

# The Relevance of the Doctrines of Natural Law, Human Rights and International Law to the Principle of Self-Determination: The Case of Nigeria

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**Abstract:** *In recent times, worldwide, agitations for self-determination, whether internal or external (secession), are becoming common. Also, in Nigeria, the agitation for self-determination has become intense. Historically, multiple independent nationalities were cobbled together by the British to form the nation called “Nigeria” without first seeking and obtaining their consent. Invariably, Nigeria is often under threats of instability due to separatist agitations from her diverse ethnic groups. Although, self-determination is expressed to be a “right” in different international legal instruments like the United Nations Charter and the African Charter on Human and Peoples’ Rights (ACHPR) and even the International Court of Justice (ICJ) has declared it to be of erga omnes in nature, the nature of this “right” is still controversial. For instance, it is argued that the right to self-determination originated from natural law. Separatists in Nigeria, agitating for self-determination anchor their arguments on this contention. This paper examine the agitations for self-determination in Nigeria from the standpoints of natural law, the doctrine of human rights and the principles of international law. The objectives are to know if self-determination originated from natural law, and to see the nexus between self-determination and the doctrine of human rights. Also, to identify the status of self-determination as a right under international law; and how all these apply to the Nigerian situation. The paper adopted doctrinal research methodology, using both primary and secondary sources. The paper concluded that the*

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*tripartite doctrines of natural law, human rights and international law apply to the Nigerian situation.*

**Keywords:** *Natural Law, Human Rights, Self-Determination, International Law, Nigeria*

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## **I. Introduction**

The concept of ‘self-determination’ is a convoluted and difficult term. As aptly remarked by Dakas ‘ . . . like chameleon its colour changes with profile of those who invoke it’.<sup>1</sup> Generally, it refers to the freewill of a people in a particular territory to decide their affairs without external influences or to freely decide their political status.<sup>2</sup> It also refers to the legal right of a particular ethnic or indigenous people to choose their purpose under the international order.<sup>3</sup>

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<sup>1</sup> Dakas DCJ, ‘The right to self-determination and the sceptre of balkanisation of post-colonial African states: The challenges of nationhood and imperative of good governance in Nigeria’ *Nigerian Bar Association, Jos Branch, Annual Law Week, 25-27 November 2009.*

<sup>2</sup> Merriam Webster Dictionary, 4<sup>th</sup> ed.

<sup>3</sup> Olomojobi Y, ‘The existing cause of Biafrexit and its right to self-determination’ 1 *African Human Rights Journal*, 2016, 111-113.

Nigeria has had its fair share of agitations for self-determination or autonomy.<sup>4</sup> The most significant being Biafra's<sup>5</sup> decision to establish itself as a sovereign state.<sup>6</sup> In an exercise of the right to self-determination, Biafra unilaterally declared its independence from Nigeria on May 30, 1967; a declaration which came after a series of complicated political upheavals that resulted in the death of many Biafrans.<sup>7</sup> Inevitably, the declaration precipitated a civil war that lasted for 30 months.<sup>8</sup>

The Nigerian situation is rather peculiar, in that it is made up of about 371 tribes.<sup>9</sup> These tribal groups have deep seated ethnic loyalties and sentiments. As such, it can be conjectured easily that agitations will be a normal occurrence.<sup>10</sup> Nigerians are a unique ethnic group as most Nigerians do not share significant commonalities.<sup>11</sup> Hugh Clifford, a former British Governor General to Nigeria, observed that Nigerians exist in a 'collection of self-contained and mutually independent Native States, separated from one another . . . by vast distances, by differences of history and traditions, and by ethnological, racial, tribal, political, social and religious barriers'.<sup>12</sup>

Similarly, Obafemi Awolowo, former Premier of West Nigeria, and one-time Federal Minister of Finance, stated:

'Nigeria is not a nation. It is a mere geographical expression. There are no 'Nigerians' in the same sense as there are 'English,' 'Welsh,' or 'French,' The

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<sup>4</sup> Okoronkwo PL, 'Self-determination and the legality of Biafra's secession under international law' 25 (1) *Loyola of Los Angeles International and Comparative Law Review*, 2002, 65-66.

<sup>5</sup> Biafra is comprised of the old Eastern Region of Nigeria under the Parliamentary System of Government adopted under the 1960 Independence Constitution. Although, the major tribe in the Region is Igbo, there are also smaller tribes like the Ijaws, the Ogonis. But, these smaller tribes have often disassociated themselves from the Biafran struggle.

<sup>6</sup> Okoronkwo PL, 'Self-determination and the legality of Biafra's secession under international law', 68.

<sup>7</sup> Okoronkwo PL, 'Self-determination and the legality of Biafra's secession under international law', 69.

<sup>8</sup> Okoronkwo PL, 'Self-determination and the legality of Biafra's secession under international law', 69.

<sup>9</sup> Sowunmi Z, 'Full list of all 371 tribes in Nigeria, states where they originate' Vanguard Newspaper, 10 May 2017 — <https://www.vanguardngr.com/2017/05/full-list-of-all-371-tribes-in-nigeria-states-where-they-originate/> on 23 December 2021.

