THE RIGHT TO SELF-DETERMINATION IN MODERN INTERNATIONAL LAW: THE BIAFRA CONUNDRUM.*

ABSTRACT
The concept of self-determination of people, which is still a subject of intense debate with respect to its fluid nature in public international law, has many prongs formulated on different legal prisms. By way of summation, its evolution could be traced to post-second world war era and gathered traction in the 1960's, occasioned by the metamorphosis of decolonization. This evolution concerns the transformation of self-determination which was in the first place, conceived as a legal principle to a legal norm. Regrettably, the implementation of the concept of self-determination, over the years; has always been more problematic unlike its original contents. However, this paper adopted a doctrinal research method to analytically discuss the Ndi-Igbo of South Eastern Nigeria, spear-headed by IPOB, continual and protracted demand for Biafran State vis-à-vis the right to self-determination within the ambit of modern international law. It is against this backdrop that this paper strongly contends that without involving their members in electioneering processes, and or, keying into some of the perspectives of right to self-determination as argued by Marc Weller, the said mantra of right to self-determination will always remain a mirage.
Keywords: Secession, Sovereignty, Recognition, Self-Determination, and Human Rights.

1.1 INTRODUCTION

It is unnecessary to state that, a significant number of today's most violent conflicts seem to be fueled, if not created, by the desire of nations to control their own States[1]. For example, the not too long renewed bombing by the Basque separatists, the outbreak of hostilities along the Eritrean-Ethiopian border, demonstrations and clashes over secession in the Comoros, heightened tension between China and Taiwan over the Island's political status, investigations into past violence in East-Timor and reports of current violence in Aceh, and accusations of torture by Russian Soldiers in Chechnya[2] are instructive. Related to the foregoing, the Catalan declaration of independence on the 27th October, 2017, the 2017 Kurdistan region independence referendum, the Ambazonian's fights for the independence of Cameron's Western Anglophone region, the protracted Tigray Conflicts in Ethiopia, the Russian and Ukraine conflict occasioned by the 2014 Ukrainian revolution, which followed by Russia's annexation of Crimea from Ukraine in 2014 in a choreographed referendum. Again, the Russian backing and tacit support of the separatist fighters of the Donetsk People's Republic, and the Luhansk People's Republic in a war; as well as the subsequent annexation of Donetsk, Luhansk, Kherson and Zaporizhzhia regions in Ukraine, on the 30th September, 2022 vide another sham referendum according to Ukrainian President, and his Western allies, and above all; the Indigenous People of Biafra (IPOB) demonstrations, feverish tension and clashes with Nigeria security personnel, and its concomitant referendum conundrum, are many examples that are apposite.

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[1] ***Keitner, I.C****, National Self-Determination in Historical Perspective: The Legacy of the French Revolution for Today's Debates, International Studies Review, Vol. p 3, 2000, PI <https//papers.ssm.com}so13 paper> accessed on 31st January, 2022*
[2] *Ibid*

That said, in the words of Prof. Chimene I. Keitner, in one of her profound literatures on self-determination, she opined that, all of those may not be likened as world war, but much of the world is at war[3]. However, the nation state principle posits an international society composed of sovereign nation-state. But, it is the writer's considered opinion that, the Russian versus Ukraine conflict on the one hand, as well as Vladimir Putin bully like posture on Ukraine, especially as it relates to the obvious violation of the law of armed conflict, the NATO, the West and USA, economic, political, psychological and the military support for Ukraine as opposed to that of Russian, have succeeded in giving scholarly traction to the fluid nature of the concept of sovereign nation-state and territorial sovereignty. Although, the assumption that nations and states should be congruent may appear outdated or benign, because it may create volatile expectations and lead to secessionist and irredentist claims[4]. These are likely to arise when political, and socio-economic discontent becomes focused on discrepancies between the boundaries of historically and culturally distinct communities and the borders of states whose control over these groups is perceived as illegitimate[5].

1.2 HISTORICAL BACKGROUND

The political origins of the modern concept of self-determination can be traced to the declaration of independence of the United States of America of 4 July, 1776, which proclaimed 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[6]. In another development, the principle of self-determination was further shaped by the leaders of the French Revolution, whose doctrine of popular sovereignty, at least initially, required renunciation of all wars of conquest and contemplated annexations of territory to France only after plebiscites[7].

Conversely, during the 19th Century, and the beginning of the 20th Century, the principle of self-determination was interpreted by nationalist movements as meaning that each nation had the right to constitute an independent state, and that only nationally homogenous states were legitimate[8]. This so-called principle of nationalities provided the basis for the formation of a number of new states and finally, at the end of World War 1, for the dismemberment of the Austro-Hungarian, Russian and Ottoman Empires. The principle was also prominent in the unification process of Germany and Italy, which to a large degree were based on national characteristics in which plebiscites played an important part[9].

The principle of self-determination further evolved when it was espoused by the socialist movement, and the Bolshevisk revolution, which was the brain child of Lenin and Stalin,

[3] *Ibid*
[4] *Ibid*
[5] *Ibid*
[6] ***Daniel Thaer & Thomas Barr,*** *The Right to External Self-Determination, Max Planck Encyclopedia of Public Law <https//www:edu.dk.Sekrefer> accessed on the 4th of January, 2022*
[7] *Ibid*
[8] *Ibid*
[9] *Ibid*

and the principle was represented as one of international law[10]. It should, however, be mentioned that the right of self-determination in soviet doctrine existed only for cases justice. Thus, it was only a tactical means to serve the aims of world communism and of an end in itself[11].

