sup>309</sup> This occurred after the will of the people was ascertained in accordance with the provisions of paragraph 4 of the Declaration and Principle VI of Resolution 1541.<sup>310</sup> Arguably, any attempt to merge colonies with a metropolitan state without ascertaining the wishes of the peoples is contrary to international law, the U.N. Charter,<sup>311</sup> and Article 56, paragraph 4 of the Declaration, which states:

[A]ll Members pledge themselves to take joint and separate action in corporation with the Organisation for the achievement of the purposes set forth in Article 55. The pledge to respect the principle of self-determination is in relation to all peoples under a state's jurisdiction, whether in mandated, trusteeship, colonial, or metropolitan territories.<sup>312</sup>

Creech Jones, a British representative speaking before the Economic and Social Council in 1956, observed that "[t]here were subject peoples within sovereign States, for whom the United Nations must care as it had for peoples under the control of imperial Powers."<sup>313</sup> In the United Nations "Belgium has consistently argued that the application of the principle to only colonial territories is unfair."<sup>314</sup> The principle of self-determination should apply to peoples within metropolitan states, "whose relations with the states concerned was essentially the same as that between European countries and their overseas territories."<sup>315</sup>

Therefore, self-determination is not just achieved by securing independence and emancipating peoples from alien colonial rule, but also by liberating peoples from tyranny and oppression.<sup>316</sup> Consequently, "there is no reason why any oppressed people

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.* at 85.

312. *Id.* at 188-89 (quoting *Declaration on Friendly Relations*, *supra* note 86, at 340-43).

313. *Id.* at 184 (quoting British representative Creech Jones, Address Before the U.N. Economic and Social Council (1956)).

314. OFUATEY-KODJOE, *supra* note 81, at 134.

315. *Id.*

316. Reference re: Secession of Quebec, *supra* note 108, at 385, ¶ 138.

should not enjoy this right to shake away the oppressor, be him from across the seas or from the same racial stock!"<sup>317</sup> All "oppressed peoples, whether under colonial or internal oppressive domination, are entitled to assert the right of self-determination."<sup>318</sup>

### *B. Exercising the Right of Self-Determination Through Secession*

Self-determination should be exercised through secession to assure a peoples' existence in realization of their human rights.<sup>319</sup> Secession is not the only mode of exercising the right of self-determination, but under certain circumstances, it may become the desired result. Peoples may choose to secede if there is a threat to their physical existence, such as genocide, or a grave violation of human rights.<sup>320</sup> Furthermore, states pledge to take action to achieve the purposes of the United Nations regarding self-determination,<sup>321</sup> and under the Declaration, states are enjoined from committing human rights violations.<sup>322</sup>

Moreover, a government that oppresses its peoples, violates their fundamental human rights, and commits genocide, cannot represent the whole population without discrimination. According to one commentator:

Wilson sought peace above all else. In his thinking, justice played a critical role in the preservation of peace: he believed that the subjugation of one distinct community by another was unjust, and thus, would inevitably lead to a threat to peace. Implicit in Wilson's approach lies a belief in the desirability of secession since it would create new states coterminous with national communities, despite their many problems.<sup>323</sup>

317. Okafor LL.M. Thesis, *supra* note 187, at 123.

318. *Id.* at 138.

319. See UMOZURIKE, *supra* note 1, at 92; see also M.G. Kaladharan, *supra* note 247, at 343 (stating: "Complete independence for a people would be unavoidable in situations involving denial of basic human rights and exploitation.").

320. Reference re: Secession of Quebec, *supra* note 108, at 440-41.

321. McCorquodale, *supra* note 147, at 19.

322. Hannum, *New Developments*, *supra* note 84, quoted in Williams, *Indigenous Peoples' Survival*, *supra* note 84, at 663 n.3.