<sup>10</sup> Sowunmi Z, Full list of all 371 tribes in Nigeria, states where they originate'.

<sup>11</sup> Nayar MGK, 'Self-determination beyond the colonial context: Biafra in retrospect' 10 *Texas International Law Journal*, 1975, 321-322.

<sup>12</sup> Nayar MGK, 'Self-determination beyond the colonial context', 324.

word ‘Nigerian’ is merely a distinctive appellation to distinguish those who live within the boundaries of Nigeria from those who do not’.<sup>13</sup>

The foregoing observations underscore the inevitability of agitations for self-determination by the different nationalities lumped together by the British colonialists to form a ‘nation’ called Nigeria. Simply put, the British succeeded in forcefully amalgamating the diverse nationalities, but they failed to first unite the people in the spirit of a nation.

It is easy to see therefore, why the clamour for self-determination (which had been somewhat repressed during the long years of military rule) has erupted and somehow becoming difficult to manage since the return to civil rule in 1999.

For the purpose of this paper, it is important to point it out that the agitators for self-determination in Nigeria, have largely canvassed arguments, to justify their struggle, on the platforms of Natural Law, Human Rights and International Law. They argue vehemently and stoutly insist that their struggle finds unassailable support in those three legal concepts.

## II. Conceptual Analysis and Definitions of Operational Terms

### a) Self-Determination

Descriptions of self-determination vary in content.<sup>14</sup> Publicists and political leaders define the concept in various ways

As stated earlier, *Self-Determination* refers to the freewill of a people in a particular territory to decide their affairs without external influences or to freely decide their political status<sup>15</sup>. As an instance, Woodrow Wilson, the 28<sup>th</sup> President of the United States (who is credited for popularising the term ‘self-determination’) described it as ‘the right of every free people to choose the sovereign under which they live, to be free of alien masters and not to be handed about from sovereign to sovereign as if they were property’.<sup>16</sup> The

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<sup>13</sup> Nayar MGK, ‘Self-determination beyond the colonial context’, 325-326.

<sup>14</sup> Okafor OC, ‘Self-determination and the struggle for ethno-cultural autonomy in Nigeria: The Zangon-Kataf and Ogoni problems’ 6 *African Society of International Law*, 1994, 88-89.

<sup>15</sup> Merriam Webster 4<sup>th</sup> ed.

<sup>16</sup> Cass DZ, ‘Rethinking self-determination: A critical analysis of current international law theories’ 18 *Syracuse Journal of International Law and Commerce*, 1992, 23-24.

position of Wilson on self-determination can be summarised as: (1) government according to the will of the people; (2) the absence of internal or external domination; (3) the free pursuit of economic, social, and cultural development; (4) the enjoyment of fundamental human rights; and (5) the absence of discrimination on grounds of race, colour or political conviction.<sup>17</sup>

Ozei sees self-determination as ‘ . . . the process in which people determine their own political status. This almost always entails territorial consideration’.<sup>18</sup> A careful analysis of this definition of Self-Determination shows that the author sees self-determination as a ‘process’, and the people determines the ‘right’ and what they determine or are entitled to determine is their ‘political status’. Self-determination is a struggle that may not be achieved immediately on demand,<sup>19</sup> hence, the use of the word ‘process’.

Another definition of self-determination, which is closer to clarity is that ‘self-determination is a right granted to peoples or groups to determine their political, economic, social and cultural rights, exercised through various ways within the context of a state entity, with an option of secession in exceptional cases of egregious violation of rights.’<sup>20</sup>

There are two categories of self-determination: (i) Internal Self-Determination and (ii) External Self-Determination.

Internal Self-Determination refers to the agitation of a minority group within a nation to be recognised and given its due rights in the conduct of the affairs of that state. Minority groups here emphasise that their cultural, religious, political and linguistic rights should be respected and enforced by the government of the mother state.<sup>21</sup> In this case, the minority group is not opting out of the nation; but rather that their opinion should count and to be allowed to determine their destiny within the mother state.

Conversely, External Self-Determination is an unhidden agitation for political independence from the mother state. This quest for a new country and recognised sovereignty involves seeking their own country under international legal instrument, as their basic rights to freely determine their political status

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<sup>17</sup> *Syracuse Journal of International Law and Commerce*, 1992, 23-24.

<sup>18</sup> Ozei ME, ‘Self-Determination and the Right to Secession’ *International Political Review*, 2014, 45-46.

<sup>19</sup> Ozei ME, ‘Self-Determination and the Right to Secession’, 47.

<sup>20</sup> Agarwal HO, *International law and human rights*, 17<sup>th</sup> ed, Central Law Publisher, 2010, 362.

<sup>21</sup> Sterio M, ‘On the right to external self-determination: selfish secession and great powers rule’ *1 Minnesota Journal of International Law*, 2009, 16-18.

and well-being, aspirations and development, are being deprived.<sup>22</sup> Usually, such oppressed people would share a common ethnic, cultural, linguistic, and religious background.

