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THE BIAFRAN SELF-DETERMINATION QUESTION: CHALLENGES AND PROSPECTS*

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ABSTRACT

The Nigerian civil war and Biafra's failed attempt to secede from Nigeria raised a series of questions about the nature and scope of the right to self-determination in formerly colonised states. The question which this paper focuses on is whether the right to self-determination should always amount to a right to secession. Through a critical examination of Biafran agitations for statehood during the Nigerian civil war and in recent times, this paper makes the case for a framework within which self-determination claims can be addressed within existing territorial arrangements. The paper argues that in the case of Biafra, forms of internal self-determination such as autonomy may cater for the agitations of the people of Biafra better than secession. Hence, international lawyers, and the international community as whole, should give more attention to forms of internal self-determination which better serves the interests of indigenous and minority peoples.

I. INTRODUCTION

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Since the nineteenth century, with the Peace of Westphalia as a genealogical tool to justify the dominance of legal positivism in international law, statehood has been the foundation of the international legal order.[1] States are the primary, and were at some point regarded as the only, subjects of international law.[2] Hence, statehood is considered one of the highest attainments in international law and politics. The emergence of so many new states represent one of the major political developments of the twentieth century. However, the rise of secessionist movements and the creation of new states after the Cold War has reinforced prolonged disagreements amongst international lawyers on whether the right to self-determination should always amount to a right to secession. These debates have become even more relevant to recent processes of state creation in Africa. The challenges faced by new states such as South Sudan and Eritrea have raised questions about the emergence and viability of new states in Africa.[3]

State creation in international law is not merely a social or political process, but a process regulated by legal codes, customs and practices.[4] In modern international law, the most

[1] See Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law,* Cambridge University Press (2007) at 43; Ian Brownlie, *Principles of International Law*, Clarendon Press (4th edn., 1990) at 553.

[2] James Crawford, *The Creation of States in International Law*, Cambridge University Press (2nd edn., 2006) at ix; Ian Brownlie, *Principles of Public International Law*, Oxford University Press (8th edn., 2008) at 57.

[3] Obehi S. Okojie, 'Between Secession and Federalism: The Independence of South Sudan and the Need for a Reconsidered Nigeria', 26 Pac McGeorge Global Bus & Dev LJ (2013) 415-474, at 415; Babatunde Fagbayibo, 'South Sudan, *Uti Possidetis* Rule and the Future of Statehood in Africa', (25 April 2012) AfricLaw <https://africlaw.com/2012/04/26/south-sudan-uti-possidetis-rule-and-the-future-of-statehood-in-africa/> accessed 21 October 2021.

[4] See Hans Kelsen, *Principles of International Law*, Revised and Edited by Robert W. Tucker, Holt, Rinehart and Winston Inc., (2nd edn., 1966) 307; Cornelia Navari, 'Introduction: The State as a Contested Concept in

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widely accepted criteria for the creation of states is laid down in Article 1 of the 1933 Montevideo Convention on Rights and Duties of States which provides that "The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states." Hence, a state exists in international law "when a people is settled in a territory under its own sovereign government."[5] Apart from the four conditions of statehood listed in the Montevideo Convention, other conditions such as self-determination, recognition, independence and sovereignty are also relevant for the attainment of statehood in international law.[6] Since the independence-era, the right to self-determination has become one of the main basis for agitations for statehood.

The right of peoples to self-determination is a core principle of international law provided for in the Charter of the United Nations (UN Charter), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and accepted as a rule of *jus cogens.*[7] However, the application of the principle has given rise to a number of issues. One important issue on which international lawyers disagree is on the scope and limits of the right to self-determination. Under what circumstances are indigenous/minority peoples entitled to self-determination and how may they exercise that right? Can indigenous/minority peoples exercise the right to self-determination without seceding? In this paper, I address these questions through a critical

International Relations' in Cornelia Navari (ed.), *The Condition of States: A Study in International Political Theory*, Open University Press (1991) at 1.

[5] H. Lauterpacht (ed.), *Oppenheim's International Law*, Longmans, (8th edn., Vol. 1, 1955) at 120.

[6] Malcolm Shaw, *International Law*, Cambridge University Press (6th edn., 2008) at 198; H. Kelsen, supra note 4, at 202.

[7] See *East Timor (Portugal v Australia)*, Judgment, 1995 ICJ 90, at para. 29.

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examination of Biafran agitations for statehood both during the period of the Nigerian civil war and in more recent times. I argue that the Biafran people can exercise their right to self-determination through forms of international self-determination such as autonomy. Such an approach is important because secession is not the best solution to Biafra's problems and the grant of autonomy within Nigeria would more adequately address the root causes of Biafran agitations and protect the interests of the various minority groups within Biafra.

It is important to clarify that my intention in this paper is not to proffer an understanding of self-determination that prioritises the sovereignty and territorial integrity of states over the rights of people to self-determination. Rather, my aim is to point out the limitations of focusing on secession as the basic form of self-determination and to draw attention to different ways in which the conflicts between individual, group and state rights can be reconciled. Hence, the conception of self-determination adopted in this paper is one that is broad enough to accommodate various approaches for addressing the needs of indigenous people, especially in previously colonised states. Such an understanding of self-determination enables the paper to take into account the implications of self-determination for both the secessionist state and the minorities within it.

Secession was the form of self-determination exercised by colonised people during the decolonisation process. Following the decolonisation logic, secession is considered the basic form of self-determination. However, there are two aspects of self-determination: the internal and external aspects. The external aspect essentially refers to secession while the internal aspect refers to a broad range of democratic and representative methods by which a group can pursue its political, economic, social and cultural development within the framework of an existing

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state.[8] Over the past century, international legal scholars have produced a steady stream of work on self-determination. However, in various respects, self-determination has been discussed within narrow limits. The dominant discourse on self-determination tends to concentrate either on external self-determination generally, or on internal self-determination in Europe. Thereby taking for granted the prospects of internal self-determination in non-European states. Although internal self-determination is provided for in common Article 1 of the ICCPR and ICESCR, both state practice and the writings of scholars indicate that it is seen as having no distinctive role. Hence, it is difficult to find consistent international actions against states for violation of their citizens' rights to internal self-determination.[9]

Even third world critiques of international law (TWAIL) seem to have overlooked the potentials of internal self-determination in third world countries. For instance, in response to some of the secessionist agitations in Africa, TWAIL scholar Makau wa Mutua argue for the use of external self-determination to disassemble and reconfigure African states.[10] Although

[8] Karen Knop, *Diversity and Self-Determination in International Law*, Cambridge University Press (2008) at 16. See also, *Reference re Secession Quebec* [1998] 2 SCR 217 at 83; Patrick Thornberry, 'The Principle of Self-determination' in Colin Warbrick and Vaughan Lowe (eds.), *The United Nations and the Principles of International Law: Essays in Memory of Michael Akehurst*, Routledge (1994) 175-203, at 175.

[9] Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal,* Cambridge University Press (1995) at 103.

[10] Makau wa Mutua, 'Why Redraw the Map of Africa: A Moral and Legal Inquiry', 16 Michigan Journal of International Law (1995) 1113-1176, at 1113. See also M. wa Mutua, 'Book Review: Putting Humpty Dumpty Back Together Again - The Dilemmas of the Past-Colonial African State', 21 Brooklyn Journal of International Law (1995) 505-536; I. A. Gamban with M. Uhomoibl, 'Self-Determination and Nation Building in Post-Cold War Africa: Problems and Prospects' in W. Danspeckgruber with A. Watts (eds.), *Self-Determination and Self-Administration: A Sourcebook*, Lynne Rienner Publishers (1997) at 273; O. C. Okafor, *Re-Defining Legitimate Statehood: International Law and State Fragmentation in Africa*, Martinus Nijhoff, (2000) at 92-125.

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external self-determination can be used to address some of the agitations in Africa, external self-determination should not be the only focus as such focus often forces self-determination-seeking groups in Africa to choose between two options – secession or forced unity. As Thornberry points out, "It is possible to read self-determination as mandating neither secession nor the artificial homogeneity of states but as a potential synthesis of respect and mutual concern between societies and their component groups."[11] Internal forms of self-determination can enable self-determination-seeking groups to alter existing state structures and determine the terms of their relationship within the parent state. Hence, internal self-determination offers more opportunities than a forced unity and can be just as valuable as external self-determination.

Using Biafra as a case study, this paper shows some of the importance of addressing self-determination claims through non-secessionist arrangements. Biafra was a self-governing region in the 'old' Nigeria and existed as a secessionist state (the Republic of Biafra) from 30 May 1967 to 12 January 1970.[12] The creation of the new state led to the Nigerian civil war which lasted for two-and-a-half years. At the end of the war, Biafra was re-joined to the rest of Nigeria. However, since the late 1990s, some Biafrans have continued the struggle for independence and revival of the defunct state. These Biafran agitations have raised questions about the rights of the indigenous people of Biafra to self-determination, the alleged unity of

[11] P. Thonberry, supra note 8, at 194.

[12] J. Crawford, supra note 2, at 406; Samuel Fury Childs Daly, *A History of the Republic of Biafra: Law, Crime and the Nigerian Civil War*, Cambridge University Press (2020) at 2; Amy McKenna 'Biafra' (*Britannica,* 4 March 2015) <https://www.britannica.com/place/Biafra> accessed 11 October 2021.

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Nigeria, and the possibility of renegotiating Biafra's relationship with the Federal Government of Nigeria.[13]

Since Biafran secessionist agitations are often hinged on the right to self-determination in international law, this paper begins with an overview of the external and internal aspects of the right to self-determination. Considering that the theory and practice of self-determination has been dominated by adherence to state sovereignty and territorial integrity, I consider internal self-determination as a balance between self-determination and territorial integrity and argue that internal self-determination is, perhaps, the variation of self-determination best suited to address the needs of indigenous people while maintaining the territorial integrity of states. I also identify autonomy as the form of internal self-determination that can address some of the challenges facing the Nigerian state and the people of Biafra. In terms of its potential, self-determination can liberate as well as disintegrate.[14] Hence, addressing secessionist agitations through internal forms of self-determination enables the empowerment of indigenous people whilst avoiding the complex and dividing issues associated with secession.

