DOES INTERNATIONAL LAW BAN THE RIGHT TO SELF-DETERMINATION? A PHILOSOPHICAL APPRAISAL

CN Ogugua and Ike Odimegwu

Abstract

The right to self-determination (SD) is one of the most contested right today both in international law and moral philosophy but especially in international law. This is because the right to SD and the right to state sovereignty (SS) are both ambiguously codified in international instruments without specification on which of the two should be prioritized when both come into conflict. The result is that international lawyers and jurists have defended at least four major theories as the correct representation of international law on the right to SD, namely, that international law bans the right to SD, international law supports primary right to SD, international law maintains remedial right to SD and that international law is neutral on the right to SD. Using both the historical and hermeneutical methods, this study interrogates the specific claim that international law prohibits the right to SD. After conceding that the jurists and international lawyers who advocate this position do so for obvious reasons of international peace and stability, the study argues that the position cannot be sustained either legally or morally as it has no specific solid support in law and practice and does not meet the basic prerequisites of justice. Above all, the study argues contrary to the proponents of the theory, that the theory is not suitable for international stability and peace and therefore recommended the need for further study to develop a theory that satisfies global need for justice, peace and stability.

Keywords: self-determination, state sovereignty, secession, international law, peace, stability.

Introduction

The rise in agitations and conflicts of SD across the globe has led to renewed interest among international lawyers and jurists on the position of international law on the right to SD. The major reason for this renewed interest is that the agitations for SD is in part fueled by the tension between the principles of SD and SS in international law. The tension itself is the consequence of the imprecise and conflicting codifications of the two principles in international protocols.

For instance, SD and SS are both codified as fundamental principles of *jus cogens (*peremptory norm") and *erga omnes* in international law. On the one hand, SD is a cardinal principle in modern international law, binding, as such, on the "United Nations [UN] as an authoritative interpretation of the Charter's norms" (McWhinney, 2007, p. 8). In fact, as early as the very first article of the UN Charter (1945, 1(2)), it is stated that one of the purposes of the UN is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."Thus, SD is not just a human right, "It is the fundamental human right from which every other human rights is derived and to protect it is the very aim and purpose of the United Nations" (Zayas, 2014, para. 15). As such, there is an international consensus that the principle of and the right to SD have become *jus cogens and applicable erga omness (para. 15).* In Article 1 (2) of the UN Charter, SD is a measure to strengthen universal peace. And SD as "a cornerstone of peace" and as "a vector of peace" is as well claimed by the UN independent expert Alfred-Maurice de Zayas (para. 15).

On the other hand, opposed to SD but codified as well in both the UN Charter and other international instruments is SS. SS, for the past several hundred years is recognized as the defining principle of interstate relations and a foundation of world order. The concept:

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> Lies at the heart of both customary international law and the United Nations Charter and remains both an essential component of the maintenance of international peace and security and defense of weak states against the strong (Chesterman, 2001, p. 13).

The sentiment of defending weak states against the strong was captured by Algerian President Boueteflika, who, as President of the Organization of African Unity (OAU), addressed the UN General Assembly (UNGA) in 1999, immediately after the Secretary-General (SG), and called sovereignty "our final defense against the rules of an unjust world" (Tharoor and Daws, 2001, p. 25). Article 2(7) of the UN Charter states that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter."

Therefore, the nucleus of the conflict between the principles of SD and SS is not just that one principle logically cancels what the other proposes but principally that both are codified and opposed to each other in international instruments. Thus, in many ways, the debate around the right to SD is the result of the clash between the Charter's definitive Articles 2(7) and 2(4), which respects the exclusive and overriding sovereignty of a state over its internal affairs, and the human rights agenda and laws developed subsequently, which erode the sovereignty of the state. The result of this contradictory codifications is that in conflicts of SD, both the rump state and the secessionist group use the same instruments to mobilize and justify their actions. For instance, in Nigeria, both the Federal Government of Nigeria (FGN) and Indigenous People of Biafra (IPOB) use international law to defend the inviolability of SS and SD respectively.

