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Biafra: An Illusion, Day Dream or an Achievable Feat (The Legal Theories and Modern Framework on Self-Determination in International Law)

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Abstract
The concept of self-determination is practically as old as the concept of statehood itself. Right from the formation of the theory of self-determination, the principles governing the topic has undergone several changes in many respect, and this points to the dynamic nature of self-determination, which has grown from a concept initially restrictively applied to other controversial topics such as decolonization, secession and to a justification for the break-up of multi-ethnic states such as Nigeria. As it stands, the theories may now extend towards suggesting that a right of self-determination exists for indigenous people. However, the theories must also consider the laws of the state which the people seek to secede from. The purpose of this article is to identify the modern theories to self-determination, and the attempt to explain and analyze the application of these theories, that the concept has undergone.
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1. INTRODUCTION

The right for a people to determine who to govern them is one which has in history been a subject of continuous debate and dual view. Just like most other theories, there exists staunch support for the right to self-determination of an ethnic group who feel they should no longer be a member of a sovereign state. On the other hand are those who feel the sovereignty of a state is superior to any frivolous claim to self-determination and a right to secede.

As the 28th President of the United States of America, Woodrow Wilson emphatically declared at the end of the First World War: "national aspirations must be respected; people may now be dominated and governed only by their own consent".[1]

It should be noted that the right to self-determination has legal backing in the United Nations Charter. Earlier is the support for the theory by the American Universal Declaration of Human and Peoples rights. However, many scholars opine that the charter and declaration strictly interpreted applies only to colonial situations and does not extend in cases of agitation of a non-colonial entity or people within a sovereign state.

Historically, the agitation for self-determination dates back to the American and French Revolution and thus is by no means a modern concept.

In Nigeria, the most superior and perhaps the most disturbing agitation for self-determination is championed by the Ibos, one of the major ethnic groups. Despite the attempt to pacify and muzzle up their demand, precedent has shown that the cause for an independent state by various groups keeps on resurfacing. From the declaration of The Republic of Biafra by Odumegwu Ojukwu, albeit lasting for barely three years, to the present struggle of MASSOB (Movement for the Actualization of the Sovereign State of Biafra), and IPOB (Indigenous People of Biafra), these individuals and groups have a common interest which is the independence of the Ibos from Nigeria (for different reasons and dissimilar grievances).

This article aims to simply examine the legal theories on the existence of a right to self-determination vis-à-vis the agitation of the Biafra movement. The authors will conclude by stating the way forward and how feasible or practical the group's agitation for self-determination actually is.

It should be mentioned, that the authors by no means claims exclusive knowledge of the subject matter in

[1] Woodrow Wilson, President of the United States of America, President Wilson's Address to Congress, Analyzing German and Austrian Peace Utterances (Feb. 11, 1918), *available at* < http://www.gwpda.org/1 918/wilpeace.html> (accessed Feb. 7, 2015).

question and will draw ideas from articles, publications, writings and the views of other imminent scholars, jurists, authors and concerned people,[1] and through the journey, the reader can evaluate the points in line with the situation on ground and appreciate the modern framework on self-determination of a group in a non-colonial circumstance. This way the reader can then formulate his own conclusion in line with the facts.

2. SELF-DETERMINATION OF THE IBOS IN HISTORICAL PERSPECTIVE

Events which crystallized into the agitation of the Ibos for self-determination from Nigeria has its origin dated back from a bloody coup of 1966.While in fact, the desire may have been secretly nursed, it wasn't until this coup that the idea sprung up first hand. Some other quarters may opine that it was the counter-coup and what some authors choose to regard as a pogrom of the Ibos that serves as the true origin for the desire for self-determination and this may in fact not be an absolutely correct position.[2]

It may be said that prior to the first coup, Nigeria had relatively been united and there had been no agitation for self-determination. This in no way means that there was no ethnic group that may have felt dissatisfied, because of a truth after the amalgamation, some groups lost their status of being autonomous for a system that saw the marriage of both major and minor ethnic groups and the resultant effects of the major groups having greater dominance and deciding power as to the affairs of the entity known as Nigeria.

Furthermore the climate after Independence had suffered imbalance in the political equation. Tribalism, nepotism, bribery, corruption, political tussle and other such negativities was common place.