The second section of the paper focuses on the events that led to the Nigerian civil war and the creation of the defunct Republic of Biafra. In this section, I examine how factors such as corruption and tribalism, promoted by the British colonial administration, became the basis

[13] See Sunday Bontur Lugard, Matthias Zechariah and Tobias Musa Ngufuwan, 'Self-Determination as a Right of the Marginalised in Nigeria: A Mirage or Reality?', 1(1) Journal of International Human Rights Law (2015) 127-158, at 135; Theodore Okonkwo and Kato Gogo Kingston, 'An Assessment of the Rights of Indigenous People of Biafra to Self-Determination Under International Law', 6(1) Sacha Journal of Human Rights (2016) 99-110; C. O. Omeire, E. U. Omeire, P. C. Nwaoma, A. B. Otunko, and P. A. Onoh, 'The Biafra Question: A Socio-Cultural Examination of the Igbo Nation of Southeastern Nigeria', 1(4) International Journal of Social Sciences, Humanities and Education (2017) 320-328.

[14] P. Thonberry, supra note 8, at 176.

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for the separatist agitations of Biafra and other self-determination-seeking groups in Nigeria. I also examine attempts to resolve the Biafran crisis through non-secessionists arrangements. In the third section of the paper, I further examine Biafran secessionist agitations by focusing on recent demands for self-determination. I consider some factors which might hinder recent Biafran agitations for statehood, especially the inability to satisfy the criteria for statehood in international law. In light of these challenges and in order to protect the rights of minorities within Biafra, I conclude that autonomy, as an exercise of the right to self-determination, can be used to resolve the conflicts between Nigeria and the people of Biafra. Such grant of autonomy can offer the various minority groups in Nigeria a broad measure of self-government and can, thus, be as effective as secession.

II. THE RIGHT TO SELF-DETERMINATION IN INTERNATIONAL LAW

Simply put, self-determination is the right of all people to govern themselves.[15] According to Connor, it means that "any people, simply because it considers itself to be a separate national group, is uniquely and exclusively qualified to determine its own political status, including, should it desire, the right to its own state."[16] Hence, the principle of self-determination is important for the self-preservation and determination of the destinies of indigenous and minority peoples.[17] Initially a political principle, self-determination has now become one of the most generally recognised principles of international law. However, the

[15] P. Thonberry, supra note 8, at 175.

[16] Walker Connor, 'The Political Significance of Ethnonationalism Within Western Europe', in Abdul Said and Luiz R. Simmons (eds.), *Ethnicity in an International Context*, Transaction Books (1976) at 11-12.

[17] Mary Ellen Turpel, 'Indigenous People's Rights of Political Participation and Self-Determination: Recent International Legal Developments and the Continuing Struggle for Recognition', 25(3) Cornell International Law Journal (1992) 579-602, at 593; *Advisory Opinion on Western Sahara*, International Court of Justice Reports 1975, at para 3, per Judge Dillard.

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ideological origins of the principle render it a multifaceted and extremely controversial principle. Both historically and politically, the principle has been seen as a threat to the status quo and considered to be too subversive. Jurisprudentially, it questions some foundational principles of international law. For instance, international law is primarily concerned about the interests of states, whereas self-determination protects the interests of peoples and nations.[18] Hence, the principle of self-determination challenges the primacy and legitimacy of international law.[19]

The origin of the concept of self-determination can be traced back to the 1776 American Declaration of Independence which declared that governments derived "their just powers from the consent of the governed" and that "whenever any form of Government becomes destructive of these ends, it is the right of the people to alter or to abolish it."[20] The leaders of the French Revolution further developed this conception of self-determination through their doctrine of popular sovereignty which required that government should be based on the will of the people, not on that of the monarch.[21] This conception of self-determination was supported by Lenin and Wilson, with the intention of expelling state-centrism in international law and politics.[22]

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[18] Rhona K.M. Smith, *Text and Materials on International Human Rights*, Routledge (3rd edn., 2013) at 451.

[19] Dominic McGoldrick, 'The Principle of Non-Intervention: Human rights', in C. Warbrick and V. Lowe supra note 8, 85-119 at 96.

[20] Ian Brownlie, 'The Rights of Peoples in Modern International Law', in James Crawford (ed.), *The Rights of Peoples*, Clarendon Press (1988) 1-16, at 4; Helen Ghebrewebet, *Identifying Units of Statehood and Determining International Boundaries: A Revised Look at the Doctrine of Uti Possidetis and the Principle of Self-Determination*, Peter Lang, (2005) at 99.

[21] A. Rigo Sureda, *The Evolution of the Right to Self-Determination: A Study of United Nations Practice*, Sijthoff-Leiden, (1973) at 17.

[22] Antonio Cassese, *Self-Determination of People: A Legal Reappraisal*, Cambridge University Press (1995) at 315.

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However, when self-determination first stepped into the international arena, international law gave it a limited and state-based meaning which prioritised the sovereignty and territorial integrity of states over the aspirations of peoples.[23]

When the UN Charter was drawn up, the principle of self-determination was recognised in Articles 1(2) and 55 of the Charter. Both articles speak of the "equal rights and self-determination of people." The reference to equal rights supposes that self-determination is provided for in the context of friendly relations among 'equal' states and that self-determination would be set aside "when its fulfilment would give rise to tension and conflict among states."[24] Hence, Higgins argues that the right to self-determination enunciated in the Charter was not, originally, a right of dependent people to independence, but a right of independent states to non-intervention.[25] In this sense, self-determination is a collective right belonging to all the people of the state as a whole, not individuals or sub-state groups.[26]

In addition, the provisions of the Charter which provide for non-self-governing territories and the trusteeship system (that is, Chapters XI and XII respectively) avoid the use of the phrase 'self-determination' and make no reference to the duty to provide self-determination to dependent people on the basis of independence. Instead, Chapter XI (Article 73(b)) refers to the duty to "develop self-government, to take due account of the political aspirations of the people, and to assist them in the progressive development of their free

[23] Richard Falk, 'The Rights of People (In Particular Indigenous People)' in J. Crawford, supra note 20, 17-38 at 24-27.

[24] Antonio Cassese, 'The Helsinki Declaration and Self-Determination', in T. Buergenthal and J. Hall (eds.), *Human Rights, International Law and the Helsinki Accord,* Allanheld (1977) at 84.

[25] Rosalyn Higgins, *Problems and Process: International Law and How We Use It*, Oxford University Press (1994), at 112.

[26] ibid

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political institutions." Although independence was encouraged in Chapter XII, it was not the only possible outcome of the Trusteeship system and it was not considered as a duty owed by the colonial powers.[27]

Although the UN Charter refers to self-determination in a very cautious manner, the General Assembly took a moral stance on the issue in the 1950s. With the increase in the number of colonised nations that had already gained independence, it was agreed that dependent people should be allowed to obtain independence if they chose.[28] This led to the adoption of three important UN Resolutions[29] which were interpreted by the International Court of Justice (ICJ) as meaning that the principle of self-determination, as enshrined in the UN Charter, was applicable to all non-self-governing territories.[30] However, these Resolutions emphasise colonialism as the main target of self-determination resulting in the grant of

[27] R. Higgins, supra note 25, at 111

[28] Ibid, at 113; A. Cassese, supra note 9, at 71.

[29] On 14 December 1960, the UN General Assembly passed Resolution 1514 (XV), 'The Declaration on Granting Independence to Colonial Countries and People' and Resolution 1541 (XV) which included in its Annex the 'Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for in Article 73(e) of the Charter of the United Nations'. These two resolutions where subsequently supplemented by Resolution 2625 (XXV) (Declaration on Friendly Relations, passed in 1970).

[30] See *The Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970),* Advisory Opinion, ICJ Reports (1971) 16 at 31; *Western Sahara* Advisory Opinion, ICJ Reports (1995) 12 at para. 162; the *Burkina Faso v Mali* case, ICJ Reports (1986) 554 at paras 25-26; and in the Arbitral Award in the *Guinea Bissau v Senegal* case (1990) RGDIP 240.

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independence.[31] As a result, states argued that the Declaration on Granting of Independence to Colonial Countries and People was confined to colonial situations and expired after the decolonisation era.[32]

Since the 1960s, states have been reluctant to accept that nations, groups or minorities may be granted a right to self-determination resulting in secession. This position has been restated time and again, for instance, in relation to the attempted secession of Katanga in 1961, Biafra in 1967-1970, and even the successful secession of Bangladesh in 1971.[33] Hence, secession outside the colonial context is considered to be permissible only in exceptional circumstances (e.g. Bangladesh and Kosovo) or by mutual consent of the parent and seceding state (e.g. Eritrea and the Baltic).[34] Formerly colonised countries have also insisted on restricting the grant of secession to exceptional circumstances. This is the basis of the Bangladeshi, Indian and Indonesian declarations to the ICCPR and ICESCR. With reference to Common Article 1 of both covenants, the three states declared that the right to self-determination only applies to people under colonial rule, foreign domination, and similar

[31] See for instance, General Assembly Resolution 1514 (XV), The Declaration on the Granting of Independence to Colonial Countries and People (1960) Paras. 2 and 5, text in Ian Brownlie, *Basic Documents on Human Rights*, Clarendon Press (2nd edn., 1981) at 28

[32] See P. Thonberry, supra note 8, at 175; A. Cassese, supra note 9, at 88; and Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights*, University of Pennsylvania Press (1996) at 41.

[33] M. Rafiqul Islam, 'Secessionist Self-Determination: Lessons from Katanga, Biafra and Bangladesh', 22(3) Journal of Peace Research (1985) 211-221.

[34] Milena Sterio, *The Right to Self-Determination Under International Law: "Selfistans", Secession, and the Rule of the Great Powers*, Routledge (2013) at 15; James Crawford, 'State Practice and International Law in Relation to Secession', 69(1) British Yearbook of International Law (1999) 85-117, at 115.