In the bid to resolve this tension and by extension influence international policies on conflict of SD, international lawyers and jurists have proposed four competing theories delineating the position of international law on the question of the right to SD: international law is opposed to the right to SD; international law supports primary right to SD; maintains remedial right to SD and international law is neutral on the right to SD. Using the historical and hermeneutical methods, this study interrogates the specific claim that international law bans the right to SD. After conceding that the jurists and international lawyers who advocate this position do so for obvious reasons of maintaining international peace and stability, the study argues that the theory cannot be sustained legally and morally as it has no specific and solid support both in law and practice and does not meet the basic requirements of justice. Above all, the study argues contrary to the belief of the theory's advocate, that the theory is not suitable for international stability and peace and therefore recommended further studies to develop a theory and framework that meet the global need for peace and stability.

The study is divided into five parts. The introductory part clarifies the problem and purpose of the study outlining the procedure for achieving them. The second part conceptualizes the concept of secession, SD and SS. In third part the theory that SD is prohibited in international law is presented and discussed. Using the criteria of international practice, judicial precedence, scholarly opinion and moral consistency the study tries to expose the vacuity of the theory in the fourth part. The fifth and final part is the conclusion and recommendation. This part, argues contrary to the theory's advocates, that it is not suitable for international stability and peace and therefore recommended the formulation and promotion of a theory that promotes global stability and peace.

Clarification of Concepts

Self-determination

Self-determination is a very complex concept. However, the various strands of meanings in the concept will not be explored here. Our purpose is strictly to operationalize the concept for use in this study. Hence, Toft (2012, p. 584) defines SD by claiming that "one can understand self-determination as the notion that ethnic groups have the right to determine their own fate, either by opting for a degree of autonomy within the borders of an undivided state, or by seceding. Thus, there are two types of SD, internal and external SD. While internal SD is the quest of a group fighting for greater autonomy within a country, external SD refers to the right and demand of those who want to form their own country or merge with another country. In international law, there is broad consensus on the meaning and existence of the right to internal SD. What is contested is the existence of external SD and that is the version of SD that this research is interested in.

Secession

Secession is the act of breaking away from a rump state to form a new state or to join another state. In this regard, secession is a form of external SD and the two terms are almost always used interchangeably in literature. This study will follow the same pattern. Nevertheless, there is still a tacit difference between secession and external SD. Whereas SD is the right of a people to pursue their political future, secession is the attempt to realize that right through complete withdrawal from the parent state (Raymond, 2014). Therefore, while all successful SD does not lead to the breakup of states, all successful secessions result in the breakup of states. On the whole, Secession and SD are used interchangeably in this study.

State Sovereignty

According to *Academic American Encyclopedia (1981)*, SS refers both to "the supreme powers exercised by a state over its own members", and "the powers exercised by an autonomous state in relation to other countries." Based on these two aspects, SS is usually said to have both internal and external dimensions. According to *Encyclopedia Britannica* (2024) internally, SS is "the ultimate authority in the decision-making process of the state and in the maintenance of order." Externally, SS refers to full legal equality with other states and the freedom from any external control with regard to the independent rights of the state to enter into transaction with other states. Specifically, and most importantly, SS immunizes the state from balkanization by both internal and external actors (Malcolm, 2014, p. 12). Therefore, as seen above, the conflict between the two principles is that what one (SD) approves (breaking up of a state) the other (SS) opposes.

International Law Bans the Right to Self-Determination

This theory claims that international law prohibits SD or that SD was only legal in international law during decolonization. After decolonization, every attempt to balkanize a sovereign state is illegal in international law. This claim was elucidated by Pei-Ling Hu (2014, p. 3):

> Many post-1945 examples of movements of [SD] especially those unilateral and outside of the context of decolonization—the only UN practice where [SD] achieved the stature of an applicable legal right—are largely contested and gain little recognition or support from the world community and the UN. Therefore, post-colonial secession is significant because, while the first introduction of the right of [SD] in the international law set it up as a universal right for all 'peoples,' it is only practiced as a binding, legal right in the context of decolonization.

He added also:

> From this perspective, for the UN, the right of [SD] of 'peoples' only constitutes a right under the context and condition of decolonization. Outside of this colonial

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> context, throughout the past decades, the UN has largely blocked the establishment of every new state especially in the previously colonial world, arguing that these demands for [SD] are 'redundant' as such right has already been addressed in the process of decolonization. The UN reacted to post-decolonization secessionist movements either with active military intervention in a separatist conflict (for example, in the Katanga vs. Congo case), or with passive denial of the breakaway nation's nationhood, thus withholding any international recognition to the new state and effectively rendering the independence invalid (for example, in the Biafra vs. Nigeria case) (p. 6).