During World War 1, the President of the United States, Thomas Woodrow Wilson, championed the principle of self-determination as it became crystallized in the fourteen points of Wilson 1918. Although, this proposal formed the basis of peace negotiations with the central powers. However, self-determination was subsequently far from fully realized in the Peace treaties of France[12]. But it was reflected in a number of plebiscites held by the Allies in some disputed areas, and it was one of the basic components of series of treaties concluded under the auspices of the League of Nations for the protection of minorities[13].

Finally, the principle of self-determination was invoked on many occasions during World War 2. It was also proclaimed in the Atlantic Charter (1941) Declaration of Principles of 14th August, 1941, in which President Roosevelt of the United States, and Prime Minister Churchill of the United Kingdom declared, inter-alia, that they desired to see no territorial changes that do not accord with the freely expressed wishes of the people concerned[14]. A further step in the development of the concept of self-determination by United Nations General Assembly, was the adoption of international Covenant on Economic, Social and Cultural Rights (1966) ICESCR and the International Covenant on Civil and Political Rights (1966) ICCPR[15]. By way of logical construct, the identically worded Article 1(3) ICCPR and ICESCR, restate the right of all peoples to self-determination, as defined in the declaration on granting independence, hence states parties are enjoined as follows: States parties …. including those having responsibility for the administration of Non-Self-Governing and Trust Territories, to promote and respect the right.

1.3 DEFINITION OF SELF–DETERMINATION

Self-determination means free choice of one's own acts, or states without external compulsion. It also means the determination by the people of a territorial unit of their own future political status[16]. As a principle, the concept of self-determination can be defined as a community's right to choose its political destiny. This, include choices regarding the exercise of sovereignty and independent external relations (external self-determination)

[10] *Ibid*
[11] *Ibid*
[12] *Ibid*
[13] *Ibid*
[14] *Ibid*
[15] ***Mariam–Webster.****com<https://www> accessed on 2nd January, 2022. For some scholarly exposition on Self-Determination as a right within the gamut of Self-Government, See* ***Hurst Hannum,*** *Rethinking Self-Determination, Virginia Journal of International Law, Vol.34.No.1.1993 <https://papers.ssrn.com > accessed on the 15th of August, 2022*
[16] *Encyclopedia Princetonians, Self-Determination <https//pesd.princeton.edu. node> accessed on the 4th February, 2022*

or it can refer to the selection of forms of government (internal self-determination)[17]. Suffice it to say that, as a concept, self-determination, the right to choose, has its roots in the American and French revolutions in the eighteenth century with their emphasis on justice, liberty, and freedom from authoritarian rule, and it found its most prominent expressions following World Wars I and II[18].

The International Court of Justice, refers to self-determination as a right held by government alone[19]. Though, Brownlie, has retorted the overlap of interests between the individual and the identifiable group[20]. Again, B.M Unterberger, defined the concept of self-determination as the right of a people to determine its own political destiny. That, beyond this broad definition, however, no legal criteria determine which groups may legitimately claim this right in particular cases[21]. From an international law perspective, albeit, International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic**,** Social and Civil Rights (ICESCR), the common Article 1,[22] defines self-determination to mean:

(a) All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.
(b) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of International Economic Co-operation, based upon the principle of mutual benefit, and International Law. In no case may a people be deprived of its own means of subsistence.
(c) The States parties to the present covenant, including those having responsibility for the administration of Non-Self Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

1.4 SELF–DETERMINANTION, POPULAR SOVEREIGNTY AND HUMAN RIGHTS

Self-determination, as a concept from all intents and purposes, enjoins a vintage position in the realm of International Law[23]. It is a notion that brings together the interests of the individual and relates them to the interests of the group[24]. The interests of both the individual and the group concentrate on the ability to exercise their selections about how

[17] *Ibid*
[18] ***Keistner, C.I**, (n1)*
[19] ***Ian Brownlie**, The Principles of Public International Law (Oxford University Press, 5th edition) January 14, 1999, p599.*
[20] ***B. M. Unterberger,** Self-Determination in Encyclopedia of American Foreign Policy, R.D Burns and Others (eds) 2nd edition, Vol. 1 Chr.AD] Charles Scribers Sons, Gale- Thomas publisher1644.*
[21] ***Gentian Zyberi,** Legal Perspective on the Rights of Peoples Minorities to Self-Determination (Including through Secession) Norwegian Centre for Human Rights, University of DSW, October, 2014, p16*
[22] *See also **Antonio Cassese,** Self-Determination of Peoples. A Legal Reappraisal (Cambridge University Press, 1995)*
[23] *See also **Antonio Cassese,** Self-Determination of Peoples. A Legal Reappraisal (Cambridge University Press, 1995)*
[24] ***Franck, T.M,** The Emerging Right to Democratic Governance, (Cambridge University Press, 2017) <https://www.cambridge.org> accessed on the 13th of June, 2022.*

they wish to live their lives and to be free from the interference and imposition of others[25]. In the same vein, Brownlie, has been quick to point the overlap of interests between the individual and the identifiable group[26]. A similar theme appears in the proposal of the United Nations as identified in the Charter when the founders of the UN agreed that the organization was to encourage friendly relations amongst nations based on respect for the principle of equal rights and self-determination of peoples[27].