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situations; and, in line with the principle of territorial integrity, would not apply to people within sovereign independent states.[35]

However, Common Article 1 of the ICCPR and ICESCR as well as the 1970 Declaration on the Principles of International Law associate self-determination with human rights and provide for a continuing right to self-determination even in independent states. The Helsinki Final Act of 1975 and Article 20 of the African Charter on Human and People' Rights of 1981 also presuppose that self-determination is a continuing principle that goes beyond the colonial context.[36] Nevertheless, state practice indicates that there remains diverse views on the implications and application of the right to self-determination.[37]

One of the implications of self-determination which has been a bone of contention is that it seems to undermine the principles of state sovereignty and territorial integrity. The debates have often centred on Resolutions 1514 (XV) (on the Granting of Independence to Colonial People) and 2625 (XXV) (on the Declaration of Principles on Friendly Relations) which provide for self-determination but also caution against anything being interpreted to violate the territorial integrity of independent states. Hence, states have not accepted secession as a principle of international law, though they may be compelled to accept secession as a *sui*

[35] See United Nations Treaty Collection, 'Multilateral Treaties Deposited with the Secretary-General', Chapter IV: Human Rights, Status of Treaties, <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> accessed 21 October 2021.

[36] See also M. Shaw, supra note 6, at 291; G. Arrangio-Ruiz, 'Human Rights and Non-Intervention in the Helsinki Final Act', IV Recueil des Cours, (1977) 195-331, at 224-231.

[37] P. Thornberry, supra note 8, at 175; Rupert Emerson, *Self-Determination Revisited in the Era of Decolonisation*, Harvard University Press (1964) at 63; Michla Pomerance, *Self-Determination in Law and Practice*, Martinus Nijhoff (1982) at 14-23.

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generis solution to an exceptional circumstance.[38] Scholars such as Shaw, Knop, Berman, Koskenniemi, Cassese and Anghie argue that such restrictive interpretation of the right to self-determination reflects the biases and forms of imperialism that still remains in international law and leads to the production of complex meanings in particular cases.[39]

Though it may be seen as being opposed to the principle of territorial integrity, as some scholars have argued,[40] the right to self-determination was intended to be exercised without violating the territorial unity of independent states. A constructive reading of Resolutions 1514 (XV) and 2625 (XXV) reveal not just a caution against territorial disintegration, but also the need for a balance to be struck between the principles of self-determination and territorial integrity. Hence, these resolutions allow for the possibility of an amicable relationship whereby

[38] P. Thornberry, supra note 8, at 190.

[39] M. Shaw, supra note 6, at 25; A. Cassese, supra note 9, at 348; K. Knop, supra note 8, at 91; A. Anghie, supra note 1, at 28-30, 190-193 and 310-311; Anthony Anghie and Sturgess Garry (eds), *Legal Visions of the 21st Century: Essays in Honour of Judge Christopher Weeramantry*, Kluwer Law International (1998) at 399; Nathaniel Berman, 'Sovereignty in Abeyance: Self-Determination in International Law', 7 Wilconsin International Law Journal (1988) 51-103, at 93-94; Martti Koskenniemi, 'National Self-Determination Today: Problems of Legal Theory and Practice', 43 International and Comparative Law Quarterly (1994) 241-269, at 264-269.

[40] See for instance, R. Higgins, supra note 25, at 125; Rosalyn Higgins, 'Self-Determination and Secession', in Julie Dahlitz (ed.), *Secession and International Law: Conflict Avoidance – Regional Appraisals*, T. M. C. Asser Press (2003) 21-38 at 35; Thomas M. Franck, 'Post-Modern Tribalism and the Right to Secession' in Catherine Brolmann, Rene Lefeber, and Marjoleine Zieck (eds.), *Peoples and Minorities in International Law*, Martinus Nijhoff (1993) 3-27; Thomas M. Franck, *The Power of Legitimacy Among Nations*, Oxford University Press (1990) at 153; Thomas M. Franck, *Fairness in the International Legal and Institutional System: General Course on Public International Law*, Nijhoff-Leiden (1993) at 13, 127-149; Thomas M. Franck, 'The Emerging Right to Democratic Governance', 86(1) American Journal of International Law (1992) 46-91.

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self-determination is to be harnessed to, and not the enemy of, territorial integrity. This balance can result in secession or internal forms of self-determination. For instance, Bangladesh and Kosovo exemplify circumstances of abuse and misuse of territorial integrity warranting the grant of secession.[41]

As the Canadian Supreme Court explained in its determination of Quebec's secessionist claims, secession as an exercise of the right to self-determination is allowed exceptionally where a people "have been denied the ability to exert internally their right to self-determination" such as "in situations of former colonies; where a people is oppressed as for example under foreign occupation; or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development."[42] Hence, in the court's view, self-determination is to be exercised ordinarily through internal forms of self-determination.[43] This view is supported by the 'safeguard clause' of the 1970 Declaration on Friendly Relations which provides that a state may have to forfeit its right to territorial integrity if it fails to conduct itself "in compliance with the principle of equal rights and self-determination of people…[being] thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour." Hence, the principle of territorial

[41] M. R. Islam, supra note 33, at 210; Marc Weller, *Contested Statehood: Kosovo's Struggle for Independence*, Oxford University Press (2009) 270 and 272; Morag Goodwin, 'From Province to Protectorate to State: Sovereignty Lost, Sovereignty Gained?', in James Summers (ed.), *Kosovo: A Precedent? – The Declaration of Independence, the Advisory Opinion and Implications for Statehood, Self-Determination and Minority Rights*, Martinus Nijhoff (2011) 87-108, at 91; Snezana Trifunovska, 'The Impact of the 'Kosovo Precedent' on Self-Determination Struggles', in J. Summers, ibid, 375-393, at 393; Miodrag A. Javanovic, 'Is Kosovo and Metohija Indeed a 'Unique Case'?', in J. Summers, ibid, 343-374, at 372-374.

[42] *Reference re Secession Quebec* [1998] 2 SCR 217 at 138.

[43] ibid.

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integrity is compatible with internal forms of self-determination, and the question of secession arises where the exercise of internal self-determination within the framework of the state has failed or has not been provided for.[44]

Since secession may not be permitted where the exercise of internal self-determination is still possible, it behoves on self-determination-seeking groups to begin their claims to self-determination through internal forms of self-determination. Self-determination has never simply meant independence.[45] The ICJ in the *Western Sahara Advisory Opinion*, emphasised that the 'essential feature' of self-determination is free choice.[46] That is, it confers a right, not to a particular outcome, but to any outcome freely expressed by the people.[47] It means that the people can freely choose their political, economic, social and cultural status through the various forms of self-determination provided in international law. Similarly, Resolution 1541 (XV) provides that the right to self-determination can be exercised 'through independence, free association, integration with an independent state, or emergence into any other political status freely determined by a people.'

Although self-determination was used during the decolonisation era to grant independence to dependent people, it was never restricted to a choice of independence. The people could choose not to secede, but to redefine their relationship with the state whilst

[44] See K. Knop, supra note 8, at 7; A. Cassese, supra note 9, at 119; M. R. Islam, supra note 33, at 210; Alexis Heraclides, 'Secession, Self-Determination and Non-Intervention: In Quest of a Normative Symbiosis', 45 Journal of International Affairs (1992) 399-420, at 410-411.

[45] R. Higgins, supra note 25, at 111.

[46] *Western Sahara Advisory Opinion*, supra note 30, at para. 57.

[47] R. Higgins, supra note 25, at 119; A. Cassese, supra note 9, at 89; Catriona Drew, 'The Meaning of Self-Determination: "The Stealing of the Sahara" Redux?' in Karin Arts and Pedro Pinto Leite (eds.) *International Law and the Question of Western Sahara*, International Platform of Jurists for East Timor (2007) 15-122, at 90.

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remaining a part of the state. Some people chose to be joined with another state (e.g. the integration of the Northern Cameroons into Nigeria, and the Southern Cameroons into Cameroon), and some chose to remain in a constitutional relationship with their parent state (e.g. Gibraltar vis-à-vis the UK, and Puerto Rico vis-à-vis the US). Hence, the exercise of the right to self-determination need not always result in secession.

Since the fundamental purpose of self-determination is the democratisation of government, the right to self-determination can be exercised through forms of internal self-determination such as autonomy, confederation, asymmetric federalism, unitarism, regionalism, enhanced self-government, association, union with confirmation of territorial unity, minority rights or other forms of political relations acceptable to the people.[48] These forms of self-determination enable the search for structures and modalities of accommodation, provide for the right to have a representative and democratic government, and may "supply some of the democratic deficit of majority-rule self-determination."[49] Internal self-determination can give minorities effective control over matters of local concern, and, in this sense, can be as effective as secession.[50] It does not only provide minority groups with an opportunity to speak for themselves, but also gives them the opportunity to shape what is being said about them.[51] In

[48] See *Katangese People' Congress v Zaire,* Comm. No. 75195 (1995); U. O. Umozurike, *Introduction to International Law*, Spectrum (1999) 52-53; Marc Weller, 'Settling Self-Determination Conflicts: Recent Developments', 20(1) European Journal of International Law (2009) 111-165, at 115; Jonathan Berg, 'The Right to Self-Determination', 5(3) Public Affairs Quarterly (1991) 211-225, at 213.

[49] P. Thornberry, supra note 8, at 191. See also K. Knop, supra note 8, at 7; A. Cassese, supra note 9, at 102.

[50] H. Hannum, supra note 32, at 468-469.

[51] K. Knop, supra note 8, at 4.

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addition, with forms of self-determination such as autonomy, the interests of subordinate minorities within the predominant minority would also be protected.[52]

The need to protect the interests of both predominant and subordinate minority groups can be demonstrated through the case of the component parts of the Soviet Union and Yugoslavia who claimed independence as separate states. Those constituting the minorities within the old states, who claimed that as minorities they were entitled to self-determination leading to independence, are now the majority within the new states. In such new states, the tendency is that the new majority, in an effort to assert its dominance, may take actions that adversely affects the interests of the new minority.[53] As Donald Horowitz points out, "secession or partition makes ethnic relations worse" resulting in "lower-level ethnic tyranny."[54] South Sudan is a case in point here. In South Sudan, disagreements among rival groups within the nationalist movements (who had fought on the same side as 'a people' against Sudan) led to another war and the loss of thousands of lives.[55] In such cases, autonomy, within the old state may have provided protection for the interests of both the predominant and subordinate minorities. This is one of the reasons why, as I argue in the next two sections, autonomy would be more suited to the Biafran people than secession.

[52] R. Higgins, supra note 25, at 125.

[53] Steven R. Ratner, *The Thin Justice of International Law: A Moral Reckoning of the Law of Nations*, Oxford University Press (2015) at 153.