323. BARTKUS, *supra* note 19, at 17.

### C. *The Principle of Territorial Integrity as a Defense to Secession*

If a government does not guarantee the safety and security of the lives and properties of its population, then that government has failed in its duties and forfeited the obedience of such peoples.<sup>324</sup> The government cannot invoke the principle of territorial integrity to prevent the peoples from opting out of the state.<sup>325</sup> It would be tantamount to a denial of the peoples' right to self-determination if those under an authoritarian government could not secede. Such peoples cannot reasonably expect to determine their political status, or pursue their economic, social, and cultural development under such circumstances.<sup>326</sup>

It appears that the principle of self-determination developed "within a framework of respect for the territorial integrity of existing states."<sup>327</sup> Almost all the international instruments that recognize the existence of a peoples' right to self-determination contain the caveat that exercise of the right should not constitute a threat to the territorial integrity of an existing state, provided the state in question is conducting itself in a manner that does not undermine the general principle of self-determination.<sup>328</sup>

The Declaration on Friendly Relations,<sup>329</sup> Vienna Declaration,<sup>330</sup> and Anniversary Declaration<sup>331</sup> all contain this caveat. In each of these sources, "immediately after affirming peoples' right to determine political, economic, and cultural issues,"<sup>332</sup> is the following statement:

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States, conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people

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324. *Id.* at 22.

325. *See id.* at 22.

326. CASSESE, *supra* note 79, at 286.

327. Reference re: Secession of Quebec, *supra* note 108, at 438.

328. *Id.*

329. *Declaration on Friendly Relations*, *supra* note 86, at 340–43.

330. *Vienna Declaration*, *supra* note 236, art. 1, ¶ 2.

331. *Anniversary Declaration*, *supra* note 241, at 3.

332. Reference re: Secession of Quebec, *supra* note 108, at 438.

belonging to the territory without distinction as to race, creed or colour.<sup>333</sup>

This requirement is not intended to preclude peoples from exercising their right to self-determination, but rather it is an attempt to reconcile the right of self-determination with the principle of territorial integrity. The principle of territorial integrity is contingent upon the state representing the whole population without discrimination. Consequently, if a people lack access to government, suffer attack on their physical existence, experience violations of their human rights, or endure oppression, they cannot be prevented from exercising their right of self-determination by a state's reliance on the principle of territorial integrity.<sup>334</sup>

The provision of the right of territorial integrity in Resolution 1514 is stated in terms that are more absolute. Paragraph 6 stipulates that "any attempt aimed at the partial or total disruption of national unity and territorial integrity of country is incompatible with the purposes and principles of the Charter of the United Nations."<sup>335</sup> The preparatory documents, however, demonstrate that paragraph 6 was intended to preclude the administering powers from disintegrating colonial territories before granting independence to the people.<sup>336</sup> It was not intended to limit the peoples' exercise of the right of self-determination.<sup>337</sup>

Neither the International Covenants nor the African Charter provide for protection of the principle of territorial integrity. Since the preamble in each of these documents reaffirms the principles stated in the U.N. Charter, however they arguably acknowledge the existence of the state's right to territorial integrity. Consequently, the principle of territorial integrity and the right to self-determination are compatible, to the extent that the government represents all peoples within the state.<sup>338</sup>

333. *Declaration on Friendly Relations*, *supra* note 86, at 340-43.

334. Reference re: *Secession of Quebec*, *supra* note 108, at 440-41.

335. Resolution 1514, *supra* note 110, at 66.

336. See, e.g., *Blay*, *supra* note 118, at 442.

337. *Id.*

338. Reference re: *Secession of Quebec*, *supra* note 108, at 439.

#### D. Biafra's Eligibility to Claim the Right of Self-Determination

Biafrans were an ethnically heterogeneous group.<sup>339</sup> There was not much difference, however, between the Ibo majority group and the non-Ibo minority.<sup>340</sup> The Willinck Commission, appointed by the British Government in 1958, studied the issue of minority tribes in Nigeria and noted, "the difference between the Ibo and non-Ibo minorities was sufficiently slight to be soon expunged by the growing nationalism."<sup>341</sup> The 1963 census shows that of an approximate population of fourteen million, Ibos comprised 64%; Efik and Ibibio 17%; Annang 5.5%; Ijaw and Ogoni 7.5%; Ekoi, Yalla, and Ukelle 3.4%; and other groups 2.6%.<sup>342</sup>

Long before the British exercised direct authority over the Northern and Southern protectorate in 1914, a clear boundary existed between the Eastern and Northern regions.<sup>343</sup> The peoples that inhabit the Eastern region have arguably occupied the territory since its inception.<sup>344</sup> They are easily identified by their various "traditional political structures," distinct culture, language and history.<sup>345</sup> Even before the government gained its independence in 1960, the Eastern region established its own internal self-government and maintained its own representation in London.<sup>346</sup>

Biafrans satisfied the criteria as "peoples" entitled to exercise the right of self-determination. Biafrans had a common history, a common territory or geographical location, and cultural, racial, or ethnic ties. Furthermore, Biafrans had a group consciousness that was distinct and manifested a sense of common destiny. They had a common commitment to protect themselves against extermination, prevent gross violation of their rights, and resist oppression and other forms of human rights abuses. The peoples