In the words of the leader of the Coup, Chukwuma Nzeogwu in a broadcast he made over the Kaduna Radio, he had stated:

"Our enemies are the political profiteers, the swindlers, the men in high and low places that seek bribes and demand ten percent, those that seek to keep the country divided permanently so that they can remain in office as Ministers or VIPs at least, the tribalists, the nepotists, those that make the country look big for nothing before the international circles, those that have corrupted our society and put the Nigerian political calendar back by their words and deeds…"[3]

In November of 1965, at a meeting which was secretly convened in Lagos, Major Chukwuma Nzeogwu who led some other six Majors discussed and in fact put finishing touches into a plan for a military takeover of the administration of the Country which had barely enjoyed the dividends of Independence from the British Government. The other young Majors along with Chukwuma Nzeogwu were Emmanuel Ifeajuna, Donatus Okafor, Adewole Ademoyega, Chude Sokei, Humphrey Chukwuka and Christian Anuforo.

Some other reports state the Majors to have been five in number.[4]

In all honesty, the plan had been nurtured from as far back as 1961. The testimony of Adewole Ademoyega, one of the masterminds of the Coup in his book, ***Why We Struck- The Story Of The First Nigerian Coup*** is an evidence of this fact.

If the broadcast made by the leader of the coup was anything to go by, the motive was not in fact self-determination, but a form of revolution and purging of the system which the Country suffered as at that time.

In the actualization of the long nurtured plot, on the 15th of January 1966, the Prime Minister, Alhaji Sir Abubakar Tafawa Balewa, Ahmadu Bello, the Sardauna of Sokoto, the then Minister of Finance Chief Festus Okotie Eboh, and some top members of the military such as Lieutenant-Colonel Yakubu Pam and Brigadier Zakari Maimalari, had been rounded up and killed at various unknown destinations.

What followed was a counter coup by the Northerners who felt that the earlier coup was targeted at them by the Ibos precisely. This line of thinking found support in the fact that the majority of those that participated in the earlier coup which led to the death of many top northerners was orchestrated and carried out by four Ibo soldiers and just one Yoruba soldier. By the 29th of May 1966, riots began to sprout up in Northern Nigeria. Reports were heard about the killing of Ibo traders and businessmen who were in Kaduna, later spreading to cities like Kano, Zaria and Jos. Men, women and children were not spared from the killings, shootings, machete cuts, burning and stabbing. Those who survived were left homeless by the reckless ruins left of their homes which were burned down. Business premises and warehouses belonging to southerners were burnt down and destroyed. However it wasn't until the eve and 29th of July 1966, that there were reports of massive killings. This necessitated the movement of many Ibos from the North and West back to their hometowns and South. The refugees were both soldiers and civilians. Figures of those Easterners killed was put at thirty thousand and the returnees two million (women and children inclusive). The balance is history, and can be read in books that chronicle the horrific

[1] Recommended texts: Self-determination and secession under international law: the new framework
Milena Sterio, Secession and the two types of territorial claims-Lea Brilmayer, Self-Determination under International Law: Validity of Claims to Secede-Ved P. Nanda, Theories of Secession-ALLEN BUCHANAN.
[2] The Nigeria-Biafra War (1967-1970) My Memoirs- Patrick A. Anwunah
[3] See pg. 97 The Nigeria-Biafra War (1967-1970). My Memoirs-Patrick A. Anwunah
[4] Nigeria's Five Majors-Ben Gbulie pg. 18

events.[1]

By this time, the responsibility for the welfare of the returnee Ibos naturally fell on Col. Chukwuemeka Odumegwu-Ojukwu, who was the Governor of the Eastern Region of Nigeria. Enugu was the Eastern Region Capital and was the place where most of the returnees who had fled the North for safety converged. Col. Ojukwu, though then a young Colonel, suffered pressure from his tribesmen to chart a course for them and take a decision as to their fate. The decision for him to be their leader may not be unconnected to the fact that he was brought up in affluence by a wealthy multi-millionaire father who hailed from Nnewi in Anambra State. Furthermore, he had early exposure to the best of education within and outside of Nigeria, both civilian and military, and was thus better placed to be their spokesperson and leader. After convening a meeting, a decision was made for Secession. In the prosecution of this decision, he volunteered to be the leader of this new entity and on the 29th May, 1967, declared Eastern Nigeria a free, sovereign and independent State, to be known as and with title of the Republic of Biafra.