[54] Donald L. Horowitz, 'Self-Determination: Politics, Philosophy and Law', in Ian Shapriro and Will Kymlicka (eds.), *Ethnicity and Group Rights*, New York University Press (1997) at 421, 433 and 437.

[55] S.B. Lugard, M. Z. Zechariah and T. M. Ngufuwan, supra note 13, at 158; Luke Anthony Patey, 'State Rules: Oil Companies and Armed Conflict in Sudan', 28(5) Third World Quarterly (2007) 997-1016, at 997-1001.

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Autonomy has been defined as "the right to be different and to be left alone; to preserve, protect, and promote values which are beyond the legitimate reach of the rest of society."[56] Autonomy is sometimes classified as a principle of international law.[57] It is said to have crystallised into customary international law and "at least territorial minorities have rights of autonomy within the existing structures of states."[58] Although no international treaty provides for the right to autonomy,[59] its value is increasingly being recognised in soft laws such as the CSCE Copenhagen Document of 29 June 1990.

Autonomy protects the interests of groups and minorities located in specific territorial areas by allowing them to be granted the power to set up regional, state or local government structures endowed with legislative and enforcement powers and with authority to take decisions on political, economic, cultural and religious matters. Autonomy entails a broad measure of self-government and, as a result, states have been reluctant to allow a right to autonomy due, in part, to fears that a right to autonomy under international law may lead to undue interference in the domestic affairs of sovereign states.[60] However, autonomy can function in a manner that would not undermine the sovereignty of states. For instance, the central government may reserve control over certain matters (e.g. foreign affairs and defence)

[56] H. Hannum, supra note 32, at 4.

[57] Hans-Joachim Heintze, 'On The Legal Understanding of Autonomy', in Markku Suksi (ed.), *Autonomy: Applications and Implications*, Kluwer Law International (1998) 7-32, at 13.

[58] Douglas Sanders, 'Is Autonomy a Principle of International Law?', 55 (1-2) Nordic Journal of International Law (1986) 17-21, at 17.

[59] H. Heintze, supra note 57, at 13.

[60] A. Cassese, supra note 9, at 102; Kristen Henrard, 'Minority Protection Mechanisms as Means to Prevent and Settle Sovereignty Disputes', in Miodrag Jovanovic and Kristin Henrard (eds.), *Sovereignty and Diversity*, Eleven International Publishing (2008) 103-130, at 116.

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and retain certain supervisory powers to ensure that the autonomous governments do not act ultra vires.[61]

Autonomy goes beyond mere regional and local self-governance; it also addresses specific issues of importance to both the groups and the state concerned. Examples of successful use of autonomy include Spain's grant of autonomy to its regions in the post-Franco period. The grant of autonomy led to the abatement of separatist sentiments in the 'Basque Country' which had witnessed the greatest turmoil.[62] Other forms of realistic and successful autonomy include the grant of autonomy to South Tyrol (pursuant to the 1946 Agreement between Italy and Austria), Greenland (by Denmark), Puerto Rico (by the US), Hong Kong (by China) and the aboriginal people of Australia. These arrangements vary from case to case and highlight the wide range of formulas that can be used to work out solutions to the problems in each state. Autonomy applies on a pragmatic, case-by-case basis, thereby taking into account the unique characteristics and interests of each group. Considering the diverse nature of Nigeria's population, autonomy may help to abate the agitations in the various parts of Nigeria.

It must be noted that autonomy will not be appropriate in every situation. For instance, as Cassese points out, autonomy will not be suitable where the minorities are scattered all over the state's territory or where the number of minorities are so much that autonomy will not be workable.[63] Autonomy will also not be suitable where racial discrimination is so intense that self-government or autonomy will be unattainable and unworkable, for instance, as in the case

[61] H. Hannum, supra note 32, at 123, 453-478; D. Sanders, supra note 58, at 17; Louis B. Sohn, 'The Concept of Autonomy in International Law and the Practice of the United Nations', 15(2) Israel Law Review (1980) 180-190.

[62] A. Cassese, supra note 9, at 355.

[63] ibid 363.

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of Southern Rhodesia and South Africa. However, this does not mean that there cannot be other ways of dealing with the problem without resorting to secession. For instance, in the case of South Africa, the solution was for the oppressed minority to be given free access to the central government. However, none of these cases apply to the people of Biafra, hence autonomy will be suitable. As discussed in the next section, both during the colonial era and during the Nigerian civil war, autonomy was recognised a suitable form of association capable of addressing the tribal and religious sentiments underlying the various issues in Nigeria.

III. BIAFRA'S SECESSION AND THE NIGERIAN CIVIL WAR

According to Ojukwu (the then Military Governor of the Eastern Region of Nigeria and subsequently, Head of State of the Republic of Biafra), "Biafra was created out of difficulties, but it has a beginning which is far deeper that the difficulties of 1966."[64] The foundation of the crisis that led to the creation of Biafra were laid by the colonial masters through their indirect rule system which gave rise to political power groups goaded by sectional rather than national interests. Nigeria was formed out of an "ethnic mix of people…who had little understanding of their individual diversity."[65] Following British rule the differences between these people were accentuated so much that the structure left behind by the British seemed unable to contain their differences. Hence, to properly understand the Biafran struggle for independence, it is important to briefly recount the history of Nigeria before the civil war.

In 1914, as an act of administrative convenience, Lord Lugard amalgamated the protectorates of Northern and Southern Nigeria as well as the colony of Lagos to form the

[64] Chukwuemeka Odumegwu Ojukwu, *Biafra: Random Thoughts of C. Odumegwu Ojukwu, General of the People's Army*, Harper & Row (Vol. II, 1969) at 175.

[65] Michael Gould, *The Biafran War: The Struggle for Modern Nigeria*, I. B. Tauris (2012) at 35.

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single colony of Nigeria.[66] In the previous administrative structure, the Southern protectorate had an Eastern and a Western part. The predominant group in the Western part were the Yoruba people, while the Igbo people were the predominant group in the Eastern part.[67] The Northern protectorate consisted of the Middle-belt and the North proper. The Middle-belt was inhabited by non-Hausa people who were vassals of the Hausa/Fulani Empire, while the North proper was inhabited by the Hausa, the Fulani, and the Kanuri.[68] Northern Nigeria occupied three fifths of the land area of all Nigeria and had fifty per cent of the population.[69] This became the basis for the Northern domination which was a major factor in the crisis that bewitched Nigeria's peace and unity.

During the colonial era, the British adopted the indirect rule system that worked well in the North but failed in the South, especially in the Eastern half of the South inhabited by the Igbo people.[70] It was difficult to impose measures on the Easterners who were traditionally opposed to dictatorship and insisted on being consulted in everything that concerns them.[71] The British also took advantage of existing ethnic and religious tensions to exploit and govern the Nigerian colony, thereby turning ethnic differences into political differences that helped

[66] See Fredrick Forsyth, *The Biafra Story* (Penguin Books, 1969) at 13; Sir F. D. Lugard, 'Nigeria: Amalgamation of Northern and Southern Nigeria, and Administration, 1912-1919' (Colonial Office, Africa (West) No. 1070, October 1919) 7-8.

[67] F. Forsyth, supra note 66, at 13.

[68] ibid at 14.

[69] ibid.

[70] ibid at 16.

[71] ibid.

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pave way for future conflicts.[72] The most heated conflicts were between the Northerners, who were predominantly Muslim and conservative, and the Easterners, who were predominantly Christian and progressive.[73] In the sixty-three years from Lugard to independence, the religious, social, and ethnic differences between the North and the South became steadily wider. Although the possibility of these conflicts were foreseen by many Colonial Service Officials in Nigeria,[74] Britain's colonial policy remained traditional and orthodox until 1945 when it began to make serious attempts towards a formula for post-independence.[75]

As the prospect of statehood approached, Nigeria went through a series of constitutional developments which revealed and heightened some of the ethnic and religious tensions that have consistently plagued the Nigerian state. Between 1944 and 1945, the Governor Sir Arthur Richards called for local opinion about constitutional reform. The North made it clear that it did not want anything to do with the South unless the principle of separate regional development will be enshrined in the new constitution and the North will have about 50 percent of the seats in the legislature.[76] Sir Richards accepted these terms, and in 1947 Nigeria became a three-region federal state. Although federalism was used primarily to reflect and accommodate the economic, religious and ethnic differences that existed within the vast territory that was to become Nigeria, the federal arrangements were also made to accommodate

[72] P.C. Lloyd, 'The Ethnic Background to the Nigerian Crisis', in S.K. Panter-Brick (ed,) *Nigerian Politics and Military Rule*, The Athlone Press (1970) 1-34, at 4.

[73] Geoffrey Birch and Dominic St. George, *Biafra: The Case for Independence*, Britain-Biafra Association (1968) at 2.

[74] G. Birch and D. George, supra note 73, at 2.

[75] ibid 18.

[76] F. Forsyth, supra note 66, at 18; Tekena N. Tamuno, 'Separatist Agitations in Nigeria Since 1914', 8(4) The Journal of Modern African Studies (1970) 563-584, at 567-568.

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the Northern protectorate.[77] The biased constitutional arrangement led to occasional unrests and disaffection among the people from other parts of Nigeria. After Richards came Sir John Macpherson who introduced a new constitution that also gave the North 50 percent representation at the central government. Consequently, Northern domination became an inbuilt feature of Nigerian politics.[78]

The last decade before independence saw a steadily growing dislike of Easterners by Northerners. There had been violent attacks unleashed on Easterners in Jos in 1945 and in Kano in 1953.[79] During the pre-independence 1959 elections, Southern candidates in the North were intimidated in their campaigns.[80] However, the elections gave Nigeria a coalition government and on 1 October 1960 Nigeria became independent. Nigeria adopted a parliamentary system of government which

> "proved to be unsuitable to the existing ethnic group structure, incomprehensible even to its local practitioners, in-apposite to African civilisation and impracticable in an artificially created nation where group rivalries, far from being expunged by the colonial power, had been exacerbated on occasion as a useful expedient to indirect rule."[81]

Regrettably, by the time Nigeria gained independence, the basic differences between the North and the South had been exacerbated and the three regions still had largely divergent hopes and

[77] Willie Henderson, 'Reality and Illusion in the Acquisition of Statehood' in Cornelia Navari (ed.), *The Condition of States: A Study in International Political Theory*, Open University Press (1991) 19-43, at 22.

[78] F. Forsyth, supra note 66, at 19.