The significance of the principle of "self-determination" and its potential legal status surfaced in the famous Barcelona Traction **C**ase[28]. By the late 1990s, the legal status of the principle of self-determination as an exercise of freedom and human rights no longer appears to be in doubt[29]. Thus, it would be useful to develop a core understanding of self-determination before any further investigation is pursued. Therefore, in turning to Prof. Brownlie, one definition of self-determination surfaces in the examination of rights. It is, for him, the right of cohesive national groups ('peoples') to choose for themselves a form of political organization and their relation to other groups[30].

From a constitutional realm, a number of States have provided a context for the concept of 'self-determination'. For example, the Croatian Constitution of 1990 speaks of the generally accepted principles in the modern world and the inalienable, indivisible, non-transferable and in expendable right of the Croatian nation to self-determination and state sovereignty, including the inviolable right to secession and association[31]. In the 1949 German Constitution, the people declare that they "have achieved the unity and freedom of Germany in free self-determination.

Emphatically, while various nation-states i.e., groups of people – have made a claim to "self-determination", importantly, what does the term connotes? In 1975, the International Court of Justice shed some insight in an advisory opinion concerning the region of the Western Sahara[32]. In noting the possible application of Article 1(2) of the Charter of the United Nations, the court acknowledged that General Assembly Resolution 1514 (XV) enunciated the principle of self-determination as a right of peoples and the application of this right for the purpose of bringing all colonial situations to a speedy end[33]. In the commentary on the Charter and General Assembly resolutions, the court noted that, the right of self-determination requires a free and genuine expression of the will of the peoples

[25]***Ian Brownlie, (n****19)*

[26]***See*** *U.N Charter Article 1.2. By way corollary, it would seem that the right of Self-Determination might be a pre-condition to all other individual human rights according to Prof. Wolfrum*

[27]***Araujo, F.R,*** *Sovereignty, Human Rights and Self-Determination: The Meaning of International Law, Fordham International Law Journal, Vol. 24, issue 5, 2000, P20.<https://ir.lawnet.fordham.edu>accessed on the 17th of July, 2022.*

[28]*Ibid, p21*

[29]*Ibid*

[30]*Ibid, p22*

[31]*Ibid*

[32]*Ibid*

[33]*Ibid*

concerned with the exercise or attempted exercise of this right[34]. In more than one occasions, the court offered a basic definition of this right as the freely expressed will of peoples, or free expression of the wishes of the people[35].
A plethora of legal sources offers some helpful contexts to better understand the nature of the will or wishes that are expressed, or wish to be expressed, by peoples as they relate to the exercise and defense of human rights[36]. For example, the 14th December, 1960 resolution of the General Assembly acknowledged that colonialism inhibits the social, cultural and economic development of dependent people. Moreover, the General Assembly recognized that alien subjugation interferes with the inalienable right (of peoples) to complete freedom, the exercise of their sovereignty and the integrity of their national territory[37]. This inalienable right includes the ability to freely determine their political status and freely pursue their economic, social and cultural development[38]. As normative texts that generate legal obligations for over 140 States parties[39], the ICCPR and the ICESCR have served as the basis for ongoing recognition about the legal status of self-determination in the realm of international law[40]

Even though specific applications of common Article 1 may present special challenges to existing government mechanism found in particular States, the idea of "self-determination" has been given both political as well as social, economic and cultural contexts. While their respective second articles are different, each covenant acknowledges State responsibility to respect, ensure, achieve or guarantee the rights specified in the applicable covenant[41]. Although, the ICCPR acknowledges that some restrictions on protecting rights may exist during times of public emergency[42], certain rights, for example, the right to life; freedom from torture, slavery and imprisonment for debt; recognition as a person before the law; and freedom of thought, religion and conscience are non-derogable[43]. Under the ICESCR, no state, group, or person has the right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized by the ICESCR[44]. The ICCPR, equally echoes this same provision[45]. Since most of the States in the world today have become parties to the ICCPR and the ICESCR, they also have obligations to respect the fundamental precepts of human rights that are defined by the political and social processes enhanced and protected by the popular sovereignty of the people and in the exercise of the people's self-determination[46]. If this is indeed the case, any external organ or agency would be prohibited from imposing

[34]*Ibid*
[35]*Ibid*
[36]*Ibid*
[37]*Ibid*
[38]*Ibid*
[39]*Ibid*
[40]Not every State party to one of those conventions is automatically a party to the other. Each convention requires independent ratification. See Section 12 of CFRN, 1999 (as amended) and the case of *General Sanni Abacha & Ors v. Chief GaniFawehinmi (2000)4 SCNJ 401*
[41]*Ibid, p24*
[42]*Ibid, p25*
[43]*Ibid*
[44]*Ibid*
[45]*Ibid*
[46]ICCPR, Article 5.1

its view on a people who have given particulars to their rights as defined by these two important conventions in the exercise of their own sovereignty and through their self-determination[47].