A number of international legal instruments make provisions for the *right to self-determination*. For example, the United Nations Charter provides that:

All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.<sup>23</sup>

Furthermore, the ACHPR plainly provides that colonised or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community with all its varied connotations.<sup>24</sup>

It is needful to reiterate it that international law gives the principle of self-determination universal scope as a right belonging to undefined ‘peoples’ as are to be found in relevant international treaties.<sup>25</sup>

## **b) Natural Law and Self-Determination**

Self-determination is a principle of justice. It means ultimately the right to determine one’s fate freely.<sup>26</sup> Accordingly, the whole concept of self-determination may be said to be a concept of natural law; because the major concern of natural law tradition is justice.<sup>27</sup>

However, the inherent difficulty this natural law position first encounters is that there is no universal consensus about the notion of what ‘Justice’, or ‘Injustice’ is.<sup>28</sup> For example, in the ongoing war between Russia and Ukraine, many people outside of Ukraine, including Ukrainians themselves would probably argue that the bombing of Ukraine by Russia is unjust, and even illegal.

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<sup>22</sup> Sterio M, ‘On the right to external self-determination’, 19

<sup>23</sup> Article 20(1), *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

<sup>24</sup> Article 20 (2), *ACHPR*, 01 June 1981.

<sup>25</sup> See Articles 1(2), 55 and 56, *Charter of the United Nations*; and Article 20, *ACHPR*.

<sup>26</sup> Umozurike OE, *Self-determination in international law*, Archon Books, 1972, 18.

<sup>27</sup> Umozurike OE, *Self-determination in international law*, 18.

<sup>28</sup> Umozurike OE, *Self-determination in international law*.

Conversely, a huge fraction of the Russian populace, and even many Russian allied countries will not see it as such.<sup>29</sup>

Again, natural law protagonists will find it difficult to establish ‘self-determination’ as a principle of justice is a phenomenon that has transcended time and place.<sup>30</sup> To start with, the idea of right to self-determination as a concept in the 20<sup>th</sup> and 21<sup>st</sup> centuries exemplifies how the understanding of justice (or injustice) has evolved over the course of time.<sup>31</sup>

The foregoing fact can be explained better in this way. The international law of former centuries ‘Jus Publican Europeanum’ as prescribed by European nations, driven merely by imperialist interests, gave no regard to the will of the colonised peoples. Yet, when the colonised territories seceded from their motherlands to create full-fledged states, with governments that were recognized by other already existing states in the comity of nations, international law accommodated and acknowledged the birth of these newly created states, yet this does not imply that the idea of separation (as found in the concept of self-determination) is warmly embraced by those already existence starts.<sup>32</sup>

The bottom-line of all the foregoing is that there is, for now, no general consensus on the idea of “self-determination’ as a principle of ‘justice’, and by extension a brainchild of natural law. The opinions on the subject are still divided.

Furthermore, even international law recognises the right of conquest, which runs counter to the concept of the will of the population conquered by external forces<sup>33</sup>

The bottom line to the above discussion is that the notion of ‘universal applicability’ of the self-determination principle as espoused by natural law protagonists which declares that ‘there is a concept of justice which transcends time and space’ is an illusion, and an argument that cannot withstand the force of empirical facts.

The position canvassed above is the standpoint of the Positivist School of Thought. The antithesis for the natural law approach is Positivism. Unlike

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<sup>29</sup> Umzurike OE, *Self-determination in international law*, 19.

<sup>30</sup> Umzurike OE, *Self-determination in international law*.

<sup>31</sup> Umzurike OE, *Self-determination in international law*, 20.

<sup>32</sup> Cass DZ, ‘Rethinking self-determination’, 26.

<sup>33</sup> Cass DZ “Rethinking self-determination” 27.

natural law which places emphasis on 'Justice', Positivism places emphasis on 'Order'.<sup>34</sup> While natural law seeks to tie the law to a transcendental and objective reality, positivists interpret the law (including international law) as it is currently in force.

In reality, the two schools of thought have presented two different consequences: while the needs for justice have given rise to the principle of self-determination, the needs for order have so far presented the priority to the counter principle, that is; the right of states to territorial integrity and political unity.<sup>35</sup>

The ongoing case of Russia and Ukraine presents a classic model of looking at the conflicts from the standpoints of the two School of Thought.

But, what is Natural Law? Thomas Aquinas, in his treatise *Summa Theologica*<sup>36</sup> had identified natural law as those precepts 'appointed by reason'. His first principle of practical reason is as follows: 'Good is to be done and pursued, and evil is to be avoided'.<sup>37</sup> As Aquinas had acknowledged, law may be understood as 'an ordinance of reason for the common good, made by him who has care of the community'.<sup>38</sup>

The above definitions of natural law evidently shows that *self-determination*, finds a firm support in the doctrines of natural law. It accords with reason to assert 'the right of every free people to choose the sovereign under which they live, to be free of alien masters and not to be handed about from sovereign to sovereign as if they were property';<sup>39</sup> and it also accords with reason to declare that a people has the right to exercise their freewill 'to decide their affairs without external influences or to freely decide their political status'.<sup>40</sup>

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<sup>34</sup> Umzurike OE, *Self-determination in international law*, 27.