In response to this action, the Government of Nigeria led by General Yakubu Gowon, decided and was in fact the first to lead an attack on the Ibos at Garkem (a town near Ogoja). The Ibos on their own part had to defend themselves with the insufficient weapons they could acquire and had in their possession. Locally made weapons were improvised with also. For all time and season, the military power of Nigeria was no match for the Biafrans. Nevertheless they fought gallantly in self-defense and were able to run a government albeit with hardship and suffering quite understandable for a people who were in a war situation and had just barely declared their independence.

It should be pointed out that before, during and after the war, Ojukwu had stated that the intent of the war was not to be subversive but that they were acting in self-defense and protection of their race and ethnic group. On the other hand, Gowon stated that Nigeria was not warring against a foreign enemy, but was rather subduing the rebellion of Lt. Col. Ojukwu and his clique. One would then wonder why peaceful resolution of the differences could not be brokered through many Nigerians, Foreigners and International Organizations had made frantic and sincere efforts to initiate peaceful dialogue and resolve the issues.

A careful consideration of the rasa of both leaders may prove that both had canny intents. For instance, Ojukwu had led the Biafrans to attempt taking over the West (Lagos). If the war was indeed a defensive war, why would Biafra attempt to attack Lagos? At best, a war to reclaim all Ibo territories will press to serve and will be reasonable.

Also disturbing was why Ojukwu led thousands to abandon their hometowns by deceitful propaganda that the Federal Government led by Gowon had plans to exterminate the Ibo race. Sadly their sojourn to the heartlands of Biafra proved to be a sour case of "*from frying pan to fire*", as there was barely any reasonable agenda for their economic survival. Many died from malnourishment, hunger and avoidable sickness. Furthermore, the Biafran Government had refused to accept aid of food supply from Nigeria.

It wasn't until 11th January, 1970 when it had become evident that the Biafrans had not just lost the battle, but was also in imminent danger of losing a large number of her people to the war and notorious hardship and starvation. Indeed, it had become evident that Ojukwu had led his folks into a self-imposed genocide. It was then, Ojukwu made the landmark move to end the war. He had on same day announced via a pre-recorded message, that he would be leaving the Biafran State in order to find means to solving the problem of sufferings of the people, and in his absence, affairs of the state were to be handled by his Chief of General Staff, Philip Effiong. In furtherance of this, on the 12th of January 1970, (a day after the supposed departure of Ojukwu), in a broadcast made at the Radio Biafra, Phillip Effiong announced the end of the war and the disengagement of the Biafran troops. He further expressed readiness for negotiation and reconciliation.

In a similar vein, a favorable response was received from Nigeria as expressed in a reconciliation broadcast made on the midnight of 12th January, 1970, by Gen. Gowon.

This brought an end to the war situation. Since then, various rehabilitation and reconciliation plans have been formulated by the Nigerian government, how far such has been followed through is another story entirely.

3. INTERNATIONAL LEGAL FRAMEWORK FOR SELF-DETERMINATION

It has become trite that the right to self-determination of any people is a recognized principle of international law which finds support in Conventions and decided cases. Since 1970, the United Nations (UN), International Human Rights Organizations and even majority of states accept that the right to self-determination is an integral part of the human rights of individuals. The 1970 Declaration on Principles of International Law concerning friendly relations can be regarded as constituting the most important source of this right to self-determination. The Declaration upholds the UN Charter and solemnly proclaims **'The principle of equal rights and self-determination of peoples'.** It states that:

[1] See: The Tragedy of Victory (On the spot Account of the Nigeria-Biafra War in the Atlantic Theatre) Brigadier-General Godwin Alabi-Isama, The Nigeria-Biafra War (1967-1970). My Memoirs-Patrick A. Anwunah

"By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter."

Furthermore it proclaims that states have a responsibility to support or promote jointly and severally this all important right for realization of the principle of equal rights and self-determination of peoples, in line with the provisions of the said Charter, and to offer assistance to the UN towards carrying out the responsibilities which are entrusted to the UN by the Charter regarding the implementation of the principle of equal rights and self-determination.

However most scholars state emphatically, that the right the charter and declaration enshrines applies solely to cases of colonial subjugation.[1] They form an opinion that the charter in no way applies or refers to situations of self-determination or secession demand in non-colonial circumstances. If this view is anything to go by, then a right to self-determination must be found elsewhere (outside the charter and declaration).