1.5 RIGHT TO SELF–DETERMINATION: LEGAL ISSUES

The above exposition makes it obvious that any legal approach to self-determination must address a number of issues. Firstly, it must identify the holder of the right to self-determination. It must also answer the question: who is entitled to the right of self-determination? Who are the people? Providing answers to the said queries, is obviously not an easy task, especially when bearing in mind the trouble that these sort of queries causes in other domains of collective rights, such as with the definitions of the minority, the indigenous population, or the nation[48].

As with other collective rights, the paucity of definition does not by itself mean that it is always unclear in concrete instances whether one or more peoples exist. Even though highly antagonistic claims of competing groups regularly clash when self-determination is at stake, the claim of particular group to constitute a people often goes unchallenged[49]. In particular, in the process of decolonization the ***utipossidetis*** principle and more simply; made certain distinctions possible: the UN and States could distinguish between peoples along the borders of former colonies or protectorates. The ICJ followed suit in the Western Sahara advisory opinion in stating that the right of that population to self-determination constitutes therefore a basic assumption of the questions put to the court[50]. In a similar way, the ICJ in the *East Timor Portugal v. Australia* case took note of the fact that both parties to the dispute agreed that the people of East Timor had the right to self-determination and thereby underscored that population of East Timor as a people. Even outside the context of decolonization, where it is not self-evident that the right to self-determination applies the existence of a people is sometimes accepted without further ado[51]. Thus, the ICJ observes that the existence of a Palestinian People is no longer in issue and that the rights of the Palestinian people include the right to self-determination. (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion).[52] Likewise, the Independent International Commission on Kosovo, author of one of the most authoritative documents on Kosovo, assumed without international community extends to the realization of the right of self-determination for the people of Kosovo, and the people of Kosovo, must take over the running of their affairs[53].

Conversely, the main reason, why parties, and the International Community concur in their assessment of whether a group constitutes a people or not is that different

[47]Father Robert Araujo, (n26)
[48]*Ibid*
[49]Daniel Thearer & Thomas Barr, {n6),p18
[50]*Ibid*
[51]*Ibid*
[52]*Ibid*
[53]*Ibid*

consequences can be drawn from the existence of a people. One, should not assume that just because there is agreement about what constitutes a people that no complications arise concerning the application of the right to self-determination[54]. So, by implication, it is the 'how' not the 'who' of self-determination that is argued about, notably in two regards: (a) how is the people made up, and (b) how does it exercise its right? These pertinent questions must be held apart from the way the right to self-determination is implanted after it has been exercised and (c) finally, the identification not only of the holder, but also of the duty-bearer of the right to self-determination is necessary[55]. Problems regarding the precise composition of a people usually arise when the right to self-determination is invoked in particular by way of referendum because then the focus shifts from th uestion who is the people to who belongs to the people[56]. The latter question reveals the nexus between the collective right to self-determination and the participatory right of the individual. In other words, the collective composition of the people and the individual right to vote in order to co-determine its collective destiny are simply two sides of the same coin[57]. Thus, the discussions regarding membership of a people usually arise when voters registers need to be established or a census is conducted. These arguments are not only further complicated by the individual's free choice of its identity, based on human rights. They are also fueled by voluntary or forced population shifts that typically happen in the context of self-determination situations, and that cause more arguments about participation thresholds and qualified majorities to be applied in the referendum. Such a complexity of problems can be witnessed in the controversy surrounding Western Sahara[58], and more recently, the September, 2022 staged managed referendum on the annexation of some territories in Ukraine by Russian-installed officials.

How do people exercise their right to self-determination? This is the question about the act of self-determination and, more specifically, about the creation and expression of the free will of a people. While, in principle, the will of a people could be formed in various ways through government decision or parliamentary resolution, possibly supported by a plebiscite, or through a referendum understandable, given the circumstances of decolonization and the fact that it should be an act of self-determination, preference is accorded at least implicitly to referenda[59]. Again, some other times, it could be by territorial expansion and ethnic incitement; and finally, annexation as exhibited by Russian government under the leadership of the strong man Vladimir Putin, firstly in Crimea, and more recently; in Luhansk, Donetsk, Kherson and Zaporizhzhia regions in Ukraine in March 2014 and September 2022 respectively.

The right to self-determination may be implemented in different ways. As a principle, friendly relations declaration puts it as the establishment of a sovereign and independent state, the free association or integration with an independent state, or the emergence into any other political status freely determined by a people constitute modes of implementing

[54]*Ibid, p20*
[55]*Ibid*
[56]*Ibid*
[57]*Ibid, p21*
[58]*Ibid*
[59]*Ibid*

the right of self-determination by that people[60]. Clearly, these modes of implementation are meant to apply to territories that are to be decolonized. They show that the right to self-determination may be exercised internally, within the confines of a state, or externally, in creating a new state. In other words, this distinction in the implementation of the right to self-determination basically enables the extension of the right to self-determination beyond the domain of decolonization[61].