In view of these claims, Joshua Castellino (2011, p. 18) remarks that "[SD] was thus viewed as the concept that exclusively freed people from 'salt-water' colonialism." Similarly, Paković and Radan (2007, p. 22) also conclude that in this right of SD sanctioned to colonial countries, there is a general insistence that "newly independent states inherited the territories and borders of the former colonial entities from which they emerged." Secessions that are outside of the specific colonial setting or that threaten to break down colonial borders are generally not considered legitimate, or legal, under international law. The right of SD of the "people" seeking postcolonial secession is not considered one of the inalienable "human rights" that "derive from the inherent dignity of the human person", or a right "of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion (1960 Declaration)" (Pei-Ling Hu, 2014, p. 3).

This theory is defended on four premises. Premise one, argues that secession is not mentioned in any international document and hence is considered illegal by international law. On this account, the various places SD is mentioned in international protocols outside decolonization are taken to mean internal SD and thus, cannot be used to justify postcolonial secession. Majority of international lawyers and jurists who hold this opinion start by making a distinction between internal and external SD and identifying SD with the former and secession with the later. From this position, they go ahead to claim that there is no recognition of a right to secede in international law (Christakis, 2011, p. 77). Tancredi (2014, p. 80) has on this ground argued that the exercise of an external right to SD is confined to processes of decolonization. The argument he used to support this claim is that the word secession did not appear in any international legal document, including the UN Charter. The initial effort to include secession in the Charter was rejected by the drafters:

> In fact, although it was debated during the preparatory sessions preceding adoption during the San Francisco Conference, the term 'secession' in the end did not figure in the text of the UN Charter as a clear expression of the decision taken by the drafters (p. 82).

After acknowledging that Art. 1 of the UN Charter can be interpreted as authorizing the right to secession, Tancredi bluntly rejects such reading insisting that it is not possible to conclude that the right to secede is reflected in the text of the original precept.

Secondly, in many ways, the claim that international law bans secession centres on the provisions of articles 2(4) and 2(27) of the UN-Charter which respect the exclusive and overriding sovereignty of a state over its internal affairs. Article 2(4) on Prohibition of threat or the use of force in international law asserts that:

> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

And Article 2(7) of the "Purposes and Principles" of the Charter of the UN states that:

> …nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter.

It is argued that under these provisions, the deciding factor in the UN's (and/or its members') involvement in any secessionist movement depends on whether the matter is considered domestic or international affairs. A secessionist war that takes place on the territory of a recognized nation-state is only considered an international affair if the aggression on either side amounts to the degree of genocide—an international crime against humanity—or if the unrest spills over the borders of the affected state, hence violating its neighboring states' right to territorial sovereignty and affecting international peace and security, the most common example of this being the refugee problem. Other than these few exceptions, the international community typically upholds Article 2(7) over any other international or human rights law. As the determination of genocide proves to be anything but clear-cut despite the signing of the Genocide Convention in 1948, and as the refugee problem generally receives more humanitarian response—emergency reliefs operated by UNHCR, for example—than military action directly addressing the secession conflict, in most unilateral, post-decolonization secessionist war the UN silently gives the host government its legal license to carry out "police action" targeting part of its own people (Pei-Ling Hu, 2014, p. 9).

The third claim is based on the provision of the various UN instruments where SD is not only restricted by but also trumped by SS. A typical example of this is the UN Charter itself where after declaring in Article 1(2) that one of the purposes of the UN is "to develop friendly relations among nations based on respect for the principle of equal rights and [SD] of peoples", article 2(7) quickly interjects that "nothing contained in the present Charter shall authorize the [UN] to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter."

Another important document usually cited in this regards is the Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960, where the declaration of article 2 that "all peoples have the right to [SD]; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development," was counterbalanced by Clause 6 which emphasizes that "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the [UN]." The contention therefore is that international law has always prioritized SD over SS.