With due respect to the eminent scholars in this school of thought, we humbly opine that the charter itself by not expressly stating that self-determination applies solely in colonial circumstances in no way ousts a right to self-determination in non-colonial circumstances. Of a truth, it will be ridiculous to prevent a legitimate and reasonable claim of self-determination to a people in a non-colonial situations. Such will portend that the right exists outside international law, which of course is a false postulation.

It may be accepted to state that the international framework for self-determination in a non-colonial situation is neutral or uncertain. This by no means should be interpreted to mean that the framework is totally none existing. If this was the case, then there will be no record of successes in the past by people who sought self-determination in non-colonial instances. Regardless of claims that a right of secession does not exist beyond colonial entities, a number of new states have sprung up from the act of secession. States such as Croatia, Bangladesh, Bosnia, Eritrea *etcetera* are notable examples of states that have received full international recognition.

Self-determination is indeed a human right, under international law, and also provided for in the constitution of most countries. The right to self-determination of a state in a non-colonial context under international law can be traced in most recent times to Article 1 of both International Covenants on Human Rights, which provides that all people have the right to self-determination.

Quite notable also is the African Charter on Human and Peoples' Rights 1981 which stipulates that all people shall have the right to existence and can freely determine their political status and pursue their economic and social development in line with the policy of their choice.

As the astute and erudite professor of international law, Lea Brilmayer puts it:

"Secession, conventionally, has been seen as a corollary of the 'rights of peoples'; whether would-be secessionists were entitled to a state of their own, depended on whether they were a 'people' sufficiently distinct from the balance of a state's population".[2]

Simply put, the interpretation of people used in the context of self-determination in the covenants is as "a group of human beings sharing one specific nationality, culture, or language".[3] Interpretation of the provisions of sections 2(1) and 3(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) shows the lack of support for any group to harness the right to self-determination.[4] Indeed, it is provided for in section 2(1) of the constitution, that "Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria".

Furthermore, section 3(1) goes on to mention the number of states that belongs to the Federation (Nigeria). The constitutions of some countries permit self-determination, albeit within an organized framework for which the state is to determine and decide upon. This situation however of placing the discretion to grant self-determination on a state has been observed to make it nearly impossible for any group to harness the benefits of self-determination easily and peaceably. Indeed, only few states will be generous enough to willfully agree for a large group of people to secede from her. Population equates strength in the international scene, and Nigeria will jealously guard her perceived strength. Moreover, some of the regions that the Ibos claim as theirs if they are allowed to secede constitutes a prime source of financial resources for Nigeria. As already mentioned, the right to self-determination is without prejudice to the sovereignty and integrity of the mother state which a group of individuals intend to secede from. Hence, the theories conflict and are quite tricky. Protection of the right of a state to territorial integrity which is also a fundamental principle of international law is of greater concern. The right to self-determination cannot be extended to promote the dismantling of a sovereign state.

Truthfully, even international organizations prefer to favor supporting a state's territorial integrity as against

[1] See International Law- Malcom N. Shaw Sixth edition at pg. 257.
[2] Lea Brilmayer-Secession and the Two Types of Territorial Claims.
[3] Encarta Dictionaries 2009
[4] See section 2 and 3 of the Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011).

a secessionist claim. The Biafran conflict provides an apt illustration. While the Biafran claim for self-determination was acknowledged neither by the then UN nor the Organization of African Unity (OAU), only five states recognized an independent Biafra (Gabon, Haiti, Ivory Coast, Tanzania and Zambia). The OAU strongly favored a unified Nigeria. While the OAU charter specifically required adherence to the principle of respect for the sovereignty and territorial integrity of each state, the OAU position was reflected in the assertion by the then His Imperial Majesty, Emperor Haile Selassie, the Emperor of Ethiopia during the six members of the OAU consultative mission to Nigeria that the national unity of individual African states was an "essential ingredient for the realization of the larger and greater objective of African unity".[1]

Earlier at a meeting of the supreme organ of OAU, the Assembly of Heads of State and Government, secession was generally condemned; the Assembly further reaffirmed the OAU's recognition and adherence to the promotion of the principle of respect for the sovereignty and territorial integrity of Nigeria and other member states. The OAU further resolved to send the six-member consultative mission, to the Head of the Federal Government of Nigeria to deliver the assurance of the Assembly's desire to protect the territorial integrity, unity and peace of the Federal Republic of Nigeria.