Emphatically, a right must not only have a holder but also a duty bearer who is entitled must be distinguished from who is obliged (at least according to the Hohfeldian approach. The ICJ in East Timor answered the question of the duty bearer for the right to self-determination by referring to the highly controversial concept called "*erga–omnes*" developed in the *Barcelona Traction Case*: In the court's view, Portugal's assertion that the right of peoples to self-determination, as it evolved from the charter and from United Nations practice, has an *'erga omnes'* character, is irreproachable[62].

1.6 GENRE OF SELF-DETERMINATION UNDER INTERNATIONAL LAW.

Just like in other legal or non-legal concepts, the right to self-determination has its own prongs, as rightly espoused by M. Weller[63], and are listed below, viz:

1.6.1 TRADING SELF–DETERMINATION FOR AUTONOMY OR ENHANCED LOCAL SELF–GOVERNMENT

Under this, territorial autonomy has been the classical means of settling self-determination disputes outside the colonial context. So, it denotes self-government of a demographically distinct territorial unit within the State. The extent of autonomy granted will normally be established in the Constitution and/or an autonomy State.[64]

For example, **see second schedule,** part two of the concurrent list of the 1ɔɔɔ Constitution (as amended) that contains 38 items. So, this State will often be legally entrenched as a special or organic law, to ensure the permanence of this Government. While operating within the overall constitutional order of the State, autonomy implies the original decision-making powers in relation to devolved competence.[65]

1.6.2 REGIONALIZATION, FEDERALIZATION, OR UNION WITH CONFIRMATION OF TERRITORIAL UNITY

Recent practice has offered a number of solutions going beyond autonomy. These ranges from loose confederations or State unions to full or asymmetrical federal solutions. It should be noted that some of these, however, have been subjected to possible dissolution

[60] *Ibid*
[61] *Ibid*
[62] ***Gentia Zyberi,*** *(n21), p17*
[63] ***M, Weller,*** *Settling Self Determination Conflict: Recent Development, The European Journal of International Law, Vol. 20 (EJIL) 2009 <http://www.ejil.org> accessed on the 13th January, 2022*
[64] *Ibid*
[65] *Ibid*

through self-determination clauses.[66] This includes the very complex structure of the Sudan in the wake of its three settlements (South, West and East) permitting the South to leave after six years, Bougainvillea, which enjoys an asymmetric federal States for at least ten years, the abortive 1967 – 1996 settlement of Chechnya, and the now defunct State Union of Serbia and Montenegro.[67]

1.6.3 DEFERRING A SUBSTANTIVE SETTLEMENT WHILE AGREEING TO A SETTLEMENT MECHANISM.

When autonomy or federalization is not acceptable to one side and secession is not on the cards for the other, the option of a deferral of the issue comes to the fore.[68] This is to allow both sides to refrain their legal positions. In the meantime, they may enter into negotiations on a substantive settlement or establish an agreed interim phase of autonomous administration until final settlement negotiations can take place, under international pressure. For example, Lithuania suspended the application of their declarations of independence a few days after they had been made.[69] This suspension for a period of three months was meant to enable negotiations on the future of Yugoslavia.[70]

1.6.4 BALANCING SELF–DETERMINATION CLAIMS

The balancing of self-determination claims is an innovative way of overcoming the mutually exclusive positions of both sides in a self-determination conflict.[71] Essentially, balancing allows both sides to claim that their view has prevailed, and that their legal positions have been preserved in the settlement. So, this is the secret of the success of the Good Friday Agreement on Northern Ireland.[72] The agreement starts by recognizing the self-determination dimension and its application to the case of Ireland, and Northern Ireland. Then, the agreement addresses the thorny issue of identifying the self-determination entity.[73]

1.6.5 AGREEING ON SELF-DETERMINATION BUT DEFERRING IMPLEMENTATION

There are two types of cases in this category of deferred implementation. The first type includes cases where self-determination is granted or confirmed, but the central government and the secessionist leadership has different expectations as to the likely outcome of the act of self-determination.[74] However, the entity may opt for continued integration with the State, or for independence. The interim period is therefore open – it is designed to offer space for campaigning for the one or other solution, or in some instances for continued unity, and for the preparation for the act of self-determination.[75]

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[66] *Ibid*
[67] *Ibid, p199*
[68] *Ibid*
[69] *Ibid*
[70] *Ibid*
[71] *Ibid*
[72] *Ibid, p200*
[73] *Ibid*
[74] *Ibid*
[75] *Ibid*

Again, a second type of deferment concerns situations where it is clear that, after an agreed period of standstill, self-determination, and almost inevitably; secession will occur. In this type of case, the standstill period can be devoted to planning for the post referendum period.[76]

1.6.6 ESTABLISHING A DEFACTO STATE

The settlements just noted above, may assign sovereignty shared by the center and constituent republics. They will then seek to dilute the effect of this action by denuding the purportedly sovereign entity of the power to remove itself from the federation, confederation, or State Union. Another option for a settlement avoids issues of the dejure status of the entity altogether.[77] There are two ways of achieving this: One is to seek agreement on the defacto configuration of the projected new States, which will confirm at least its potential independence.