The fourth argument is based on the history of secession. It is claimed that since the formation of the UN in 1945, no country has gained independence through post-colonial unilateral secession. In this context, James Crawford makes the observation that "since 1945 the international community has been extremely reluctant to accept unilateral secession of parts of independent States if the secession is opposed by the government of that State" and that "since 1945 no State which has been created by unilateral secession has been admitted to the [UN] against the declared wishes of the government of the predecessor State" (Crawford, 2006, p. 390). Crawford lists all cases of secession and dismemberment after 1945 in non-colonial context here to demonstrate this claim:

> Since 1945, the only new states emerging from situations which were not formally recognized as colonial, i.e. as covered by Chapters XI or XII of the Charter, have been: Senegal (1960); Singapore (1965); Bangladesh (1971); the three Baltic States: Latvia, Lithuania, Estonia (all 1991); the eleven successor States of the former Soviet Union: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan,

> Kirgizstan, Moldova, Tajikistan, Turkmenistan, Ukraine, Uzbekistan (all 1991) the five successor States of the former Yugoslavia: Slovenia, Macedonia, Croatia, Bosnia-Herzegovina, Federal Republic of Yugoslavia (Serbia and Montenegro) (1991- 2); Czech Republic and Slovakia (1993); and Eritrea (1993) (p. 391).

Similar point was made by Vidmar (2015, p. 370) who argues that the fact that international law prohibit secession outside the context of decolonization is evident in customary international law since 1945. He notes that while 28 new States have emerged outside any decolonization process since 1945, cases such as Senegal (1960), Singapore (1965), Eritrea (1993) and South Sudan (2011) involved consent between the parties concerned prior to independence. In other instances, for example the Baltic States, Latvia, Lithuania and Estonia (1991), it was a question more of the re-emergence of States, since they recovered the independence that had earlier been seized from them. In yet other cases there were states that came into being as a consequence of the collapse of communism: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kirgizstan, Moldova, Tajikistan, Turkmenistan, the Ukraine and Uzbekistan emerging from the former Soviet Union in 1991; Slovenia, Macedonia, Croatia, Bosnia-Herzegovina, Federal Republic of Yugoslavia (FRY), that arose from the former Yugoslavia in 1991 and 1992, followed in 2006 by Montenegro; and the former Czechoslovakia, which split into the Czech Republic and Slovakia in 1993. In reality, in international practice there are only the cases of Bangladesh (1971) and Kosovo (2008) that are new States arising as the result of a process of unilateral secession. In view of this, Vidmar concludes that the recognition of a right to secession in international law by the international community would hence not appear to find the necessary and sufficient precedents in reality.

Vidmar view would be reinforced by the occurrence of cases like those also cited by James Crawford: Tibet (China, 1959), Katanga (Congo, 1960), Biafra (Nigeria, 1967), Kashmir (India, 1987), East Punjab (India, 1970), the Karen and Shan States (Burma, 1949 and 1960), the Turkish Federated State of Cyprus (Cyprus, 1975), Tamil Eelam (Sri Lanka, 1983), Bougainville (Papua New Guinea, 1990), Somaliland (Somalia, 1991), Kosovo (FRY, 1991), Chechnya (Russia, 1991), Nagorno-Karabakh (Azerbaijan, 1991), Kurdistan (Iraq/Turkey, 1992), Republika Srpska (Bosnia-Herzegovina, 1992), Abkhazia (Georgia, 1992), South Ossetia (Georgia, 1992), the Democratic Republic of Yemen (Yemen, 1994), and more recently Crimea. In all these the attempts at secession by groups or territories within an independent State, according to Crawford failed to gain recognition as new States from the international community (Crawford, 1998, p. 105). Therefore, for the proponents of this theory as clearly represented by Peters, if there is no recognition for a right to secede, then secession is not permitted, in other words, it is prohibited by international law. Some comment, in addition, that this is so because there is a presumption in favour of stability, rather than an acceptance of secession (Peters, 2011, p. 99).

Appraisal of the Theory that Self-Determination is banned in International Law

As stated above, this section will examine the claim that SD is prohibited in international law from both moral and legal perspectives. Morally, two objections are raised against the theory: objection from human right and objection from justice. Legally, two objections are also raised against the theory: objection from international practice and objection from judicial precedence.

Moral Objections

Objection from Human Rights

The most important moral objection against this theory is that the claim that international law bans SD treats SD as a territorial rather than a human right as provided by many international and regional instruments. These international provisions make the claim of international ban on SD

arbitrary since human rights inheres on persons and cannot be banned. For instance, following the 1960 Declaration, in 1966 the UN adopted International Covenant on Civil and Political Rights (ICCPR), as one of the documents under the International Covenants on Human Rights, which, though not binding, officially viewed SD not only as a human right, but the first and fundamental human right. It states that it recognizes "the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" and also enshrines the right of [SD] in its very first Article with the same words:

> All peoples have the right of [SD]. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (Art. 1(1)).