[79] *January 15: Before and After: Nigerian Crisis 1966* (Vol. 7, Government Printer, Enugu, 1966) 2.

[80] F. Forsyth, supra note 66, at 23.

[81] ibid, at 24-25.

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aspirations which brought the unity of Nigeria under threat. Hence, as Schwarz observes, "Nigeria became independent with a federal structure which, within two years, was shaken by an emergency and, within five, had broken down in disorder, to be finally overthrown by two military coups and a civil war."[82]

At independence, Dr. Nnamdi Azikiwe (who had been Prime Minister of the East for five years) became the Governor-General of Nigeria, and Alhaji Sir Tafawa Balewa (leader of the Northern Party) became the first Prime Minister.[83] This government which was built on a weak alliance between the North and the East was sometimes directed against the West.[84] Hence, the West resented the North-East alliance which soon broke down and was replaced by a North-West alliance. Despite independence, tensions continued to exist within Nigeria due to competing aspirations and interests amongst the various ethnic groups. The power struggle that was to follow, also followed the lines of regionalism as laid down in the 1947 Richards Constitution.

During the first election after independence in 1964, Sir Ahmadu Bello, in establishing an alliance with the West, announced bluntly that "the Ibos have never been true friends of the North and never will be."[85] Dr. Azikiwe (President of the federation since Nigeria became a Republic in 1963) appealed for a free and fair election, warning against the dangers of tribal discrimination and the use of such racist pitches against the alleged Igbo domination.[86]

[82] Walter Schwarz, *Nigeria*, Pall Mall Press (1968) 86.

[83] F. Forsyth, supra note 66, at 19.

[84] David Hunt, 'Diplomatic Aspects of the Nigerian Civil War', 3(1) Diplomacy and Statecraft (1992) 5-22, at 7.

[85] Cited by F. Forsyth, supra note 66, at 29.

[86] ibid.

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However, his warning was not heeded, and the election eventually led to chaos throughout the federation which even the military struggled to deal with.

Eventually, on the night of 14 January 1966, in the North, the West and the federal capital of Lagos, a coup led by Major Kaduna Nzeogwu (an easterner) was carried out by some young military officers.[87] In a few hours, on 15 January 1966, Sir Ahmadu Bello (the Sardauna of Sokoto and leader of the Northern People's Congress), Alhaji Sir Tafawa Balewa (the Prime Minister of the federation), and Chief Samuel Akintola (the Opposition Leader) were assassinated.[88] There was no coup in the East or in Enugu, the Eastern capital, and only Northern and Western political and military leaders were killed during the coup. Eastern leaders such as Lt. Col. Arthur Chinyelu Unegbu (Quartermaster General of the Nigerian Army), Dr. Michael Iheonukara Okpara (Premier of the Eastern region) and Chief Dennis Chukude Osadebey (Premier of the Mid-Western region) were spared during the coup.[89] Following the coup and the incidents that happened immediately after the coup, General Johnson Thomas Umunakwe Aguiyi-Ironsi became head of the Federal Military Government.[90] The targeted killing of northerners and westerners during the coup and the rise of General Aguiyi-Ironsi (an Easterner) to power were the basis for the proposition that the 15 January coup was an all-Igbo affair aimed at bringing about Igbo domination in Nigeria.[91]

[87] C. O. Omeire, supra note 13, at 321.

[88] F. Forsyth, supra note 66, at 32.

[89] Idowu Johnson and Azeez Olaniyan, 'The Politics of Renewed Quest for a Biafra Republic in Nigeria', 33(4) Defense & Security Analysis (2017) 320-332, at 323-324.

[90] F. Forsyth, supra note 66, at 40.

[91] ibid, at 37.

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General Ironsi's advent to power marked the beginning of the Second Republic and put an end to the warring in the Western region, the violence in Tiv-land, and the insurrection by Isaac Boro in the Niger Delta area.[92] Ironsi appointed Military Governors to all four regions: Lt. Col. Hassan Katsina for the North; Lt. Col. Fajuyi for the West; Lt. Col. Ejoor for the Midwest; and Lt. Col. Chukwuemeka Odumegwu Ojukwu for the East.[93] From its earliest days, Ironsi's regime called for a unitary form of government which was welcomed by the South.[94] Unification was particularly popular among the Igbo who were the most travelled, the best qualified of the major ethnic groups and amply confident of their ability to compete on equal grounds with anybody. For them regionalism had always meant treatment as second-class citizens in the North.[95] However, for the North, regionalism as entailed in the Richards Constitution protected their society from incursions by the more vigorous, industrial and Western-educated Southerners.[96] Thus, what was for the South a glorious opportunity was for the North a deadly threat.

Following investigations into the various aspects of the proposed unification, the North became unsettled by the proposals. Not too long after, another coup followed. On 29 July 1966, some junior army officers of Northern origin carried out another coup which took the life of General Ironsi and brought into power Ironsi's chief of staff, Lt. Col. Yakubu Gowon (a northerner).[97] The second coup was followed by large scale killing of Igbo people resident in

[92] ibid, at 43.

[93] F. Forsyth, supra note 66, at 43.

[94] ibid, at 45.

[95] ibid.

[96] ibid.

[97] ibid, at 50.

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the North.[98] In accordance with the decades-old policy of the North, the purpose of the 29 July coup was to either split the country and establish 'an independent Republic of the North', or to re-establish the dominance of the North over the rest of Nigeria.[99] The latter prevailed and by 1 August 1966 Gowon assumed the position of Supreme Commander of the Armed Forces and Head of the National Military Government of Nigeria.[100] In the East, however, Col. Ojukwu refuted Gowon's right to both titles, contested the legality of the coup and maintained that the Eastern Region would remain a self-governing entity.[101]

Gowon tried to unite the country by centralising its administration. He proposed a unitary form of government and expressly ruled out a complete break-up. He suggested four possibilities: (1) A Federal system with a strong central government; (2) A Federal system with a weak central government; (3) A Confederation; and (4) An entirely new arrangement which may be peculiar to Nigeria.[102] With the exception of the Midwest who reserved their position on most of the issues, all the regional delegations initially agreed on a loose confederal association of states.[103] However, the North later decided that they wanted an effective central government, which the west, Midwest and Lagos agreed with. But the East maintained that only a loose form of association can work in Nigeria.[104]

By the Good Offices of General Ankrah, the Ghanaian Head of State, a conference was held in Aburi, Ghana on 4th and 5th January 1967, which seemed to produce a solution. At Aburi,

[98] C. O. Omeire et al, supra note 13, at 321.

[99] G. Birch and D. George, supra note 73, at 9.

[100] F. Forsyth, supra note 66, at 59.

[101] C. O. Ojukwu, supra note 64, at 120.

[102] G. Birch and D. George, supra note 73, at 13.

[103] ibid, at 14.

[104] ibid.

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the Nigerian military leaders reached a compromise to secure the life of the federation by allowing the four regions to be autonomous within the federal state.[105] However, Gowon reneged on the agreement reached at the Aburi conference and instead of creating autonomous regions, in May 1967, the federal government unilaterally divided Nigeria into twelve states.[106] In response, Ojukwu proclaimed secession and re-named the Eastern Region as the new Republic of Biafra.[107] Following his proclamation, Ojukwu began to 'self-administer' the Eastern Region and formed a civilian Biafran government based on the Declaration of Sovereignty of 30 May 1967.[108]

Following Ojukwu's Declaration of Sovereignty, the federal government declared war on the Republic of Biafra in order to re-join the Eastern Region with the rest of Nigeria. However, the enthusiasm that charged the war was symbolised in Ojukwu's broadcast of 30th June 1967, six days before the start of the civil war:

> "Our soldiers are ready… If Gowon should make the mistake of crossing into our territory, even by a few yards, we shall immediately go into open, outright, and total war against Nigeria… This will be an opportunity for us to do honour to the memory of the thousands of our kith and kin savagely murdered last year by avenging their deaths."[109]

[105] M. Gould, supra note 65, at 3.

[106] H. G. Hanbury, *Biafra: A Challenge to the Conscience of Britain*, Britain-Biafra Association (1968) at 4.

[107] G. Birch and D. George, supra note 73, at 20.

[108] C. O. Ojukwu, supra note 64, at 121.

[109] See Ntieyong U. Akpan, *The Struggle for Secession, 1966-1970: A Personal Account of the Nigerian Civil War*, Frank Cass (1972) at xiv.

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This broadcast reveals the nature of the political and ethnic biases that fuelled the war. Both Ojukwu and the Nigerian government were so invigorated in their biases and aspirations that they failed to foresee the consequences of their actions. As Akpan points out, neither Ojukwu nor the federal government had thought that the war would assume the magnitude and proportion which it did.[110] Although the Igbo itched to go to war with the Northerners because of the massacres of 1966, most Igbo people did not want a secession.[111] Those who wanted secession were a few individuals with private and personal ambitions, and a few others who had come home embittered by the atrocities committed against them and their kith and kin.[112] Even Ojukwu had initially advocated for the unity of Nigeria instead of secession.[113]

On the other hand, there are many reasons why the federal government was bent on maintaining Nigeria's unity and preventing Biafra's secession. Among them is the fact that the Eastern Region was an essential part of Nigeria – the important wharves of Port-Harcourt were within its region and Biafrans were vital to the smooth and continuous development of the rest of the country.[114] Also, the federal government feared that the successful secession of Biafra may be followed by several other secessions.

Since the amalgamation of Southern and Northern Nigeria in 1914, Nigeria has been plagued by threats of secession by various majority and minority ethnic groups. As Tamuno points out, these secessionists agitations increased during the early post-independence

[110] N. U. Akpan, supra note 109, at xiv.

[111] ibid, at xv.

[112] ibid

[113] T. N. Tamuno, supra note 76, at 579-580.

[114] Rex Niven, *The War of Nigerian Unity 1967-1970*, Evan Brothers (Nigeria Publishers) Ltd. (1970) at 5.

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period.[115] For instance, in 1965, some Tiv leaders in the Middle-Beltern part of the Northern Region had agitated to secede from Nigeria due to marginalization of the Tiv people and maladministration of the Tiv area from the colonial era to the period following independence.[116] Biafran secession fuelled more of such secessionist claims. For instance, following Biafra's declaration of independence, the Midwestern region, under the leadership of Major A. Okonkwo, declared the Republic of Benin on 20 September 1967.[117] However, Benin fell to the Nigerian army soon after. Isaac Boro, in the South, had also intended to form a separate Delta Region state, hence during the war he fought for the Nigerian government instead of Biafra.[118] This fear of secessions haunts Nigeria till today.