339. See, e.g., Nayar, *supra* note 3, at 326.

340. See, e.g., *id.*

341. *Id.*

342. Nixon, *supra* note 48, at 480; see also Nayar, *supra* note 3, at 325-26; Dr. T. O. Elias, *Nigeria: The Development of its Laws and Constitution* 1, 4 (1967), in 14 THE BRITISH COMMONWEALTH: THE DEVELOPMENT OF ITS LAWS AND CONSTITUTIONS (George W. Keeton, ed., 1967).

343. Nixon, *supra* note 48, at 480.

344. Elias, *supra* note 342, at 4.

345. Ezetah, *supra* note 166, at 814.

346. Nixon, *supra* note 48, at 481-82.



of the Eastern region of Biafra, therefore, qualify as the "self" for the purposes of self-determination.

[B]ut in case of the Eastern region this was not the case. Its lines, its boundaries, its areas of jurisdiction had long historic roots, which had in fact been the operative lines and operative jurisdiction throughout a period of conflict with the rest of the country. If any entity in Nigeria was recognised by others as appropriate entity to exercise self-determination, it was the region as then constituted.<sup>347</sup>

In sum, "the strongest piece of evidence supporting the Biafran's claim as a distinct group with an overwhelming desire for independence was their willingness to suffer almost three years of civil war, disease, and famine to achieve that independence."<sup>348</sup> The vexing question is whether Biafra's secession was a legitimate exercise of its right of self-determination under international law.

#### *E. The Right of Biafra to Secede Under International Law*

Denied human rights in other parts of the country, including the right to live, the Biafrans were entitled to secure their very existence if they could do so by secession.<sup>349</sup> Prior to their declaration of independence, Biafrans suffered great oppression and other forms of gross human rights abuses at the hands of the central government and peoples from other sections of the country.<sup>350</sup> The proclamation of Biafra described that "defenseless men, women, and children were shot down or hacked to death [and] some were burnt alive. Women and young girls were ravished with unprecedented bestiality; unborn children were torn out of the wombs of their mothers and killed."<sup>351</sup>

Over fifty thousand Biafrans lost their lives and over two million others became refugees as a consequence of these abuses. The federal government left the culprits unpunished, and the whole matter uninvestigated. Further, the federal government compounded Biafra's plight by imposing a blockade<sup>352</sup> restricting

347. *Id.*

348. L. C. BUCHEIT, SECESSION: THE LEGITIMACY OF SELF-DETERMINATION 174 (1978).

349. UMOZURIKE, *supra* note 1, at 266.

350. Nixon, *supra* note 48, at 476.

351. Ikoku, *supra* note 24, at 667-68.

352. UMOZURIKE, *supra* note 1, at 264-65.

all communication and other transactions with the Eastern region.<sup>353</sup> The government also refused to give the Eastern region its share of statutory revenue months before Biafra declared its independence.<sup>354</sup>

Consequently, when Biafra declared its independence, no Biafran had security of life or property in the country.<sup>355</sup> The duty of the federal government to secure lives and property, however, extended all over the country.<sup>356</sup> The government demonstrated that it lacked either the will or the power to enact and apply just and effective guarantees over the safety of Biafrans.<sup>357</sup>

Further, the government acted aggressively towards Biafrans by severing communications and stopping payment of statutory allocations.<sup>358</sup> As a result, the secession of Biafra is legally justified on the ground that the Biafrans experienced rejection by their own country and faced extermination. Under such conditions, the Biafrans could not have been “enjoying self-determination” as guaranteed in several international instruments.<sup>359</sup> The justification for the “extreme step” of secession “rests both on the denial of human rights and the dim prospects for [the Biafrans’] future development.”<sup>360</sup>

Human atrocities such as these clearly implicate the Biafrans’ right to exercise self-determination through secession. Furthermore, the majority of Biafrans supported the decision to secede.<sup>361</sup> Lastly, the government flagrantly failed to create conditions necessary to assure Biafrans an equitable position and safety within the federal government.<sup>362</sup>

As observed by the Supreme Court of Canada in, “the right of self-determination has developed largely as [a] human right.”<sup>363</sup> The Nigerian government had an obligation to promote and

353. ALEXIS HERACLIDES, *THE SELF-DETERMINATION OF MINORITIES IN INTERNATIONAL POLITICS* 85 (1991).

354. Ikoku, *supra* note 24, at 670.

355. *See, e.g.*, UMOZURIKE, *supra* note 1, at 264.