<sup>35</sup> Umzurike OE, *Self-determination in international law*.

<sup>36</sup> Thomas Aquinas, *Summa Theologica*, I-II, q. 94, a. 1, p. 1008 (The Fathers of the English Dominican Province trans, Benziger Brothers 1947) (1273). Article 2.

<sup>37</sup> Aquinas, *supra* note 16, at q.94, a. 2, p.1009. As Ralph McInerny has stated: 'Natural law is a dictate of reason. Precepts of natural law are rational directives aiming at the good for man. The human good, man's ultimate end, is complex, but the unifying thread is the distinctive mark of the human, i.e., reason; so too law is a work of reason. Man does not simply have an instinct for self-preservation. He recognizes self-preservation as a good and devises ways and means to secure it in shifting circumstances.'

<sup>38</sup> Aquinas, *supra* note 16, at q. 90, a.4, p. 995.

<sup>39</sup> Cass DZ, 'Rethinking self-determination', 27.

<sup>40</sup> Sowunmi Z, 'Full list of all 371 tribes in Nigeria, states where they originate'.



The foregoing explanations are in agreement with the concept of ‘justice’, which is the ultimate object of natural law. As Aquinas has remarked: ‘The good of any virtue, whether such virtue directs man in relation to himself, or in relation to certain other individual persons, is preferable to the common good, to which justice directs: so that all acts of virtue can pertain justice, in so far as it directs each person to common good’.<sup>41</sup> The concept of *common good* is at the core of the doctrine of natural law and, it accords with reason to assert that *self-determination* is in sync with *common good*.

This is also in accordance with the UN General Assembly’s Declaration of December 14, 1960, that ‘all peoples have an inalienable right to complete freedom, the exercise of their sovereignty, and the integrity of their national territory’.<sup>42</sup>

### **c) Self-Determination and Human Rights**

Does the exercise of self-determination qualify to be a *right*? The answer to this question can be conveniently answered in the affirmative. The right to self-determination has been identified by the International Court as ‘one of the essential principles of contemporary international law’.<sup>43</sup>

It is interesting to note that the right to self-determination was introduced into international law in vague terms. For instance, paragraph 1 of Article 1 of the International Covenant on Civil and Political Rights 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1966 (together ‘the Human Rights Covenants’) reads: ‘*All peoples have the right of self-determination. By virtue of that right, they freely determine their political status*

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<sup>41</sup> Aquinas, *Supra* at p. 1438.

<sup>42</sup> These principles were reiterated on February 23, 1998, when approving U.N. members reiterated that in ‘respect for the principle of equal rights and self-determination of peoples.....all peoples can freely determine, without external interference, their political status and freely pursue their economic, social and cultural development’ and that ‘it is the concern solely of peoples to determine methods and to establish institutions regarding the electoral process....’ Respect for the Principles of National Sovereignty and Non-Interference in the Internal Affairs of States in their Electoral Processes , U.N. GAOR, 52<sup>nd</sup> Session, 70<sup>th</sup> plenary meeting, U.N. Doc. A/RES/52/119 (1997).

<sup>43</sup> *Case Concerning East Timor (Portugal v Australia)*, Merits, Judgment, ICJ Reports 1995, 4 at 102, para 29.

*and freely pursue their economic, social and cultural development*'.<sup>44</sup> Inherent in the scope of this recognised *right* is the right of a group within a state to secede and form a new state. It has been suggested that this right permits a broad range of plausible interpretations and is therefore able to accommodate unforeseen circumstances.<sup>45</sup>

The commitment of the international society of states to the self-determination of all peoples is reflected in their signing of the United Nations Charter of 1945. In its Article 1(2), the Charter states that one of the purposes of the United Nations is to pursue the development of friendly relations among nations 'based on respect for the principle of equal rights and self-determination of peoples'.<sup>46</sup>

It is also possible to identify, from the various international instruments that have addressed self-determination, rights that fall upon a people before they go through the process of determining their status. These rights have been classified by Drew who asserts that:

'While its normative contours are yet to be definitively settled, the following can be deduced as a non-exhaustive list of the substantive entitlements conferred on a people by virtue of the law of self-determination in the de-colonisation context: (a) the right to exist - demographically and territorially - as a people; (b) the right to territorial integrity; (c) the right to permanent sovereignty over natural resources; (d) the right to cultural integrity and development; and (e) the right to economic and social development'.<sup>47</sup>

Interestingly, it is now accepted that the legal right to self-determination also applies beyond the colonial context.<sup>48</sup>

There is no denying the fact that *self-determination* is not only articulated as a *human right*, but it is also characterised as such;<sup>49</sup> although, its

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<sup>44</sup> Article 1, ICCPR, 16 December 1966, 999 UNTS 171. (See Bossuyt, *Guide to the Travaux Préparatoires of the International Covenant on Civil and Political Rights*, Dordrecht: Martinus Nijhoff, 1987, 19-21.