The fear of potential conflicts in Africa, such as the Eriterian conflict, has a powerful influence on the OAU and the UN's decision making process. Indeed, the UN despite Biafra's appeals to the UN in December, 1967, and the charges brought against the Federal Government of Nigeria for genocide and repeated contraventions of the UN Charter provisions on human rights, the UN never deliberated on the conflict**.** Three years later the UN Secretary General observed that the Security Council could not have acted because no member state had brought the question before the Council to deliberate upon.

The decision not to deliberate on the issue was also due to the fact that the Nigerian Government had vehemently maintained that the civil war was an internal affair and that no other state or outside agency had a right to interfere or lend support to Biafra, and this view was shared by the OAU.

Commenting further on his role, he said, "I have been accused in some circles of 'passivity', and even of indifference to the sufferings of Nigerian people, as if the sovereign independence of its States Members was not, for better or for worse, a basic principle of the United Nations which is especially binding on its Secretary-General".

Similar lack of support was met by the agitations of Katanga to secede from Congo. The UN had earlier decided not to interfere since it was an internal affair, however subsequently they honored the call for support in restoring the State of Congo as there was disintegration of the government, assassinations and crisis.

Consequently, in November 24, 1961, the Security Council adopted a resolution completely rejecting the claim that Katanga is a "sovereign independent nation," and reaffirming one of the purposes of the UN's action in the Congo, that of maintaining "the territorial integrity and political independence of the Congo. 'The resolution demanded that the deplorable' secessionist activities and armed action taking place in Katanga shall cease forthwith". By the end of January 1963, the secession had ended.

Examples of successful secessions in recent history include the Kosovo secession from Serbia, the South Sudanese secession from Sudan in 2011, and the Crimean secession from Ukraine. Some other successful secessions includes the separation of Eritrea from Ethiopia in 1993, and the separation of Bangladesh from Pakistan, in 1971.[2]

Moreover, most states will not give support to a group trying to secede from a mother state. States generally have a form of reciprocal attitude towards defense of territorial integrity. At best, they would rather stay neutral, than formulate any positive stance.

The position is therefore that international law is mostly neutral on the issue of secession. While international law embraces the right to self-determination for all people, and while this right can effectively translate into remedial secession, it can only be confidently said that international law positively allows for this outcome in the case of decolonization and, perhaps, occupation. Other than these two relatively rare instances, secession for a group within a sovereign state is rarely an achievable feat. This may perhaps be because secession inherently undermines the territorial integrity of the mother state, and international law has for centuries espoused the principles of state sovereignty and territorial integrity as earlier mentioned.

As expected, the International Court of Justice (ICJ) has smartly avoided the issue of secession in non-colonial circumstances and has not laid a clear cut framework. This is obviously because the issue of secession is a delicate matter that can signal a global chaos. But some observers and scholars state that silence is not a better answer, and that there should indeed be a definitive framework set out in statutes and decided cases. The risk of

[1] Report of the OAU Consultative Mission to Nigeria, cited in Ijalaye, "Was "Biafra" at Any Time a State in International Law?" 20, at 556.
[2] See Self-Determination and Secession Under International Law: The New Framework- Milena Sterio, See also Bereket H. Selassie, Comment, Self-Determination in Principle and Practice: The Ethiopian-Eritrean Experience, 29 COLUM. HUM. RTS. L. REV. 91 (1997) (this Article will briefly discuss the first three more recent secessions, but will not focus on the latter two remote secessions). See RICHARD SISSON & LEO E. ROSE, WAR AND SECESSION PAKISTAN, INDIA, AND THE CREATION OF BANGLADESH (University of California Press 1990), for a discussion of the Bangladeshi secession from Pakistan.

having a neutral stand is that, groups may take the law into their own hands when they seek self-determination, and this also in itself may signal chaos for both the mother state and indeed other states. Also, in a case where the seceding entity is indeed subject to cruel, dehumanizing and awful treatment from the mother state and is at risk of extermination, it may be in the interest of justice for secession to be allowed, and if international law is neutral, then this in itself is greater chaos.