Joshua Castellino and Jérémie Gilbert (2003, p. 155) are therefore right to point out that shortly after the establishment of the UN, with the drafting and adopting of these documents concerning basic human rights, the UN has made the right to SD "essential before any other rights can be recognized."

This message resurfaced again in the Vienna Declaration of 1993 adopted by the World Conference on Human Rights. The Declaration states in its first Article that "human rights and fundamental freedoms are the birth right of all human beings; their protection and promotion is the first responsibility of Governments," and then in its second Article, when affirming that the denial of the right of SD is a violation of human rights, it states:

> In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the [UN], this shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and [SD] of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

The proponents of the ban on SD are yet to provide evidence of what changed in human nature that made colonial people to have the right to SD while post-colonial people do not.

Objection from Justice

This second objection derives directly from the first objection on human right. The objection questions the justice of ascribing the right to SD to colonial people who were treated unfairly why denying the same right to post-colonial people who live under the same condition of unfair treatment. For instance, one searches in vain to find the grounds upon which SD which is a human right can be justified for people living under colonial domination but denied to post-colonial people. Why is SD good for African living under colonial rule but not good for Africans in post-colonial time who still live under similar conditions? Therefore, it is argued that if SD is a human right, it does not appear reasonable to say that colonial people have it why non-colonial people do not.

This refutation was made by Lee Buchheit who while acknowledging that many jurists and international lawyers often seem to favour SS over SD under the claim that the principle of SD was originally intended to apply only to colonized peoples and territories. However, Buchheit points out that even if this interpretation is correct, it does not mean that it could not plausibly be extended to apply to secessionist claims. His reasons is that the situation of some national minorities in existing multinational states is strikingly similar to that of colonized peoples under alien rule prior to decolonization: "domination by a foreign government, lack of political autonomy, economic exploitation, and human rights violations." If this is the case, it is unclear

why such minorities should not be able to invoke the principle of SD to free themselves from such rule. As Buchheit (1978, pp. 17-18) puts it:

> One searches in vain for any principled justification of why a colonial people wishing to cast off the domination of its governors have every moral and legal right to do so, but a manifestly distinguishable minority which happens to find itself, pursuant to a paragraph in some medieval territorial settlement or through a fiat of the cartographers, annexed to an independent State must forever remain without the scope of the principle of [SD]. International law is thus asked to perceive a distinction between the historical subjugation of an alien population living in a different part of the globe and the historical subjugation of an alien population living on a piece of land abutting that of its oppressors. The former can apparently never be legitimated by the mere passage of time, whereas the latter is eventually transformed into a protected status quo.

Thus, while it is understandable that the restricted use of the principle of SD endorsed by some legal scholars is motivated mainly by the fear of the chaos and violence that would likely ensue were every secessionist claims are satisfied, this fear should not lead to the outright claim that secession is prohibited in international law.

Legal Objections

Objection from Judicial Precedence

While scholars have used a number of judicial precedence to make case for non-prohibition of the right to SD in international law, the landmark case that connects all the cases together is the Advisory Opinion (AO) of the International Criminal Court (ICJ) on the legality of the declaration of independence by Kosovo. On 8 October 2008, through Resolution 63/3, the UNGA issued a request for an AO to the ICJ. Serbia through this Resolution sought to have the court's opinion on whether the declaration was in breach of international law and also to reopen the negotiating process for determining the future of Kosovo. The question was framed as follows:

> Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law? The question that the GA posed to the ICJ was to assess the accordance of the declaration of independence of 17 February 2008 with international law (Resolution, 63/3, 2008).

To address the question, the ICJ underlines the substantial relevance of the principle of territorial integrity in international law and interprets its subjective scope using as a basis two relevant texts: the GA resolution 2625 (XXV) of 1970 and the Final Act of the Helsinki of 1 August 1975. The conclusion of the ICJ (2010, p. 80) is that "The scope of the principle of territorial integrity is confined to the sphere of relations between States." The interpretation of the Court is held as balanced on the basis of the traditional view that international law remains neutral in regard to secession (Christakis, 2011, p. 82). Upholding the strictly inter-sate character of the territorial integrity principle, the Court refused to challenge the "legal neutrality" thesis (Corten, 2011, p. 89). The answer to that question turns on whether or not the international law prohibited the declaration of independence. The Court chose to focus its answer in terms of non-violation. Taking this less demanding approach, it declares that the declaration did not violate any applicable rule of international law. In order words, it will be preposterous to go contrary to the ruling of the highest judicial organ in the UN and say that international law prohibits SD.