356. *Id.*

357. *See id.*

358. *Id.*

359. *Id.* at 269.

360. *Id.*

361. *See* BUCHHEIT, *supra* note 49, at 173.

362. *See* Nnoli, *supra* note 2, at 123.

363. Reference re: Secession of Quebec, *supra* note 108, at 437.

respect this right.<sup>364</sup> Therefore, the gross violations of the Biafrans' human rights provide a legal justification for Biafra's secession. The Nigerian government forfeited any legitimacy it had to oppose the secession by invoking the right of territorial integrity and sovereignty.<sup>365</sup> As noted by the Foreign Ministry of the defunct Republic of Biafra:

[W]hen the state ceases to stand for the honour, the protection and well-being of all its citizens, then it is no longer the instrument of those it rejected. In such a case, the people have a right to create another instrument for their protection, in other words, to create another state.<sup>366</sup>

The Nigerian government's failure to punish violators of Biafrans' rights encouraged the killing of army officers of the Eastern region on July 29, 1966,<sup>367</sup> and the massacres of Easterners in other parts of Nigeria in May, July, September, and October of 1966.<sup>368</sup> Similarly, the secession of Bangladesh from Pakistan was justified partly because of the Pakistani army's outrageous violations of the East Bengal peoples' human rights. Conversely, the lack of support for the unsuccessful secession attempt of Katanga from Congo might be explained in part by the lack of gross human right abuses committed by the Congolese government.

Biafra's declaration of independence is justified because it was the most plausible way of restoring peace in Nigeria "when dialogue and harmonious co-existence" were no longer possible.<sup>369</sup> Despite the violence, repression, and other acts of aggression directed against them, Biafra persisted in seeking a peaceful solution to the crisis. In contrast, the federal government was

364. See Resolution 1514, *supra* note 110, at 67; *Declaration on Friendly Relations*, *supra* note 86, at 340.

365. *Declaration on Friendly Relations*, *supra* note 86, at 67.

366. The Republic of Biafra Foreign Ministry, *Biafra—Why the O.A.U. Has Failed*, 2 N.Y.U. J. INT'L L. & POL. 398, 406 (1969) (quoting a Tanzanian Government official).

367. See HERACLIDES, *supra* note 353, at 85; BARTKUS, *supra* note 19, at 122; Nixon, *supra* note 48, at 475.

368. See BUCHHEIT, *supra* note 49, at 166.

369. Chancellor Helmut Kohl, Statement to German Parliament (Sept. 4, 1991), *quoted in* Payam Akhavan, *Self-Determination and the Disintegration of Yugoslavia: What Lessons for the International Community?*, in SELF-DETERMINATION: INTERNATIONAL PERSPECTIVES 240 (Donald Clark & Robert Williams eds., Macmillan Press Ltd. 1996) [hereinafter Chancellor Kohl Statement].

stubborn and refused to implement agreements that sought peaceful resolution of the conflicts.

Due to the continuing violence, separation from Nigeria was the best option for Biafra to restore peace and the only way of self-preservation. Former Head of State, Yakubu Gowon, reinforced the belief that harmonious co-existence was no longer possible and that separation was the best way to restore peace in Nigeria.<sup>370</sup> Indeed, the international community encourages and legitimizes the separation of states, where such separation would enhance peace, or where it is clear that the contending peoples can no longer harmoniously co-exist.<sup>371</sup> The appropriate conditions for secession, however, must exist.<sup>372</sup> "Separation as an ultimate goal may be preferred by the world community when it is more promising for the sustenance of enduring peace and order."<sup>373</sup> For instance, in the recent case of the former Yugoslavia, some countries legitimized the actions of the successor states because they were convinced that dialogue and harmonious co-existence were no longer possible.<sup>374</sup>

Prior to Biafra's declaration of independence, the peoples of the Eastern region had already exhausted all available options in the exercise of the right of self-determination short of outright independence. The federal government, however, repudiated all such political arrangements.<sup>375</sup> Specifically, the federal government precipitated Biafra's secession when it repudiated the 1967 Aburi accord.<sup>376</sup>

Biafra's historical claim to independence constitutes a legitimate basis for secession. Before the unification of the Eastern region with Nigeria, East Nigerians existed as self-governing, independent entities.<sup>377</sup> Even after the amalgamation, the British authorities continued to treat the Eastern region as a *de*

370. BUCHHEIT, *supra* note 49, at 166.

371. See MICHLA POMERANCE, *SELF-DETERMINATION IN LAW AND PRACTICE: THE NEW DOCTRINE IN THE UNITED NATIONS* 28 (1982).

372. *Id.*

373. M. Rafiqul Islam, *Secessionist Self-Determination: Some Lessons from Katanga, Biafra and Bangladesh*, 22 J. PEACE RES. 211, 219 (1985).