In the East Timor case, Portugal, which is East Timor's last colonizer, brought a claim against Australia, asserting that the latter did not have a legal right to enter into a treaty with Indonesia over the natural resources in East Timor, because Portugal was the true sovereign of East Timor, whereas Indonesia had illegally occupied East Timor. The ICJ refused to resolve the dispute, because this would have involved announcing a legal proclamation on the status of East Timor (whether the people of East Timor had the right to self-determination, and which state was its legitimate "owner"), which as at the time was controlled by Indonesia. The ICJ in dismissing the case, relied on the indispensable third party doctrine, and therefore failed to seize the opportunity to develop the law on self-determination or secession.

Similarly in the now famous Kosovo Case, the court emphatically stated that it was not required to and was not willing to give answers to the question of whether Kosovo declaration of independence generally confers a right on states or groups to unilaterally secede. In its ruling the International Court stated[1]:

"The Court is not required by the question it has been asked to take a position on whether international law conferred a positive entitlement on Kosovo unilaterally to declare its independence or, *afortiori,* on whether international law generally confers an entitlement on entities situated within a State unilaterally to break away from it."

Nevertheless in the same Kosovo case, it was held that the declaration of independence was legal and that many states have gone on to recognize Kosovo. Moreover, the court has in the past appeared to entrench a principle in its decisions in the context of the cases of Southern Rhodesia, Northern Cyprus, and Republika Srpska (one of the legal entities that seceded from Bosnia), that if the seceding entity approaches their claim for self-determination without the use of force, then such a claim is legitimate. The court differentiated the cases above from that of Kosovo, that in the former, there was illegal use of force, while the latter (Kosovo) was legitimate and acceptable because there was no element of the illegal use of force.

If this theory is anything to go by, the approach of the Biafrans in their struggle since the post Ojukwu era and the now existent MASSOB and IPOB era may be considered fairly legitimate, as truthfully, there has been no major use of force against Nigeria, rather the demands has repeatedly called for a referendum.

Furthermore, scholars, jurists and authors have divergent views on the right to self-determination. A former Secretary General of the UN, U**.** Thant gave his position in a statement he made regarding the Biafran conflict. He contended that the attitude of the UN as an international organization is unequivocal, and the UN has never accepted and does not accept the principle of secession of any of its member state.[2]. However this postulation was made quite a long time ago and no longer reflects the current attitude towards the pursuit for self-determination.

In the Wall's case, there appears to be a support for the right to self-determination, since the world court emphatically stated that the Palestines had a right to secede from Israel unilaterally.

Quite a number of scholars still criticize the ICJ for failing to state a definite benchmark. However with the few decisions, a framework can be said to exist. The following we believe are some factors to consider in determining the legitimacy or otherwise of the claims for self-determination and they shall be discussed in line with the Biafran situation to determine if a right does in fact exist. The determining factors to legitimacy and permissibility of a claim to secession are:

1. The reason behind the group's demand for self-determination/secession
2. The legality of the pursuit for self-determination
3. The level of honesty, sincerity and legitimacy of claims to territory.
4. How recent or far back did the agitation begin
5. The likelihood of the secession jeopardizing the national integrity and sovereignty of the mother state.
6. The level of recognition accrued to the secessionist group by other actors in the international scene (States, International Organizations).
7. The level of fairness and equity that can be achieved (fairness element)[3]
8. How widely the demands articulated by the elites of the subgroup are shared by the other members of

[1] Adapted from Self-Determination and Secession Under International Law: The New Framework- Milena Sterio, Also see: Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403 (July 22), available at <http://www.icjcij. org/docket/files/141/15987.pdf> (accessed Feb. 4, 2015) [hereinafter referred to as Kosovo].

[2] 7 U.N. MONTHLY CHRONICLE 36 (Feb. 1970).

[3] A detailed analysis of the scope of Fairness Element can be found in Self-Determination and Secession Under International Law: The New Framework- Milena Sterio. Note that fairness must be examined from both angles. How fairly can a seceding group be treated? and also how fairly is it to the mother state for a group to be granted secession from her?.

the subgroup

9. The nature and extent of the deprivation of human rights of the group making the claim[1]

4. THE TERRITORIAL PERSPECTIVE TO SELF-DETERMINATION

It is almost impossible to divorce the concept and clamor for secession from some claims to territorial landscape. There has been no demand for secession in history that does not also seek for territorial occcupation and the reason is not farfetched. Entities that seek to secede must also possess a clearly defined territory when and if they obtain their desired result. It is a basic rule of international law that in the absence of a well-defined territory, there cannot be a state.[2].