This was attempted in the proposal put forward by Martti Ahtisaari, the UN special envoy for final status settlement for Kosovo in March, 2007.[78] A second way will merely seek to offer territorial stability for the defacto entity. A possible example may be the emerging arrangements in relation to Abkhazia and South Ossetia. In that instance, the EU obtained guarantas from Georgia not to use force, or deploy it forces, in what normally would remain its own territory in order to regain control over the two areas.[79]

1.6.7 SUPERVISED INDEPENDENCE

Under supervised independence, world trade and international recognition of statehood for a commitment by the newly independent entity to certain permanent or temporary limitations of its sovereignty.[80] According to the Ahtisaari comprehensive proposal, it was foreseen that Kosovo would enshrine in its constitution number of important provisions established in the proposal. These concerned human and minority rights, the protection of cultural heritage, provisions safeguarding the political participation of minorities, and many other requirements.[81]

1.6.8 CONDITIONAL SELF-DETERMINATION

Another technique of addressing the self-determination dimension is conditionality. These can be external and internal conditionality. An example of external conditionality is provided by the Gagauzia autonomy State.[82] However, internal conditionality on the other hand, relates to the acceptance and effective implementation of certain requirements of governance. The EU, has pioneered this approach with its condition for recognition of Eastern European States, and in particular the criteria for recognition of the former

[76] *Ibid*
[77] *Ibid*
[78] *Ibid*
[79] *Ibid*
[80] *Ibid*
[81] *Ibid*
[82] *Ibid, p201*

Yugoslavian States.[83] Similarly, the Rambouillent interim settlement for Kosovo would have provided for an assessment of its implementation before discussions about a mechanism for final settlement is commenced.[84]

1.6.9 CONSTITUTIONAL SELF-DETERMINATION

A final way of settling claims to self-determination is to enshrine the right directly in the State Constitution. Hence, the right to self-determination is not directly based in international law, although international actors are likely to take account of such internal provisions when an entity so entitled seeks to exercise its rights.[85] Constitutionally established self-determination is not unknown, although it has remained comparatively rare for example, the 1947 Constitution of the union of Burma,[86] provided save as otherwise expressly provided in this constitution or in any Act of parliament made under section 199, every state shall have the right to secede from the union in accordance with the conditions hereinafter prescribed. Another good example is Article 39 of the Ethiopia's Constitution of 1995 that contains the right to self-determination.

1.7 THE BIAFRAN CONUNDRUM AND THE FUTURE OF NIGERIA

Armed with some of the profound admonitions of Karl Popper, in one of his cerebral literatures titled: 'The Poverty of Historicism', nearly fifty years after the end of the civil war in Nigeria, some of our state and non-state actors, regrettably, from the context of national integration, as well as nation building apologies to Christopher Henry Muwanga Barlow, are yet to learn some moral lessons with respect to the multiplier effects of the war, hence the more reason why the project called Nigeria, is still bedeviled with the Biafra conundrum. This is notwithstanding the obvious, and surreptitious attempt by some of our state, and non-state actors to wish same away, or better put; feign ignorance of its ideological sentiment, probably because failure of statecraft in all departments by successive administrations.

As intelligently stated by Chudi Offodile, with respect to Nigeria as a nation, the Igbos are still facing the dilemma of conflicting world view. That is, they hold a romantic reminiscence of Biafra, conceived in tragic circumstances and ended in tragedy–genocide. Yet, its people remain proud of its brief existence, and romanticize its accomplishments, military and technological feats, administrative competence and of course, its leader, late General Emeka Odumegwu Ojukwu.[87]

However, efforts to reintegrate the South East region into Nigeria, since the end of the civil war have not fully succeeded, yet the Igbos, have a significant presence all over the country, and dream of a proper federation of equal opportunity for all[88]. Sadly, the structure of the Nigerian federation is skewed against the Igbo, and in a sense, against Nigeria. For example, the present structure has wittingly, or unwittingly failed to provide

[83] *Ibid*
[84] *Ibid*
[85] *Ibid*
[86] *Ibid*
[87] ***Chudi Offodile,*** *The Politics of Biafra and The Future of Nigeria, Published by Safari Books Ltd, Ibadan, 2016, p12*
[88] *Ibid*

real development because of its centralized nature[89]. Again, to add salt to injury, successive federal governments since 1970 have made little or no huge capital investments in the South East zone, resulting in massive migrations from the South–East to the economic centers of Lagos and Abuja, and other parts of the nation[90]. In the same breath, for reasons that have all the trappings of corruption cankerworm, since the return to civil rule, despite huge federal allocation to states and local governments as contemplated by the Constitution[91], most of the governors and local government chairmen in the South East region, have equally failed to provide the needed infrastructural facilities to arrest the massive migrations by the Igbos.

Hence, from a logical construct perspective, the above noted institutional caging, and failure of statecraft in all departments have inexorably necessitated the idea of a separate country regurgitated by Ralph Uwazurike's Movement for the Actualization of the Sovereign State of Biafra (MASSOB), which began as a protest organization in 1999 and has somehow gained traction in the South–East geopolitical zone[92]. However, it is important to point out that Ralph Uwazurike, who formed the Movement for the Actualization of the Sovereign State of Biafra (MASSOB), was an Indian trained lawyer, from Imo State. He is well educated with degrees in politics and law[93].

When he took the decision to launch MASSOB in 1999, the timing was crucial. This is because, he was either genuinely bitter or he decided to exploit the collective bitterness of the Igbos at that point in time for political advantage. Although, it is possible that he had long planned to renew the agitation for Biafra and found the perfect opportunity in 1999, following Ekwueme's defeat and Obasanjo's ascendancy[94].