<sup>45</sup> McCorquodale R, 'Self-determination: A human rights approach', 43 *International and Comparative Law Quarterly*, 1994, 862.

<sup>46</sup> Higgins R, *Problems and process: International law and how we use it*, Clarendon Press, Oxford, 1995, 112.

<sup>47</sup> Higgins R, *Problems and process*, 663.

<sup>48</sup> Gareau JF, 'Shouting at the Wall: Self-determination and the legal consequences of the construction of a wall in the occupied Palestinian territory', 18 *Leiden Journal of International Law*, 2005, 505.

<sup>49</sup> Wilde R, *International territorial administration: How trusteeship and the civilising mission never went away*, Oxford University Press, Oxford, 2008, 160.

characterisation as a human right has been rejected.<sup>50</sup> Nevertheless, articulating self-determination as a human right has brought it into the specific legal framework of human right<sup>51</sup> It is necessary to emphasise it here that the nature and basis of self-determination as a human right require that it must be balanced with other human rights; notably, freedom of expression and freedom of religion.<sup>52</sup>

#### d) Self-Determination and International Law

What is the basis for recognising the principle of *self-determination* as a legal norm under the regime of *international law*? What legal status, among others, does *self-determination* enjoy under international law?

To start with, it should be stressed here clearly that the debate about whether self-determination was in fact a legal norm, or still only a political principle took a considerable time to subside.<sup>53</sup> In the first instance, the pronouncements from the ICJ on the legal status as regards the norm brought an end to the debate.<sup>54</sup> Also, the debate on whether *self-determination* in international law is a *legal rule* or *legal principle* raged on for a while. In this regard, the view that it is both a *legal principle*, which declares that ‘peoples must be enabled freely to express their wishes in matters concerning their condition’;<sup>55</sup> and also functions as an omnibus *legal principle* for a collection of more specific legal rules appears to be the correct position.<sup>56</sup>

However, the question whether there is a difference in the rules of self-determination as applicable to customary international law and those related to

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<sup>50</sup> Bhalla RS, ‘The right of self-determination in international law’ in Twining W (ed), *Issues of self-determination*, Aberdeen University Press, Aberdeen, 1989, 91-97.

<sup>51</sup> McCorquodale R, ‘Self-determination’, 873.

<sup>52</sup> McCorquodale R, ‘Self-determination’, 873.

<sup>53</sup> Laing EA, ‘The norm of self-determination: 1941-1991’, 22 *California Western International Law Journal*, 1991, 220.

<sup>54</sup> *Legal consequences of states for state of the continued presence of South Africa in Namibia (South West Africa), notwithstanding security council resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, 31-32, para 52-53.

<sup>55</sup> See Cassese S, *Self-determination of peoples: A legal reappraisal*, Cambridge University Press, Cambridge, 1995, 128. *Self-determination* is also considered by some scholars to be a fundamental principle of international law which drives the development of other aspects of international law. See also Mullerson R, *Ordering anarchy in international society*, Martinus Nijhoff, The Hague, 2000, 166.

<sup>56</sup> See Crawford, J ‘Self-determination of peoples: A legal reappraisal’, 90 *American Journal of International Law*, 1996, 331.

Human Rights Covenants<sup>57</sup> is still moot. More importantly, it should also be pointed out that clarity on the meaning of *self-determination* as a legal norm is perhaps hindered more than other norms by the controversial nature of the concept.

Nevertheless, self-determination as a legal norm has come to attract recognition among the society of nations.

### III. Agitations for Self-Determination: The Case of Nigeria

In post-independence Nigeria, as in most other modern states, the agitations for *self-determination* as a right of ‘peoples’ have assumed frightening dimensions.<sup>58</sup> Nigeria went through, within 7 years of its independence, a civil war that challenged the very foundations of its unity and statehood.<sup>59</sup> The war was the outcome of the attempt by the Eastern region of the country to secede from Nigeria. The nation of Biafra, as the seceding region was called, only lasted for 30 months as its attempt to break away from the rest of the country was crushed by the federal troops.<sup>60</sup> The war started in 1967, when the Biafrans (Igbos) attempted an external remedial self-determination, despite efforts made to assuage frayed nerves as the aspiration for nationhood began in earnest. The administration of President Muhammadu Buhari was inaugurated in 2015, and since then, agitations for self-determination have assumed an unprecedented dimensions.<sup>61</sup> While there are numerous advocates of self-determination, or separatism, the two most prominent are Nnamdi Kanu and Sunday Igboho.<sup>62</sup> Nnamdi Kanu is the founder of the Indigenous People of Biafra (IPOB), which aims to establish an independent State of Biafra in south-eastern Nigeria.<sup>63</sup> IPOB, banned by the Federal Government of Nigeria in 2017, evoked the memories of an independent Biafra vanquished in the 1967-1970 Nigerian Civil War, with casualties of up to two million people. Most

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<sup>57</sup> For example, *ICCPR*, and *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3.