Many scholars have therefore studied self-determination and/or secession from a territorial perspective in order to give life fully to the idea and concept. The basic notion of territorial claim is that a particular territory does not belong to the larger state but is rather owned by the seceding entity or group. This notion is perhaps even more deeply rooted than a mere referendum by a majority.

Lea Brilmayer quite aptly stated that "Not every cohesive or homogeneous group is entitled to secede. A group that is linguistically, ethnically or religiously homogeneous may still not be entitled to a state. Homogeneity is neither a necessary nor a sufficient condition for the establishment of a territorial state"[3].

The above simply points to the fact that the homogeneity of a group simply does not confer a right to secession and does not operate as a magic wand to legitimize a claim for secession. How legitimate or otherwise a claim to secession is, has to be found in a framework, which international law has to now set and in the future.

Earlier stated are some tests which determines to an extent whether or not a group can validly claim a right to secede from a sovereign state. Although the tests are not exhaustive, nevertheless they constitute a good starting point. The development of a definite and normative framework is necessary in order to address various secessionist claims around the world, and to replace the resolution of secessionist struggles through politics of the Great Powers with positive legal norms.

There is more than one way that territorial claims can be framed; two of such interpretations of territorialism are discussed here. Firstly, a territorial claim may take the form of a generalized claim as to a right to a territorial state, as a remedy for past injustices. This theory is generally referred to as "Remedial Right Only" theory of secession. Secondly, a territorial claim may take the shape of an assertion that the group currently has a proper and legitimate ownership claim over a particular territory. Both theories are popular and the Biafran situation can be interpreted from both perspectives.

The Remedial Right theory is generally credited to Allen Edward Buchanan, an American philosopher and Professor of Philosophy of International Law[4]. Buchanan chose to view the normative theory of secession from two broadly distinct perspectives. First is the one he termed "Primary Right Theories". He posited that this theory is different from the other in the sense that it "assert that certain groups can have a (general) right to secede in the absence of any injustice". He further stated that it does not limit legitimate secession to being a means of remedying any injustice.

In Buchanan's view, the various Primary Right Theories pick out different criterias that groups must fulfill to have a right to secede in the absence of injustices. The primary right theory stems from the concept that people have a right to determine who will govern and rule over them. Furthermore, it is derived from the view that everyone has a right to self-determination.

On the other hand, Buchanan views the Remedial Right as a form of revolution against injustice that has been melted out against a group of people. It is quite similar to John Locke's theory by which people who suffer breach of their fundamental rights have a right to overthrow the government. The only notable difference between the right to secede and the right to revolution, according to Buchanan, is that the right to secede accrues to a portion of the people, concentrated in a part of the territory of the state. The purpose of exercising their right to secede is not towards toppling the government, but rather simply to sever the government's hold and control over that portion of the people's territory.

This theory applies to the Biafran situation. It appears the ill treatment and scars from the civil war and how badly precedent has shown the treatment of the Ibo tribe is a primary reason for the renewed agitation by the Indigenous People of Biafra (IPOB) and The Movement of the Actualization of the Sovereign State of Biafra (MASSOB) groups for the secession of Biafra from Nigeria. The government by its actions within this new regime has done little to pacify members of the groups and Ibos at large.

For example, the Nigerian Army was reported in May 31, 2016 edition of Premium Times by Gbolahan

[1] A careful reading of this two texts may create an unbiased view on this point: The Tragedy of Victory (On the spot account of the Nigeria-Biafra War in the Atlantic Theatre)- Brigadier-General Godwin Alabi-Isama, The Nigeria-Biafra War (1967-1970) My Memoirs- Patrick A. Anwunah

[2] See Malcom N. Shaw- International Law Sixth Edition. Chapter 10 and pg. 487 on Territory as a concept in International Law

[3] Lea Brilmayer-Secession and the Two Types of Territorial Claims.

[4] See Allen Buchanan's classic work Theories of Secession

Adediran to have shot dead at least five members of IPOB and MASSOB during the 49th Anniversary Celebration of the declaration of Biafra by Odumegwu Ojukwu, wounded about eight and claimed they acted in self-defense and in the protection of lives and properties.

It makes no sense for groups to claim independence from the current state without asserting a territorial basis for the new international entity that they seek to bring into existence. The consequences of secession is that the "people" in question become recognized as a territorial entity.