IV. CURRENT BIAFRAN SECESSIONIST AGITATIONS AND THE GRANT OF AUTONOMY AS AN EXERCISE OF THE RIGHT TO SELF-DETERMINATION

Four decades after Biafra's failed secession, the foundations of Nigeria's unity and statehood have been challenged by secessionist groups such as the Movement for the Actualisation of the Sovereign State of Biafra (MASSOP), the Indigenous People of Biafra (IPOB), Ohanaeze Ndigbo, the Yoruba Liberation Command (YOLICOM), the Movement for the Emancipation of the Niger Delta (MEND), and the Movement for the Survival of the Ogoni People (MOSOP). These groups seek the secession of various ethnic groups in Nigeria. However, the focus of this paper is on MASSOP, IPOB and Ohanaeze Ndigbo which are the most prominent Igbo secessionist groups, particularly interested in the actualisation of a Biafran sovereign state.

[115] T. N. Tamuno, supra note 76.

[116] ibid, at 575-576.

[117] C. O. Ojukwu, supra note 64, at 209.

[118] M. Gould, supra note 65, at 214.

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Ohanaeze Ndigbo is a pan-Igbo socio-cultural group which in recent times, has voiced numerous complainants and agitations on behalf of the Igbo people. Whilst Ohanaeze Ndigbo supports the claim of Biafrans to self-determination. it also advocates for the dominance of the Igbo people in Nigeria.[119] MASSOP is also a pan-Igbo group that has carried on the Biafran struggle for independence.[120] It was founded by Ralph Uwazuruike in 1999.[121] The struggle for the actualisation of the defunct Republic of Biafra has also been taken up by Nnamdi Kanu, leader of IPOB and director of Radio Biafra. IPOB's activities include the organisation of rallies/protests and the use of Radio Biafra to mobilise support for Biafra's secession.[122] The secessionist agitations of IPOB took a new turn in October 2015 following the arrest of Nnamdi Kanu on charges of treasonable felony.[123] Various protests and marches were organised for the release of the IPOB leader, some of which led to bloody exchanges between Nigerian security forces and Biafran supporters.[124] Kanu is now being tried on charges of treason and instigation of violence.

[119] Gilbert Chukwu Aro and Kelechi Johnmary Ani, 'A Historical Review of Igbo Nationalism in the Nigerian Political Space', 6(2&3) Journal of African Union Studies (2017) 47-77, at 55.

[120] ibid; Moses Metumara Duruji, 'Resurgent Ethno-Nationalism and the Renewed Demand for Biafra in South-East Nigeria', 14(4) National Identities (2012) 329-350, at 333.

[121] Uwazuruike was arrested in 2005 on charges of treason but was released on bail in 2011. See Ike Okonta, ''Biafra of the Mind': MASSOB and the Mobilization of History', 16(2-3) Journal of Genocide Research (2014) 355-378, at 355.

[122] S. B. Lugard, M. Z. Zechariah and T. M. Ngufuwan, supra note 13, at 135.

[123] G. C. Aro and K. J. Ani, supra note 119, at 58-59.

[124] See Nonso Robert Attoh, 'Biafran Self-Determination and Radio Biafra: Legal Issues Arising' (*Premium Times*, November 17 2015) <http://opinion.premiumtimesng.com/2015/11/15/biafran-self-determination-and-radio-biafra-legal-issues-arising-2-by-nonso-robert-attoh/> accessed 23 October 2021; Focus, 'Biafra: Now a Reality' <http://www.focus.co.uk/Biafra--Now-A-Reality/biafra--now-a-reality.html> accessed 23 October

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The main arguments for the recent Biafran struggle for secession are: economic and political marginalization; lack of developmental projects in Biafra; security problems, especially the killing of Easterners in Northern Nigeria; and the fact that Biafra was an existing autonomous nation before the arrival of the British in Africa.[125] Underlying these issues are ethnic tensions between the North and the East which has carried on since the Nigerian civil war. Both the crisis which led to the Nigerian civil war and the current issues which are the basis of recent Biafran agitations are the result of ethnic and religious tensions. Whilst it may seem like secession might address the economic and political issues which Biafrans agitate against, secession in itself may not be able to address the ethnic and religious differences which underlie these issues. This is because, although the most prominent tensions have been between

2021; Anayo Okoli and Chinedu Adonu, 'IPOB Faults Police Report, Says 21 Members Killed, 41 Arrested' (*Vanguard*, 23 August 2020) <https://www.vanguardngr.com/2020/08/ipob-faults-police-report-says-21-members-killed-47-arrested/> accessed 14 October 2021; Haleem Olatunji, 'Killings Triple in in the South-East After IPOB Launched ESN – Is This an Insurgency?' (*The Cable*, 7 April 2021) <https://www.thecable.ng/killings-triple-in-the-south-east-after-ipob-launched-esn-is-this-an-insurgency> accessed 14 October 2021; Joseph Jibueze and Ogochukwu Anioke 'Timeline of Attacks on Policemen, Stations in Southeast' (*The Nation*, 20 April 2021) <https://thenationonlineng.net/timeline-of-attacks-on-policemen-stations-in-southeast/> accessed 14 October 2021; Nkasi Wodu, 'Nnamdi Kanu's Trial Turns Up Pressure on Nigerian Government' (*Council on Foreign Relations*, 28 July 2021) <https://www.cfr.org/blog/nnamdi-kanus-trial-turns-pressure-nigerian-government> accessed 14 October 2021.

[125] Government of Indigenous People of Biafra, *The Policy Statements and Orders,* Bilie Human Rights Initiative, (2014) at 7; M. M. Duruji, Supra note 120, at 330-332; I. Okonta, supra note 121, at 355-356; S. B. Lugard, M. Z. Zechariah and T. M. Ngufuwan, supra note 13, at 135; G. C. Aro and K. J. Ani, supra note 119, at 55; I. Johnson and A. Olaniyan, supra note 89; Stephanie Busari and Sebastian Shukla, 'The Nigerian Separatist Movement Being Powered From a Suburban London Home' (*CNN*, 25 September 2021) <https://edition.cnn.com/2021/09/25/africa/nigeria-separatists-biafra-cmd-intl/index.html> accessed 14 October 2021.

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the majority ethnic groups in Nigeria, within these ethnic groups also exist minority groups which are often marginalised and oppressed. Hence, whilst secession may address the issues facing the majority ethnic groups, it may not address the issues of the minority groups. As a result, the same issue of tribalism and marginalisation may resurface in the secessionist state.

The grant of autonomy, on the hand, may be more effective in ensuring that the majority and minority ethnic groups in Nigeria have a sufficient measure of self-government based on which they can pursue their own economic, social and cultural development. In this sense, autonomy can address not just the secessionist sentiments in Nigeria but also the root causes of such sentiments. It would also protect the interests of minority groups who are often marginalised. Moreover, an autonomist arrangement would be more easily applied to the various ethnic/minority groups in Nigeria, as opposed to secession which can only be available to a few groups.

As scholars such as Lugard, Zechariah and Ngufwan have argued, the ability of Biafrans to exercise the right to secession based on their recent agitations is questionable because the issues which they agitate against are not peculiar to Biafra, but also affect other parts of Nigeria.[126] For instance, other regions in Nigeria existed as autonomous nations before the arrival of the British and were also forced into the union. Moreover, as Tamuno notes, "even if Nigeria could be regarded as a British creation, so was 'Biafra', which included Ibos, Efik, Ibibio, Ijo, and Ekoi, who before the advent of British rule had had different political destinies."[127] Just as the Igbo people were victims of colonialism, so also were all the other ethnic groups in Nigeria. However, during the civil war the agitations of the minority groups in Biafra, some of which were in support of the Nigerian federal government, were overlooked

[126] See S. B. Lugard, M. Z. Zechariah and T. M. Ngufuwan, supra note 13, at 127.

[127] T. N. Tamuno, supra note 76, at 581.

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by the Biafran government.[128] Tamuno observes that the vulnerable position of these minority groups was one of the greatest impediments to Biafran solidarity during the war.[129]

Biafrans are also not the sole or primary victims of the recent security problems in Northern Nigeria. Northerners actually suffer the most from the incidents that occur in the North. For instance, the over 200 Chibok school girls who were kidnapped in 2014 by the Boko Haram insurgents were mostly Northerners.[130] The Boko Haram insurgents have often targeted their attacks at Northerners who they think have accepted Western ideologies and thereby become insensitive to the core values of Islam.[131] Their primary victims have not been Southerners. These attacks differ from the attacks in Jos in 1945 and in Kano in 1953 which were primarily and specifically targeted at Igbo people.

In addition, the problem of economic and political marginalisation does not affect only Biafrans, it affects all the thirty-six states in Nigeria. Claude E. Welch Jr., observes that in Nigeria, "Ethnic dominance exists within individual states, and many smaller groups are disaffected, mainly because of their unresolved concerns about resources and power."[132] Political marginalisation in Nigeria is partly caused by the failure of successive governments to encourage genuine power sharing, and this has sparked dangerous rivalries between the

[128] M. R. Islam, supra note 33, at 214-215.

[129] T. N. Tamuno, supra note 76, at 581.

[130] See Bim Adewunmi, Monica Mark and Jason Burke, 'Nigeria's Mass Kidnapping: The Vital Questions Answered' *The Guardian* (London, 7 May 2014) <https://www.theguardian.com/world/2014/may/07/nigeria-boko-haram-mass-kidnapping-vital-questions> accessed 14 October 2021.

[131] S. B. Lugard, M. Z. Zechariah and T. M. Ngufuwan, supra note 13, at 140.

[132] Claude E. Welch Jr., 'The Ogoni and Self-Determination: Increasing Violence in Nigeria', 33(4) The Journal of Modern African Studies (1995) 635-650, 635.