<sup>58</sup> Vanguard Newspaper, 6 December 2021.

<sup>59</sup> Vanguard Newspaper, 6 December 2021.

<sup>60</sup> Vanguard Newspaper, 6 December 2021.

<sup>61</sup> Vanguard Newspaper, 6 December 2021.

<sup>62</sup> Vanguard Newspaper, 6 December 2021.

<sup>63</sup> Vanguard Newspaper, 6 December 2021.

advocates of Biafra are ethnically Igbo.<sup>64</sup> Towards the end of 2020, IPOB formed an armed wing, the Eastern Security Network (ESN), ostensibly to protect the predominantly Christian Igbo from Fulani Muslim herders who the organisation alleged are backed by the government of Muhammadu Buhari in their plan to Islamise Nigeria. Although there is little evidence to support the allegation<sup>65</sup>

Sunday Igboho, on his own is a wealthy Yoruba from the south-west of the country. He is reputed to be well-connected with formidable Yoruba establishment groups.<sup>66</sup> Unlike Kanu, he does not command any largely visible separatist group to pursue his separatist agenda. But, he consistently organised and addressed rallies across Yoruba speaking territories, where he railed against Fulani herders moving south and raised allegations of connivance of Buhari's government in attacks by Fulani herders against Yoruba farmers in their homelands.

In June 2021, Nnamdi Kanu was captured in an unnamed country widely speculated to be Kenya, and the federal government secured his extra-legal rendition to Nigeria. He is currently standing trial for treason. Kanu is linked to increasing separatist-motivated killings now happening on a regular basis in the south east of Nigeria with quite a number of attacks against security personnel and government buildings.<sup>67</sup>

Meanwhile, Igboho is accused, by the federal government, of illegally stock-piling weapons, which led to the raid of his home by security personnel but he barely escaped. However, he was arrested in mid-July 2021 in the Republic of Benin while trying to flee to Germany. He was arrested in Benin and charged for illegal entry and he is undergoing trial whilst on remand.<sup>68</sup>

The demand for self-determination is not an unfamiliar trend of events in Nigeria. For instance, IPOB is itself an offshoot of the more avowedly peaceful Movement for the Actualisation of the Sovereign State of Biafra (MASSOB).<sup>69</sup> MASSOB was formed shortly after the inauguration of Olusegun Obasanjo's administration in 1999. IPOB is a break-away faction of the group. Again, prominent Yoruba of the south west have consistently clamoured for

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<sup>64</sup> Vanguard Newspaper, 6 December 2021.

<sup>65</sup> Vanguard Newspaper, 6 December 2021.

<sup>66</sup> Vanguard Newspaper, 6 December 2021.

<sup>67</sup> Vanguard Newspaper, 6 December 2021.

<sup>68</sup> Vanguard Newspaper, 6 December 2021.

<sup>69</sup> Vanguard Newspaper, 6 December 2021.

the creation of a break away Yoruba state to be known as Oduduwa Republic; although earlier on, support for the call had been less fervent, it was Sunday Igboho that came to give teeth to the clamour, resulting in a groundswell of support among ordinary Yoruba masses.<sup>70</sup> The call for external remedial self-determination is not exclusive to the south-east and south-west, even among the south-south region (known as the Niger Delta) largely made up of minority ethnic groups like Ijaw, Urhobo, Itsekiri, Ogoni and Efik, among others, there is long-standing resentment because most of the oil wealth is channelled to other non-oil producing regions, while oil production has severely damaged the Delta environment and destroyed traditional livelihoods based on fishing and agriculture.<sup>71</sup> This long-standing resentment became overtly expressed by The Movement for the Emancipation of the Niger Delta (MEND), an umbrella of Delta militant groups, when it carried out armed attacks on oil infrastructures.

The only part of the country that appears to be satisfied with the status quo, and never bothers about seceding or unconcerned about self-determination (whether in its internal or external form) is the north of Nigeria. It is surmised, and existing situation also support the view that the status quo is largely skewed in favour of the northern region of the country in political, economic and social terms.

For one, the north has been in control of the political power of the country for almost 50 years out of the post-independence 61 years of Nigeria's nation-hood (both during the military and civilian regimes). This singular fact made the economic advantages and opportunities to be rigged in favour of the north.<sup>72</sup> Again, although, Nigeria is supposedly a federal state, yet true federalism has never been implemented and the nation remains highly centralised yet weak. Consequently, agitations for self-determination among the constituents who feel cheated is always just below the surface.<sup>73</sup>

Insecurity and perceptions of discrimination (both of which have reached worrying dimensions during the present administration of President Buhari) have caused a resurgence of the separatist agitations; now with a more

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<sup>70</sup> Vanguard Newspaper, 6 December 2021.

<sup>71</sup> Vanguard Newspaper, 6 December 2021.