According to Buchanan, Remedial Right Only Theories allows for a right to secede if (1) the state unilaterally grants a right to secede (notable example being the secession of Norway from Sweden in 1905), or if (2) the constitution of the state allows for a right to secede (such as with the 1993 Ethiopian Constitution), or in a case where (3) there is an implicit or explicit assumption that during the formation of the state, which was created from previously independent political units, that secession at a later point was permissible. In the instance of any of these three conditions, a special right to secede exists.

The other school of thought is what is known as the non-remedial theory or "Direct Territorial Theory". This theory views the issue of territorial claim from a non-remedial point. It postulates that a right under international law exists regardless and outside of a history of past injustice which the seceding group wishes to remedy.

Direct territorial theory simply puts the argument of the secessionist forward in that a group may be entitled to a particular territory on its own merits, as a consequence of the existence in international law of legal backing to a rightful acquisition of territories.

It is our humble opinion that the Biafran agitation since after Ojukwu's failed attempt has to fall into the Remedial Rights Theory.

Also, an argument may be advanced that the Ibos had always lived autonomously and distinctively as a nation of their own with unique rules and laws before the amalgamation and union which led to the creation of Nigeria. Also the amalgamation was meant to suit the agenda of colonialism and the Ibos may indeed be championing a cause to correct the past anomaly. If this is their position then, not just the Ibos should secede, but the entire entity known as Nigeria would be brought to shreds, and this is quite unthinkable and unimaginable.

Moreover as already stated, homogeneity or distinctiveness does not operate in such a way as to automatically confer a right to secession. Observers are split over what to make of these very different theories of why the Ibo people are entitled to a state.

Another important angle to the relationship between territorial claim and self-determination claims, is how reaching a claim to a territory affects the legitimacy or otherwise of a pursuit for self-determination. Scholars and various subjects of international law have fully agreed that a people whom in their claim for self-determination attempts or intends to claim beyond their rightful territory shows bad faith and will therefore not be given support and granted their claim.

In the Biafran situation, the states that were claimed by the Ibos by the then elders and leader of The Republic of Biafra, Colonel Ojukwu upon the declaration of independence made at Ahiara were nine in number to wit: Ebonyi, Anambra, Cross River, Enugu, Imo, Rivers, Abia, Akwa Ibom, Bayelsa. On the other hand the Indigenous People of Biafra claim four additional states (Edo, Delta, Kogi and Benue). This inconsistencies further shows some measure of insincerity of territorial claim.

It should be stated that most of the states such as Kogi, Benue and Rivers have disclaimed their association with Biafra and stated emphatically that they have interests of staying in Nigeria and developing their region and Nigeria as a whole. Would it not amount to colonialism for Biafra to annex such regions against their wish? We humbly assert that the answer is in the affirmative.

Furthermore, as earlier stated secession inherently undermines the territorial integrity of the mother state, and international law has for centuries espoused the principles of state sovereignty and territorial integrity. Expressly embracing a right of secession would jeopardize the above-mentioned principles and may likely lead to a situation of global chaos of incessant redrawing of boundaries and territorial limits. For example, the claim to Igbanke, an Igbo speaking community in Edo State automatically alters boundaries and geographical territory.

5. CONCLUSION AND RECOMMENDATIONS

There is no doubt that, secession struggle and agitation affects the smooth operation of a state as it causes undue division and controversy. However, a group legitimately entitled to secession after due consideration of the level of fairness that can be achieved should not be unnecessarily deprived of their human right to self-determination.

Moreover, assessing the level of popularity of the claim is very important. This can only be done in modern day by conducting a referendum or plebiscite. The necessity for this is because an infinitesimal number of people may actually champion secession demands for political gains. However, as earlier mentioned, the result of such referendum is not definitive of whether or not a group can secede. Other factors must surely coexist alongside.

In 2011, South Sudan seceded from Sudan. The secession came after decades of violence, unrest and civil wars within Sudan. Eventually, the secession was achieved through peaceful negotiations and a public

referendum. There was an overwhelming vote by the people of South Sudan for secession and independence and through the favorable result of the referendum; South Sudan became a new independent state on July 9, 2011. South Sudan has now been recognized by the majority of states as an independent state and has also become a member of the UN.

More importantly, all the actors in the international scene must kick a force for a formation of a definitive and universally accepted framework for self-determination. This will prevent ambiguity and needless bickering.