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federal government and the thirty-six states of the federation.[133] Economic marginalisation is also caused by the centralised nature of revenue generation and allocation among the three tiers of government.[134]

The issue of revenue allocation has sparked tensions between the federal government and the oil producing states in the Niger Delta area since the early 1970s.[135] In 1998, the Izon Youth Council, an Ijaw militia group in the Niger Delta area, proclaimed the Kaiama Declaration, calling for self-determination and demanding an end to oil exploitation activities.[136] This declaration resulted in tensions between the federal government and the Ijaw ethnic militias. The federal government has not been able to avail the grievances of the Niger Deltans despite setting up agencies and programs to carry out various developmental projects in the area.[137] If the problems which Biafrans agitate against also affects other groups in Nigeria, then a solution should not be provided for Biafrans alone, but for all the states and regions affected.

[133] O. S. Okoji, supra note 3, at 423.

[134] S. B. Lugard, M. Z. Zechariah and T. M. Ngufuwan, supra note 13, at 136.

[135] See John Boye Ejobowah, 'Who Owns the Oil? The Politics of Ethnicity in the Niger Delta of Nigeria', 47(1) Africa Today (2000) 29-47, at 33; Edward Okechukwu Okeke, 'The South-South and the National Conference of 2014', 4(1) International Journal of Arts and Humanities (2015) 98-110, at 99.

[136] See Abraham Nabhon Thomas, 'Beyond the Platitude of Rehabilitation, Reconstruction and Reconciliation in Nigeria: Revolutionary Pressures in the Niger Delta', 12(1) Journal of Sustainable Development in Africa (2010) 54-71, at 59-61.

[137] Examples include, the Niger Delta Development Board (NDDB), the Oil Mineral Area Producing Commission (OMPADEC), the Niger Delta Development Commission (NDDC). See S. B. Lugard, M. Z. Zechariah and T. M. Ngufuwan, supra note 13, at 137.

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Another reason why autonomy should be considered rather than secession is that some Biafrans acknowledge that their agitations can be resolved through non-secessionist arrangements.[138] Hence, there are notable contradictions in the strategies adopted by pan-Igbo groups and elites in the resolution of the issues affecting the Igbo people. As Aro and Ani have noted, whilst groups such as MASSOB and IPOB insist on the secession of Biafra, other pan-Igbo groups such as the Igbo Youth Movement, World Igbo Congress and Pan Ndi Igbo Forum advocate for a united Nigeria in which the Igbo have the right to rule.[139] These different pan-Igbo agendas show that Igbo nationalism is expressed in different forms and that the Igbo people are not united on the issue of secession.[140] Hence, the extent to which secession caters for the interest of the Igbo people as a group is questionable.

Also questionable is the extent to which Igbo secessionist groups can satisfy the criteria for statehood set out in Article 1 of the Montevideo Convention – that is, a permanent population, a defined territory, a government, and the capacity to enter into relations with other states. Since statehood essentially revolves around territorial effectiveness, the existence of a permanent population and a defined territory is naturally required.[141] International law requires each state to have a particular territorial base upon which the operations of the state will take place.[142] This criterion is essential because one of the purposes of international law is to regulate the exercise of sovereign power over a territory.[143] This is reflected in the principle of

[138] G. C. Aro and K. J. Ani, supra note 119, at 55.

[139] G. C. Aro and K. J. Ani, supra note 119, at 55.

[140] See I. Johnson and A. Olaniyan, supra note 89, at 330; Innocent Chiluwa, 'A Nation Divided Against Itself: Biafra and the Conflicting Online Protest Discourses', 12(4) Discourse and Communication (2018) 357-381.

[141] M. Shaw, supra note 6, at 199.

[142] ibid.

[143] R.Y. Jennings, *The Acquisition of Territory in International Law*, Manchester University Press (1963) at 2.

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territorial integrity and the prohibition on the use of force. Hence, 'The firm confirmation of its territory furnishes the state with the recognised setting for its sovereign powers.'[144] The state is not just a political unit but also a territorial unit. Therefore, it is not possible to have a state in international law without a defined territory.[145]

Currently, it is unclear how the population of Biafra is constituted and how its territory is defined. The Igbo were the majority ethnic group in the defunct state of Biafra and were mostly involved in the tensions that led to the civil war. However, other ethnic groups also existed in Biafra including the Ibibio-Efik (made up of the people of Uyo, Eket, Annang, Itu, etc.), the Ogoja (made up of the people of Ekoi, Akunakuna, Boki, etc.) and the Ijaw (made up of the people of Okirika, Ibani, Kalabari, Nembe, etc.).[146] Some of these ethnic groups supported the Nigerian federal government and did not identify with Biafra during the civil war.[147] During the recent Biafran agitations for secession, some minority ethnic groups in the region have also distanced themselves from the Biafran cause. For instance, the Ikwerre people who live in the Niger Delta region have insisted that they are not Igbo and are not part of the Biafran struggle.[148] Hence, it has now become difficult to clearly identify the population and

[144] Charles de Visscher, *Theory and Reality in Public International Law*, Princeton University Press (English translation by Percy Ellwood Corbett, 1957) at 197.

[145] H. Lauterpacht, supra note 5, at 451

[146] Government of the Republic of Biafra, *Introducing the Republic of Biafra*, Britain-Biafra Association (1967) at 18.

[147] T. N. Tamuno, supra note 76, at 581; M. R. Islam, supra note 33, at 214-215; Samuel Fury Childs Daly, 'A Nation on Paper: Making a State in the Republic of Biafra', 62(4) Comparative Studies in Society and History (2020) 868-894, at 870 and 885.

[148] See Cyril (CY), I.B. Njika Ogunkah**,** 'The Iwhnuru**o**hna (Ikwerre) Dynasty: Sifting Fiction from Facts', International Journal of Law, Psychology and Human Life (IJLPHL): ISSN: 2319 – 8494 (2016) 1-12, at 8-10; Ezebunwo Omachi, 'We Are Not Part Of Any Delusion Called Biafra - Ikwerre Elders' (*Crystal News*, 13 Nov.

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territory of Biafra.[149] Even the groups who are at the forefront of the agitations for the secession of Biafra have not been able to pinpoint the territories and populations which are the subject of their agitations. On some occasions, MASSOB and IPOB refer to the Igbo people as Biafra, and at other times they refer to all the people of the former Eastern Region of Nigeria.[150]

The third criteria for statehood in the Montevideo Convention is the existence of an effective government.[151] A government is necessary to effectively organise and control the political entity. This is not a pre-condition for recognition as an independent state, but an indication of some sort of coherent political structure and society.[152] A government needs to have significant control of its territory.[153] Whilst Ojukwu's Biafra did have a clear governmental structure, it is unclear what the current government of Biafra is. Currently, there are at least three Biafran groups (MASSOP, IPOB and Ohanaeze Ndigbo) whose leaders make claims to the leadership of Biafra and sometimes disagree on the best methods of actualising the secessionist claims of Biafra.[154] It is unclear which of these leaders would constitute the

2015) <http://www.newscrystal.com/2015/11/we-are-not-part-of-any-delusion-called.html> accessed 14 October 2021; IWHNURỌHNA CHRISTIAN ASSOCIATION (ICA), A BRIEF HISTORY OF IKWERRE (7 November 2012) <http://iwhnurohna.blogspot.co.uk/2012/11/a-brief-history-of-ikwerre.html> accessed 14 October 2021.

[149] See also, M. R. Islam, supra note 33, at 214.

[150] I. Johnson and A. Olaniyan, supra note 89, at 330.

[151] J. Crawford, supra note 2, at 55.

[152] R. Higgins, supra note 25, at 40; C. Hoskyns, *The Congo Since Independence*, Oxford University Press (1965).

[153] See *The Aaland Islands case* (1920), LNOJ sp. Sup. No., pp. 8-9.

[154] See for instance, Ohanaeze Ndigbo Worldwide, 'Be Diplomatic in Your Agitation, Nwodo Tells Igbo Youths' (24 June 2020) <https://www.ohanaezendigboworldwide.org/2020/06/24/be-diplomatic-in-your-agitation-nwodo-tells-igbo-youths/> accessed 16 October 2021.

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government of Biafra and how effective such government would be. Hence, it is unlikely that the current Biafran movement would be able to satisfy the requirement for an effective government.

The last requirement for statehood in the Montevideo Convention is the capacity to enter into relations with other states. The primary concern here is the competence or lack of competence to enter into legal relations with other states, not the degree of influence that the other states may have in relation to the emerging state.[155] Such capacity is a reflection of the sovereignty and independence of the emerging state. However, this criterion reveals the importance attached to recognition. Recognition has been defined as 'the adoption of a positive acknowledgement on the part of a state.'[156] It is a method of acknowledging the fact that a new state has emerged and accepting the legal significance of such emergence. Hence, recognition is important for ascertaining that the recognised entity is a state under international law and that the recognising state is willing to enter into political and other relations with the recognised state.[157] Recognition, therefore, constitutes strong evidential demonstration of satisfaction of the relevant criteria for statehood and is essential to the legal existence of a state.[158]

Recognition has been one aspect of statehood which Biafra has struggled to attain. During the Nigerian civil war, the Republic of Biafra was recognised as an independent state only by a few African states such as Cote d'Ivoire, Gabon, Tanzania and Zambia.[159] However, these recognitions did not have much political and legal significance as most powerful western

[155] M. Shaw, supra note 6, at 202.

[156] R. Y. Jennings, supra note 143, at 36

[157] H. Kelsen, supra note 4, at 390-391.

[158] M. Shaw, supra note 6, at 207.

[159] A. McKenna, supra note 12.

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and African states continued to recognise and support the Nigerian federal government.[160] Recognition has an integral relationship with the criteria for statehood in that the higher the degree of international recognition, the lesser the demand will be in terms of objective demonstration of adherence to the criteria for statehood. Conversely, where the degree of recognition is low, there will be a higher demand for strict adherence to the criteria.[161] Since, Ojukwu's government was unable to secure a high number of recognitions, it is difficult to prove that the Republic of Biafra satisfied the requirements for statehood under international law.

During the recent agitations for the secession of Biafra, the Biafran leaders have also been unable to gain significant recognition from independent states. Hence, they would have a much higher demand for strict observance of the criteria for statehood. In light of the difficulties of establishing Biafra's current population, territory and government, it is unlikely that the current Biafran movements would be able to satisfy the criteria for statehood in international law. Hence, the prospects for Biafran secession are low and it may be better, at least in the interim, for Biafran self-determination-seeking groups to consider other ways of exercising their right to self-determination.