Objection from International law and Practice

Another strong objection against the claim that international law prohibits SD is that such claim

has no specific support in international law and practices. For instance, nowhere in international law is it clearly stated that secession or SD is prohibited. The general references usually made by scholars to articles 2(4) and 2(7) of the UN Charter and the so called safeguard clause in para. 6 of the 1970 Declaration on Friendly Relations (UNGAR, 2625), in no way specifically outlawed or specifically stated that SD is illegal in international law. Specifically, the safeguard clause states that:

> Nothing in the foregoing paragraph shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent **States conducting themselves in compliance with the principle of equal rights and [SD] of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.** Every state shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country.

While this paragraph clearly states that SS is sacred and protected by international law, it does not in any way state that SD is prohibited. Rather it implies that SD trumps SS for states who do not conduct themselves in compliance with the principle of equal rights and SD of peoples and possess a government that represents the whole people.

Also, although, there has been many failures of attempted SD since the UN Charter came into force in 1945, there has also been few successful ones that at least passed through the auspices and recognition of the UN such as Bangladesh, Kosovo and South Sudan. These though few, are indications that it will be difficult to justify the claim that there is general prohibition of SD in international law.

Evaluation and Conclusion

From the foregoing, it appears that there is no basis both in international law and moral philosophy to legitimize the argument that international law prohibits the right to SD. What is somewhat obvious is that scholars who propound this argument do so as a policy wish and then scout for international legal backing to support their policy proposition. Their aim as hinted above is that they feel that SD expressed in the form of secession is globally destabilizing and therefore dangerous for peace. Hence, they propose prohibiting SD as a way of maintaining global stability

In this regards, Christakis (2011, p. 80) reasons that the recognition of a right to secede would be dangerous for any State with racial, linguistic, political or religious minorities. Furthermore, he claimed that it would lead to a progressive fragmentation of the international community through the creation of numerous unviable mini-states. Moreover, Higgins (1993, p. 35) maintains that each new State might incorporate a minority that would in its turn seek a new secession thereby disrupting global peace and stability. Similarly, Heraclides (1991, p. 28) claims that there would be a negative effect for democratic States in which any minorities would always have the opportunity of blackmailing the majority by threatening to secede if its wishes were not satisfied. Therefore, the argument that international law bans SD is more or less a peace theory and hence, stands or falls on its ability to guarantee peace and this raises the question, will banning secession make the world more or less peaceful?

This question has been addressed by a number of scholars. Akpan (2016) for instance argues that secession is a fact of life that will occur irrespective of whether it is prohibited or not in international law. According to him, saying that international law bans SD does not stop it from happening rather it takes it away from the ambiance of law where it can be regulated and makes it a question of power which is the reason it has become the greatest source of violence in modern

times. In other words, prohibiting secession rather than discouraging it orients it towards violence, makes it more dangerous and therefore unsuitable for international peace.

Similarly, Caterina Malavolti (2016) noted that the world community of states has almost tripled between 1945 and 2012, meaning that nearly two new secessions occurred yearly. According to her, therefore:

> What normative moral theories do not consider is that there will always be separatist movements and ultimately secessions are likely to occur anyway, even illegally. The need to morally justify secession is trumped by the necessity of domesticating separatist claims while avoiding violence and political instability. Therefore, we should adopt a pragmatist approach and focus on the procedures that ought to be established to control what appears to be an inevitable phenomenon.

As Miljenko Antić (2007, p. 153) suggests, the appropriate question is not whether secession should be allowed, but under which conditions and which procedures should be set to handle it in the most peaceful and effective way.

It is obvious therefore that banning the right to SD is a risk to international peace and stability. Even if peace and stability of borders were guaranteed, it would not be just peace, since this would not be "peace by satisfaction", but "peace by power" or, more precisely, "peace by impotence" which as seen above is not peace at all. President Wilson (1927, p. 244), the widely acclaimed author of the modern concept of SD believed that the prevention of future wars was linked to the establishment of a just peace, peace founded on respect for the principle of SD. An "imperative principle of action, which statesmen will henceforth ignore at their peril", he warned. Therefore, while the debate on whether or not, the right to SD is prohibited in international law is important and commendable, the more important question should be, what moral theories and legal framework should be set to help the international community handle SD most peacefully and effectively. This study recommends further studies in this direction.

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