<sup>72</sup> Punch Newspaper, 21 November 2021.

<sup>73</sup> Punch Newspaper, 21 November 2021.

lethal force.<sup>74</sup> The perception of the federal government as being led by a religious jingoist (or, preferably a jihadist as they claim) and the unabated killings in the north by the Boko Haram Islamist sect, which is considered more directed towards Christians have not helped matters.<sup>75</sup>

#### **IV. Natural Law, Human Rights and International Law as Aids or Constraints to Self-Determination: The Case of Nigeria**

To answer the question whether there exists a right of self-determination in post-independence Nigerian contexts, this paper has chosen to adopt the doctrines of natural law, human rights and international law as the standpoints. However, before doing this, it is necessary to outline the factors that fertilize the agitations for self-determination in Nigeria.<sup>76</sup> Some of the factors are listed below:<sup>77</sup>

- a) Economic marginalisation.<sup>78</sup>
- b) Imbalances in the political power structure of the country.<sup>79</sup>
- c) Confusion about identity.<sup>80</sup>
- d) Fear of domination of minority ethnic groups by the majority ethnic groups.<sup>81</sup>
- e) Discrimination inherent in government policies skewed in favour of majority groups.<sup>82</sup>
- f) Over-centralisation of governmental powers in the central government.<sup>83</sup>

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<sup>74</sup> Punch Newspaper, 21 November 2021.

<sup>75</sup> Punch Newspaper, 21 November 2021.

<sup>76</sup> See generally, Umozurike, O, *Introduction to international law*, 2<sup>nd</sup> ed, Spectrum Books Ltd, Ibadan, 1999, 21-22; also, Idowu A, 'Revisiting the right to self-determination in modern international law: Implications for African states' 6(4) *European Journal of Social Sciences*, 2008, 43.

<sup>77</sup> Umozurike, *Introduction to international law*, 21.

<sup>78</sup> Umozurike, *Introduction to international law*, 21.

<sup>79</sup> Umozurike, *Introduction to international law*, 21.

<sup>80</sup> Umozurike, *Introduction to international law*, 21.

<sup>81</sup> Umozurike, *Introduction to international law*, 22.

<sup>82</sup> Umozurike, *Introduction to international law*, 22.

<sup>83</sup> Umozurike, *Introduction to international law*, 22.

These are some of the factors that motivated the resurgence in agitations for self-determination, since 1999, when the Fourth Republic was inaugurated.<sup>84</sup>

Mnyongani<sup>85</sup> has argued that ‘self-determination is a multifaceted concept which, depending on the situation, can mean independence, self-government, federalism, confederalism, unitarism or self-rule’.<sup>86</sup> Using this definition as a standard and considering the shape that clamour for self-determination in Nigeria has assumed, it is safe to conclude that it is the right to self-determination that results in secession (that is,<sup>87</sup> external self-determination) that is the concern of agitators in Nigeria,<sup>88</sup> as demonstrated by the activities of Nnamdi Kanu and Sunday Igboho.

So how do doctrines of natural law, concept of human rights and principles of international law become relevant here?

### a) Natural Justice

As stated earlier, self-determination is a principle of justice. It means ultimately that people have the right to determine their fate freely.<sup>89</sup> Accordingly, the idea of self-determination itself is a derivative of natural law. More importantly, the whole essence of natural law is justice.<sup>90</sup>

What is the relevance of the above thesis to the agitation for self-determination in Nigeria?

It has been mentioned above that one of the reasons why there is a clamour for self-determination is the perceived marginalisation of the aggrieved ethnic groups calling for self-determination, particularly the south-east and the south-south of the country. For example, over the years, there has been ‘a deep sense of alienation and dissatisfaction felt by the Niger Delta Region (south-south), engendered by a feeling that their environment (where oil is exploited)

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<sup>84</sup> Umozurike, *Introduction to international law*.

<sup>85</sup> Mnyongani F, ‘Between a rock and a hard place: The right to self-determination versus *Uti Possidentis* in Africa’, 41(3) *The Comparative and International Law Journal of Southern Africa*, 2008, 463-473.

<sup>86</sup> Mnyongani F, ‘Between a rock and a hard place’, 473.

<sup>87</sup> Mnyongani F, ‘Between a rock and a hard place’ 475.

<sup>88</sup> Mnyongani F, ‘Between a rock and a hard place’ 475.

<sup>89</sup> Maiksoo L, ‘Justice, order and anarchy: The right of peoples to self-determination and the conflicting values in international law’ 4 *Juridica International*, 1999, 75.

<sup>90</sup> Maiksoo L, ‘Justice, order and anarchy’, 75.



is degraded and their wealth is explored to support the federal government and the northern states<sup>91</sup>

If the above sorry situation is true, and of course, available evidence indicate that it is true then that the tenets of justice as espoused under the doctrines of *natural law* are applicable. As Ralph McInerny, quoted earlier, has remarked.