Whatever be the case, it must be stated that contrary to popular myth that Ojukwu was behind the formation of MASSOB, it took Uwazurike a great deal of effort, long after the formation of MASSOB, to get close to Ojukwu[95]. In the first place, President Obansanjo, did not perturb himself with the activities of MASSOB, as an organization, as well as its irritant agitation for Biafra. But as days unfold, Obasanjo, became irritated with the activities of MASSOB, and amongst numerous of reasons like the civil war victor mentality, he knows that MASSOB, sprouted under his watch[96].

Consequently, the government of President Obasanjo, cramped down on the group, and Uwazurike, was detained from 2005 to 2007 and equally charged with treason. By the time that he was released through the intervention of some notable Igbo leaders like

[89] *See Second Schedule, part 1 & 2 of the exclusive and concurrent items, and section 162(1)-(10) of CFRN, 1999 (as amened)*

[90] ***Chudi Offodile,*** (n87)

[91] See section 162(1)-(10) of CFRN, 1999 (as amended) See also the famous case of Attorney-General Of Abia State & Ors v Attorney General Of The Federation (2003) LLJR-SC

[92] Chudi Offodile, (n87)

[93] Ibid, p199

[94] Ibid

[95] Ibid

[96] Ibid

Ojukwu, Senator Uche Chukwumerije, Senator Ben Obi, et al, he had become softened a bit[97]. On the other hand, his followers, had become radicalized and as a result, Uwazurike, found himself facing insurrection within. Again, the softness of Uwazurike, infuriated some of his followers, including Nnamdi Kanu, the best known of the radicalized Uwazurike boys, alongside Uchenna Madu[98].

1.8 THE INDIGENOUS PEOPLE OF BIAFRA (IPOB)

As noted above, the total cramping of MASSOB activities and the detention of Uwazurike with treason charges hanging on his neck, and the subsequent intervention of notable Igbo leaders, dovetailed into the radicalized nature of Uwazurike boys, and notable among them are Nanmdi Kanu and Uchenna Madu, and same, metamorphosed into what is known today as the Indigenous People of Biafra (IPOB).

Two groups lay claim to the name Indigenous People of Biafra (IPOB). Nnamdi Kanu, leads one of the groups and the other group is led by His Majesty, Honourable Justice Eze Ozobu (OFR), former Chief Judge of Enugu State and the traditional ruler of Aguobu Owa in Enugu State[99]. Emphatically, they used to be one group with the same objective, the realization of Biafra by peaceful means, until the Kanu group decided to take a different approach,[100] which to all intents and purposes is tantamount to "class suicide" as evident in IPOB, recent but out of control sit at home order in the South East region, and the uncontrollable violent criminal activities that same has triggered occasioned by Nnamdi Kanu, gespo like kind of arrest in Kenya, his detention and subsequent trial by the Nigeria courts.

Nnamdi Kanu, is the motivating force behind IPOB. The philosophical foundation for its formation and existence was, however, provided by a London based solicitor, Emeka Emekesiri[101]. It is on the basis of a fundamental difference in strategy that the camps went their separate ways with each holding on tenaciously to the name IPOB.[102]

The more moderate Emekesiri, advocated the use of customary law to organize and govern the Indigenous people of Biafra based on provisions of the Nigeria Constitution. Thereto, he mounted intermittent legal challenge in Nigeria courts for the right to self-determination of the remnants of the Indigenous People of Biafra not consumed in the war between Nigeria and Biafra[103].

On the other hand, the recalcitrant Nnamdi Kanu, and his cohorts, devoid of any philosophical, sociological, legal and above all, economic interrogation as it is related to IPOB, Ndi Igbo, and their place in Nigeria, considers this legal process ridiculous and a waste of time, hence he launched virulent attacks on the group, other ethnic nationalities,

[97] Ibid, p200
[98] Ibid
[99] Ibid
[100] Ibid
[101] Ibid
[102] Ibid
[103] Ibid

and the Nigeria State, using Radio Biafra before his first and second incarceration. This development, promptly earned him the toga of ostracism signed by Ikanga Nwewi, Dr. Dozie Ikedife, on behalf of the Supreme Council of Elders in accordance with Customary Law[104].

As rightly espoused by Marc Weller,[105] in his genre of self-determination as noted above, unlike Nnamdi Kanu, insidious rhetoric in the name of self-determination, or secession that did not consider the matrix of domestic politics, geopolitics and territorial jealousy, Emekesiri's position is more persuasive, and by way of corollary; has philosophical backing considering Marc Weller's genre of self-determination. Put differently, Kanu's IPOB, underhand rhetoric's of self-determination, vide Biafra and referendum mantras without more, is a constitutional and sociological impossibility, hence it is important to point out that, the concept of referendum and secession is unknown to the CFRN, 1999 (as amended).