Many Biafrans including those who survived the Nigerian civil war agree that Biafra must be free, but while some Biafrans want autonomy within Nigeria as self-governing territories like the UK (or like Canada where the Quebec region is self-governing), others want

[160] D. Hunt, supra note 84, at 5-6; Pius L. Okoronkwo, 'Self-Determination and the Legality of Biafra's Secession Under International Law', 25(1) Loyola of Los Angeles International and Comparative Law Review (2002) 63-115, at 115.

[161] M. Shaw, supra note 6, at 207; J. Crawford, supra note 2, at 5.

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secession from Nigeria.[162] However, the grant of autonomy will be better than secession due to the complex nature of the Nigerian state, the difficulties of satisfying the criteria for statehood in international law and the problems that such secession would create. For instance, if Biafra secedes, there may be several minority groups within Biafra who may not be properly represented, as the Igbo majority often occupies a dominant position in Biafra. Hence, Biafran secession may give rise to a situation in which such minority groups may also want to secede from Biafra, and there may be no end to the secessions. More so, such minority groups may become marginalised and subjected to the same treatments which Biafrans are currently agitating against.

Secession is not a cure to all national issues. Certain issues are better resolved by granting more rights of autonomy to the regions or to the federating states. This will allow minorities within these states to govern themselves and make laws and policies that will address the root causes of their agitations. Secession does not guarantee that secessionist agitations will be addressed. Instead, it has the potential of creating new tensions between the majority and minority groups in the secessionist state. During the civil war, Ojukwu recognised that Biafra's secession did not automatically address the issues which led to the secession in the first place. Even after proclaiming the state of Biafra, Ojukwu recognised that issues of tribalism and marginalisation were likely to continue in the new state. Hence, he warned the people of the then Republic of Biafra that:

> "If we arrive at the end not changed, there is no worse disaster for this nation, because I can promise you that the same problems that brought about the breakup of our old society in Federal Nigeria, now confined in a smaller scale, will still set up the same

[162] Government of Indigenous People of Biafra, supra note 125, at 17.

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chain reaction and destroy our new society. Have we yet accepted ourselves as brothers? Does the Nnewi man accept fully the man from Ikot Epkene?"[163]

Ojukwu recognised that secession in itself would not address the issues of tribalism and marginalisation in Biafra. Hence, he sought to deal with these issues through the grant of autonomy to the various regions in Biafra.[164] Ojukwu had always advocated for autonomy. He was going to form a central administration with Ironsi based on autonomy and self-governance in the regions. He was also receptive to Gowon's idea of a loose form of association with autonomous regions.[165] When Biafra was formed, he tried to incorporate autonomy into Biafra.[166] This shows that both the Biafran government and the Nigerian government (who allowed regional autonomy in the federal structure of the First Republic) understood that autonomy was the best form of association for Nigeria.

As early as 1953, Nigerian leaders knew that regional autonomy was capable of dealing with the issues that faced Nigeria, but the leaders allowed their selfish interests and desire for domination to override what they knew was the best way forward. Both at the 1953 Constitutional conferences and at the Aburi conference, the leaders of both the North and the South recognised that a 'one' Nigeria with regional autonomous governments was best for the country (though the leaders were not agreed on whether a federation or confederation would be best). Michael Gould suggests that the civil war would have been averted if an autonomous arrangement had been sustained in Nigeria.[167]

[163] C. O. Ojukwu, supra note 64, at 159.

[164] ibid, at 122.

[165] G. Birch and D. George, supra note 73, at 14.

[166] C. O. Ojukwu, supra note 64, at 121.

[167] ibid; M. Gould, supra note 65, at 3.

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Autonomy has always worked well whenever it was applied in Nigeria. To some extent, autonomy had worked for the colonialists, and this may be one of the reasons Britain believed that Nigeria could remain united. Even after independence, as Stanley Diamond points out, Ironsi's unitary regime based on autonomy worked better than Gowon's unitary regime based on an effective central government.[168] Although the autonomous arrangements agreed to at the Aburi conference did not get the chance to be effected, the Nigerian leaders saw autonomy as the primary unifying form of association for Nigeria. Secession is rarely an answer to Nigeria's problems;[169] instead of addressing the problems of Nigeria, secession would create new difficulties. However, as opposed to secession, autonomy would enable the various ethnic/minority groups in Nigeria to organise themselves in ways that best promote their economic, political, cultural and social development.

Previous autonomous arrangements in Nigeria were promising, even though they were short-lived by hostilities inspired by the desire for sectional domination. Now that Nigeria has enjoyed a stable civilian democracy for more than two decades, it is time to re-consider the potential use of autonomy to address the secessionist agitations that threaten the unity of the country. The autonomous arrangement in Nigeria could take various forms including the grant of autonomous governing status to the regions in Nigeria as in the case of Catalonia, Quebec and Scotland, or a modification of the current federal structure to reflect the First Republic autonomous system e.g. by having state constitutions, local government systems and administrations, and removing certain matters from the exclusive legislative list (e.g. matters

[168] Stanley Diamond, *Who Killed Biafra?*, British-Biafra Association (1970) at 27.

[169] T. N. Tamuno, supra note 76, at 578.

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relating to culture).[170] The autonomous arrangement could also be, as Gowon suggested just before the war, one which may be peculiar to Nigeria.[171]

One important value of autonomy is that it can be used by indigenous and minority groups to determine ways of governing themselves, including through arrangements that are built on traditional African structures of government even if such arrangements are peculiar to the group. Hence, autonomy can be a usefully creative tool in formerly colonised countries where it may be necessary to alleviate some of the effects of colonial rule. As Ojukwu pointed out,

> "Colonial state generates a colonial posture. This posture automates a series of complexes which remain with the African long after the colonial stimulus has ceased to have direct contact…This is why I believe that the black will not emerge until he is able to build modern states based on a compelling African ideology."[172]

During the colonial era, colonial states were created based on European ideologies that failed to take account of the ideologies and circumstances of the local people. The result, in the case of Nigeria, was the crisis that led to the creation of the Republic of Biafra. As Ojukwu rightly posits, such effects of colonialism will continue to plague the African continent until Africans begin to build modern states based on African ideologies. In the post-colonial era, autonomy

[170] S. B. Lugard, M. Z. Zechariah and T. M. Ngufuwan, supra note 13, at 158; T. Okonkwo and K. G. Kingston, supra note 13, at 99; C. O. Omeire et al, supra note 13, at 327-328.

[171] G. Birch and D. George, supra note 73, at 13.

[172] Chukwuemeka Odumegwu Ojukwu, *Biafra: Random Thoughts of C. Odumegwu Ojukwu, General of the People's Army*, Harper & Row (Vol.I, 1969) ix.

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offers indigenous and minority peoples an opportunity to govern themselves based on their own ideologies.

V. CONCLUSION

The emergence of so many new states represents one of the major political developments of the twentieth century, and there is still an increase in the agitation for the creation of new states. Agitations for statehood are often based on a claim for the exercise of the right to self-determination leading to secession. However, self-determination is a major issue in international law and politics as it serves to grant statehood to oppressed people, and also to disrupt existing state structures. To address these issues, there is a need for self-determination-seeking groups and the international community as a whole to take advantage of legal principles that can effectively accommodate the competing interests of the various actors in the international legal arena. What is proposed in this paper is an understanding of the principle of self-determination that is capable of protecting the interests of indigenous and minority groups whilst maintaining the stability of the international legal order. The paper considers internal self-determination to be the variation of self-determination best able to ameliorate secessionist tensions in all, but the most exceptional, cases.[173]

Using Biafra as a case study, this paper has argued that internal forms of self-determination such as autonomy are capable of addressing the needs of the indigenous and minority people in Biafra better than secession. The value of internal self-determination lies in its ability to promote accommodation between the various groups in Nigeria and implicate them in common concerns. It can give rise to a kind of communitarian self-determination that

[173] Helen Quane, 'Self-Determination and Minority Protection after Kosovo', in J. Summers, supra note 41, 179 212, at 212.

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focuses on structures and modalities of accommodation that promotes individual and group participation at various levels, thereby demolishing barriers between groups and combatting tribalism.[174] This is important for addressing the ethnic and religious differences which continue to threaten the unity of Nigeria. Internal self-determination would encourage tolerance, mutuality and good-neighbourliness. It may also encourage a move towards decentralised, autonomist structures that enable individuals and groups to organise themselves as they wish while continuing to be involved in the organisation of the whole.

Tribalism and marginalisation led to the two coups, the declaration of the state of Biafra and, eventually, to the Nigerian civil war. The recent Biafran agitations for secession are also based on tribalism and marginalisation. However, tribalism and marginalisation will not be adequately addressed by Biafran secession. Instead, such secession will empower the new majority to marginalise and oppress the new minority. Hence, other forms of self-determination (such as autonomy) should be considered. One thing that is clear from the events that took place before, during and after Nigeria's independence is that the leaders of the various regions recognised that autonomy was the best suited form of association for Nigeria.

Autonomy can provide the people of Biafra with a broad measure of self-government (either at the state or regional level) that will focus on their development in political, economic, cultural and religious matters. Autonomy would also be much easier to attain considering that the current Biafran movement may not satisfy the criteria for statehood in international law, and states are generally opposed to secession. Although states are also suspicious of autonomy and may be reluctant to grant autonomy to its people, they are not as opposed to autonomy as they are to secession. Hence, Biafran groups will find it much easier to claim a right to autonomy. There already exist many instances of autonomy that prove that it is workable and

[174] ibid, at 212; P. Thornberry, supra note 8, at 176.

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capable of reconciling the conflicting needs of minorities and the demands of state sovereignty and territorial integrity. In this sense, autonomy can provide the opportunity for a more participatory and less oppositional view of the rights of people.

There is hardly any African state which is wholly solid and unified that it does not have within its borders some groups who might want to break away. However, we must realise that "what is needed is a way of breaking up political disputes and differences,"[175] not necessarily a break-up of the state itself. Continuous fragmentation, or Balkanisation as it is called, can cause serious setbacks for the states in question and the African continent as a whole. Hence, as Ojukwu notes, our revolution must start from the point where we recognise our oneness as a nation.[176]

[175] Roger Fisher, *Points of Choice*, Oxford University Press (1978) at 25-26.

[176] C. O. Ojukwu, supra note 64, at 160.