‘*Natural Law* is a dictate of reason. Precepts of natural law are rational directives aiming at the good of man. The human good, man’s ultimate end is complex, but the unifying thread is the distinctive mark of the human; i.e, reason; so too law is a work of reason. Man does not simply have an instinct for self-preservation. He recognises self-preservation as a good and devises ways and means to secure it in shifting circumstances’<sup>92</sup>

The above statement about natural law is applicable to the case of the marginalised groups in Nigeria agitating for self-determination. They are, in line with the definition of natural law, motivated by the need for self- preservation having been marginalised, to call for external self-determination which will not be in accordance with the principles of justice, but will also achieve common good.

## **b) Human Right**

The first General Assembly Resolutions that were central to the emergence of self-determination as a legal norm were passed in 1960<sup>93</sup> However, it was not until 1966 with the two human rights covenants<sup>94</sup> that self-determination was articulated as a ‘human right’ in a United Nations instrument. Apart from this, within the context of Africa, the African Charter of Human and Peoples’ Rights also make provisions recognising the legal status of this right.

Despite this, states in the community of nations have not been so forthcoming with regard to the elevated aspects of normative status that have been ascribed to the right to self-determination. More importantly, international human rights law instruments often lack formal mechanisms for

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<sup>91</sup> Okojie O, ‘Between secession and federalism: The independence of South Sudan and the need for a reconsidered Nigeria’, 26 *Global Business and Development Law Journal*, 2013, 416-423.

<sup>92</sup> McInerny R, ‘The Principle of Natural Law’ 25 *American Journal of Jurisprudence*, 1980, 5.

<sup>93</sup> Saul M, ‘The normative status of self-determination in international law: A formula for uncertainty in the scope and content of the right’ 11(4) *Human Rights Law Review*, 2011, 609.

<sup>94</sup> E.g., ICCPR and ICESCR.

enforcement<sup>95</sup> Nevertheless, where an aggressive state threatens a group within its territory, particularly through a threat to their physical existence such as genocide or a grave violation of their human rights, other states can take action to achieve the purposes of the United Nations regarding self-determination and under the Declaration, state are enjoined not to commit human rights violations.<sup>96</sup>

Moreover, a government that marginalises its peoples violates their fundamental human rights and also, in that sense, oppresses them.

### **c) International Law**

The best way to start here is that although, international law gives the principle of self-determination universal scope as a right belonging to ‘peoples’, a right to self-determination under international law would be un-enforceable in domestic courts.<sup>97</sup>

A range of significant international legal instruments acknowledge the idea of *self-determination*. As an instance, The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations and The United Nations Charter<sup>98</sup> both recognise the idea of self-determination. Yet in practice, international law rejects any secession from independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples, with a government that represent the whole populace inhabiting the territory regardless of race, creed or colour.

## **V. Which Way Forward for Agitators for Self-Determination in Nigeria?**

Self-determination is a mainstay of political claim; although it is arguable if it holds a utility as a legal weapon.

Admittedly, the Constitution of the Federal Republic of Nigeria, 1999<sup>99</sup> provides that Nigeria is one indivisible and indissoluble Sovereign nation; yet it

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<sup>95</sup> Umozurike, *Introduction to international law*, 138.

<sup>96</sup> Umozurike, *Introduction to international law*, 140

<sup>97</sup> Halliday, I, “The road to the referendum on Scottish independence: The role of law and politics” 5 *Aberdeen Student Law Review*, 2014, 26-52

<sup>98</sup> *Charter of the United Nations* (1941/1945).

<sup>99</sup> Section 2(1), *Constitution of the Federal Republic of Nigeria* (1999).

can be argued that the framers of the Constitution were not farsighted enough to contemplate a situation where one of the constituent ethnic groups may decide to opt out of the union on account of grievances or fundamental differences. This clearly is an inadequacy. Since the beginning of the ongoing democratic dispensation in 1999, the long years of repression under the military rule, which lasted for close to two decades led to the violent eruption of long-bottled grievances and feeling of justice that is now putting the country through some of its worst throes.

Although, going by the provisions of the Nigerian Constitution, agitation for external self-determination (or, put clearly, *secession*) is not allowed in the Nigerian, leaving the agitations unattended to or repressing them with ferocious force may worsen the issue.

### *Call for a Sovereign National Conference*

This paper throws its weight behind the persistent call for a Sovereign National Conference to discuss the multi-faceted challenges the country has been facing over the years, especially with reference to the system of federalism practised by the country.

Convoing such a Conference, which of course will be backed by an enabling law, will allow the over 250 constituent ethnic groups in the country to ventilate their grievances, express their anxieties and proffer working solution to the Nigerian multi-dimensional problems.

## **VI. Conclusion**

Self-determination was conceived as a vehicle for the preservation of peace and the promotion of human right. This is reinforced by the recognition given to the idea in many international instruments. However, with regard to external self-determination, precisely secession, controversies have always trailed any discussion about its utility.

The idea of external self-determination may be inevitable and unavoidable in certain circumstances; and this has to be given the recognition and the acceptance due to it.