Flowing from the foregoing, and by way of synchronization, three broad schools of thought or ideological positions can be gleaned within the Igbo society since the return to democratic rule in 1999, viz: the federalist group dominated by Igbo business men, and political elites,[106] and more importantly, some Igbos that were born, bred and had their primary, secondary, and tertiary socialization outside the South East region, like the present writer. Again, the second group are the separatist group, spear headed by Nnamdi Kanu, and his cohorts. Finally, the third group, are those who are victims of maladministration, incessant killings and destruction of lives and properties in many parts of Nigeria, and above all, unemployment. Erroneously, to the second and third groups, Biafra actualization will be immune from the obvious vagaries that have become a norm in Nigeria. So, from the context of the political and ideological struggle within the ambit of Biafra between 1967 till date, this division is not new. This is because, the federalists belong to the Nnamdi Azikiwe school of thought and the separatists, to the Odumegwu Ojukwu school of thought[107].

1.9 SECESSION/REFERENDUM PATTERNS AND THEIR PITFALLS

Even with their frequency, secession, and or referendum are variable phenomenon. Some movements for secession emerge early in the life of a new state, seemingly with little provocation. Others develop only after a prolonged period of frustration and conflict.[108] Some movements simmer for years, even decades, and in the end may come to nothing, whereas others burst quickly into warfare. However, many movements never even reach a slow simmer, much less a quick boil.[109]

[104] Ibid, p201
[105] M, Weller, (n63)
[106] Chudi Offodile, (n104)
[107] Ibid
[108] D.I, Horowitz, Ethnic Groups in Conflict, (University of California Press, 1985, p240)
[109] Ibid

Conversely, to discern patterns of secession, it is necessary to recognize that, this is a special species of ethnic conflict, but a species nonetheless. Though, modified by their territorial character, secessionist conflicts partake of many features that ethnic conflict in general exhibits.[110] Calculations of group interest play their part, although some ethnic groups opt for secession when it does not appear to be in their interest to do so. So, in decisions to secede, group interest is alloyed with enmity and offset by apprehension. The roots of those decisions are to be found in the context of group relations.[111]

Fundamentally, one fairly firm rule of thumb can be laid down at once. Whether and when a secessionist or referendum movements will emerge is determined mainly by domestic politics, by the relations of groups and regions within the state.[112] So, it is instructive to point out that whether a secessionist or referendum movements will achieve its aims, is determined largely by international politics, geopolitics, the balance of interests and above all, forces that extend beyond the state.[113] Consequently, considerations of means available to support secessionist movements including external assistances, may modify secessionist sentiment – though separatists are often surprisingly heedless of such prudential constraints.[114]

Occasionally, external relations reinforce separatist proclivities, as for example when Kurds and Southern Sudanese took exception to Pan–Arabist activities in Baghdad and Khartoum.[115]

Secessionist or referendum movements lies squarely at the juncture of internal and international politics. But, for the most part, the emergence of separatism can be explained in terms of domestic ethnic politics.[116] However, to this broad rule of thumb, there is a major exception for example, a group that might otherwise be disposed to separatism will not if its secession is likely to lead, not to independence, but to incorporation in a neighboring state, membership in which is viewed as even less desirable than membership in the existing state.[117] The cases in which this is likely to occur involve irredentism, where an international boundary divides members of a single ethnic group, like the Baluch and Pathans of Pakistan, are likely to limit their separatist activity to the extent that it makes them vulnerable to incorporation in Afghanistan or, in the Baluch case, Iran.[118]

In the final analysis, because of the principle of respect for national sovereignty and territorial integrity as set out in the UN Charter, which is the bedrock of international law and international relations,[119] the concept of geopolitics, as well as the matrix nature of

[110] Ibid
[111] Ibid
[112] Ibid, p241
[113] Ibid
[114] Ibid
[115] Ibid
[116] Ibid
[117] Ibid
[118] Ibid
[119] Patricia Carley, Self-Determination: Sovereignty, Territorial Integrity, and the Right to Secession, United States Institute of Peace (report from A Roundtable held in Conjunction with The U.S. Department of State's Policy Planning Staff) <htt://www.usip.org> accessed on the 7th of July, 2023.

domestic politics, the pitfalls in right to self-determination appears to be more than the right itself, hence while it easily peters out with time, especially with good governance, and other compelling and extraneous factors.

CONCLUSION

From the above disquisition, it is a given that right to self-determination is recognized under International Law, and same; has been codified via the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Civil Rights (ICESCR). However, the implementation of the concept of right to self-determination; over the years as can be gleaned from the said analysis has always been more problematic than its contents which have been laid down in the two covenants, besides the obvious loss of lives and properties that have necessitated its pursuit.

In practical terms, the geopolitics involve in right to self-determination is so complex, daunting, and above all; capital intensive that often times most self-determination groups that have embarked on same encounters self-destruct. To this end, though not cast on stone, accommodationist, integrationist paradigms as well as structural techniques that has to do with reshaping of territories, and or electoral arrangements will plausibly tame the traction for same.

Related to the foregoing, federalism with robust regional autonomy for the purposes of fairness, equity and justice are strongly suggested. Finally, besides the aforementioned structural techniques, with respect to the Biafra conundrum, the concept of rotational presidency as suggested in 1995 Abacha constitutional conference would go a long way in making the six geo-political regions to have their entrenched sentiments comfortably represented, therefore, obviating the perennial and internal conflicts associated with who becomes the Nigeria President among the tripod majority and disparate minorities vis-à-vis periodic elections.