374. Chancellor Kohl Statement, *supra* note 369, at 240.

375. See Onyeonoro S. Kamanu, *Secession and the Right of Self-Determination: An O.A.U. Dilemma*, 12 J. MOD. AFR. STUD. 355, 361 (1974).

376. *Id.*

377. OLUWOLE IDOWU ODUMOSU, *THE NIGERIAN CONSTITUTION: HISTORY AND DEVELOPMENT* 5 (1963).

*facto* separate colonial entity by governing the region under a different administrative structure.<sup>378</sup> As recently as 1957, the Eastern region had an internal self-government with direct representation in London,<sup>379</sup> and sent its own delegates to various constitutional conferences.<sup>380</sup>

Prior to gaining independence, all of Nigeria treated the Eastern region as a unit and did not discriminate between the various peoples living within the region.<sup>381</sup> Surprisingly, before the British granted Nigeria independence, the peoples of the Eastern region were denied the opportunity to vote for independence as a separate colonial entity. They never had the opportunity to decide whether they wanted to be part of an independent Nigeria, or whether they wanted to express their political position in some other way. In contrast, the peoples of Northern and Southern Cameroon had the opportunity to decide to which country they wished to belong before their incorporation into Nigeria and Cameroon, respectively.<sup>382</sup> The incorporation of the Eastern region peoples into an independent Nigeria without obtaining their consent constituted a violation of Chapter XI of the U.N. Charter and Principle IX(b) of Resolution 1541:

[I]ntegration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage.<sup>383</sup>

The colonizing authorities denied the peoples of the Eastern region the benefit of this provision, although the region was a distinct entity before the advent of colonialism. The Eastern region was a separate and self-governing entity until 1957. Consequently, the peoples of the Eastern region did not exercise their right of self-determination when Nigeria became independent in 1960. Under international law, they could still assert their right to self-determination by secession as specified in Principle 4 of Resolution 1541 and Paragraph 4 of the Declaration.

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378. Tamuno, *supra* note 4, at 565.

379. Nixon, *supra* note 48, at 481.

380. *Id.*

381. *Id.*

382. Elias, *supra* note 342, at 8-9.

383. Resolution 1514, *supra* note 110, at 30.

Biafra's secession from Nigeria, based on the principle of self-determination, was legally justified under the following factors: there were gross violations of Biafran's human rights; Biafra had a historical claim to independence; it was the most plausible way of restoring peace in Nigeria; and the Nigerian government discriminated against the Biafran population.

Biafra's secession received the overwhelming support of the people of the Eastern region. Biafra's independence was declared based on the mandate of the representatives of the peoples—the Consultative Assembly of the Eastern region. The Declaration did not supplant the will of the people. Moreover, Biafra's independence accorded with international law.

The fact that Biafra was undermined in its efforts did not render secession illegal under international law. Rather, it demonstrates the extent to which the self-interests of the superpower nations could undermine a peoples' genuine attempt to exercise their right of self-determination through secession. Both the Organization of African Unity and the United Nations willingly played as pawns on behalf of the interests of the superpowers.

## VI. CONCLUSION

Self-determination was conceived as vehicle for the preservation of peace and the promotion of human rights. Unfortunately, the concept has been characterized as disruptive because of the principle's mismanagement. Various international instruments and state practice demonstrate that, under the proper conditions, international law recognizes secession as a legitimate mode of exercising the right to self-determination.

A statement by the leader of the defunct Biafra Republic, Chukwuemeka Odumegwu Ojukwu, attempts to place Biafra's struggle in context. He asserts, "For a time there were endless wars in Europe, incessant conflicts until the old European empires were dismantled, until the Balkans were Balkanized—then came peace . . . Europe found peace through Balkanization, why not Africa through Biafranization?"<sup>384</sup>

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384. HERACLIDES, *supra* note 353, at 91.

