EXPLORING THE MEANING AND SCOPE OF SELF-DETERMINATION UNDER INTERNATIONAL LAW: A CASE STUDY OF SEPARATIST AGITATIONS IN NIGERIA

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Abstract

Self-determination has evolved from a mere principle at the time of the Treaty of Versailles to a right today. It was a useful tool for state creation in the years between the two World Wars and the decolonization process of the mid-twentieth century. Although it is a very popular concept, its true meaning and scope are largely unsettled. In attempting to locate the bounds of self-determination, this paper argues that outside the colonial context, it cannot be exercised to the detriment of the principles of territorial sovereignty and integrity of a sovereign state. The paper applies the basic principles of self-determination to the ongoing secessionist campaigns in Nigeria and concludes that the separatist brand of self-determination in Nigeria is attended with dubious legality and fraught with peril. The paper concludes by advocating a pacific resolution of the Nigeria situation.

Keywords: Self-determination, Secession, Agitation, International law

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Introduction

The fallout of the two World Wars witnessed hitherto latent concepts and principles assuming front-page prominence in diplomacy and international law. These concepts included ideas like international peace and stability, decolonization, self-determination, and secession among others. To be sure, these ideas were not created by the wars but acquired universal importance as a result of the horrors of the wars and the declared intention of the international community to prevent further exposure to the evil of war.[1]

The senses in which these terms are used fluctuate depending on the views of the users and the contextual application. Thus, it is difficult to achieve a global consensus on the meanings and limits of these terms. The world gave concrete expression to its determination to curb the scourge of war and promote peaceful approaches to world development through the formation of the United Nations.[2]

The UN espouses the ideals of the international community on achieving a just and peaceful world. Among the major ideals that the UN promotes is the principle of self-determination. Self-determination has no precise definition but in simple terms, it implies the right of a people to self-rule without external control.[3] In conservative circles, especially in the inter-war years, self-determination was seen as the right of a colonized people to gain independence.[4] The offshoot of self-determination is its penchant to promote the quest for secession. Secession, like self-determination, suffers from definitional indeterminacy, but there is agreement among scholars that secession involves the excision of a people and their land from the sovereignty of a recognized

[1] The preamble to the United Nations (UN) Charter wherein the UN 'determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind…' <https://www.un.org/en/about-us/un-charter/preamble > accessed 3 January 2023

[2] Established on 24th October 1945 less than two months after the official end World War II (2nd September, 1945); The United Nations, 'History of the UN' <https://www.un.org/un70/en/content/history/index.html> accessed 18 December 2022

[3] Definition of the term 'Determination by The People of a Territorial Unit of Their Own Future Political Status,' Merriam-Webster Dictionary (latest edn, 2018) <https://www.merriam-webster.com/dictionary/self-determination> accessed 2 January 2023

[4]Kristina Roepstorff, 'Self-Determination of Indigenous Peoples Within the Human Rights Context: A Right to Autonomy?' < https://www.researchgate.net/publication/242237415_Self-Determination_of_Indigenous_Peoples_within_the_Human_Rights_Context_A_Right_to_Autonomy> accessed 18 December 2022

state.[5] Because secession invariably alters the territorial sovereignty and integrity of an established state, many states that support self-determination do not in principle support secession. [6]

In the case of Nigeria, some aggrieved groups have, in recent times, openly campaigned for secession from Nigeria[7] in the name of self-determination. This paper aims to interrogate the validity of the quest for secession by the separatist groups in Nigeria in the light of international law. The paper is divided into six parts with the introduction as the first part. The second part discusses the overview of the concept of self-determination and the third part reviews judicial and diplomatic attitudes to self-determination vis-à-vis secession. The fourth part examines the legal tenability of the separatist agitations in Nigeria. The fifth part proposes recommendations for a just and practical resolution while the sixth part concludes the paper.

The Concept of Self-Determination-

Self-determination has been described as one of the essential principles of contemporary international law recognized by the UN Charter (1945) and the International Court of Justice (ICJ).[8] However, as stated in the introduction to this paper, it is one of those legal terms that have no universally accepted definition.[9] Some scholars contend that it has no definition.[10] Its scope is

[5]Pavkovic Aleksandar, 'Secession: A much contested concept' published in Territorial Separatism in Global Politics: Causes, Outcomes and Resolution' (1st edn, Damian Kingsbury & Coastas Laoutides eds) 13-28 <https://www.routledge.combooks> accessed 28 December 2022

[6] These would include African and South American countries who are so committed to the preservation and maintenance of colonial boundaries that they would not permit any alteration in the name of self-determination. See Cornell University, 'uti possidetis juris' Legal Information Institute, <https://www.law.cornell.edu/wex/uti_possidetis_juris> accessed 28 December 2022

[7] The most pronounced among these groups are the proscribed Indigenous People of Biafra (IPOB) led by Mazi Nnamdi Kanu and the Yoruba Nation led by Sunday Adeyemo AKA Igboho.

[8] The Case Concerning East Timor (*Portugal v Australia*) Merits, Judgment, ICJ Reports [1995] 4 [102].

[9] *Aaland Islands Case*, formally titled "Report Presented to the Council of the League of Nations by the Commission of Rapporteurs" LN DOC. B721/68/106 (1921) 3 where the Commission of Rapporteurs described free-determination or self-determination as "a principle of justice and of liberty, expressed by a vague and general formula which has given rise to the most varied interpretations and differences of opinion."

[10] J. Crawford, *Brownlie's Principles of Public International Law* (8th edn, Oxford University Press 2012)

also a subject of dispute when applied outside of a colonial context.[11] It has been described as a concept with both unifying and divisive potentials.[12]

The meaning of self-determination, like many other words, may best be deduced from its contextual usage. The UN Charter uses self-determination in the sense of decolonization and equality of states. Article 1 (2) of the UN Charter states the purposes of the UN to include, the promotion of friendly relations among states, equality of states, self-determination and world peace. In Article 55 of the Charter, the UN commits itself to enhancing equal rights and self-determination as vital elements of international peace. The International Covenant on Civil and Political Rights (1966) sheds more light on the meaning which the UN attaches to self-determination. The covenant recognizes the right to self-determination to include the right of a people to determine their political, cultural and economic development[13]. The office of the Attorney General of Australia in its Public Sector Guidance Sheet summarizes the UN's conceptualization of self-determination thus: there is no single uniform definition of self-determination. But there is consensus that it involves some form of self-rule and the right to political, economic and cultural development by a people [14]

The ordinary interpretation of the UN's perception of self-determination is that the right to self-determination connotes the basic right of a people to determine their political status together with ancillary rights to freely pursue their economic, social and cultural development. This would, on face value, include the rights of such people to be politically independent of external control or compulsion including the right to secede at will from an existing state. Obviously, this position (induced by a permissive interpretation of the word "peoples" as used in the charter and

[11]Drew, '*The East Timor Story: International Law on Trial'* (2001) 12 European Journal of International Law. 651 at 658 cited in Matthew Saul, '*The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right*?' (2011 Human Rights Law Review, Oxford University Press) 610

[12] Eusike Suzuki, 'Self-Determination in International Law' (1980) 89 (6) The Yale Law Journal, 1247-1259 <https://www.jstor.org/stable/796032> accessed 29 December 2022

[13] See Article 1 of the Covenant

[14] 'Right to self-determination/Attorney-General's Department' <https://www.ag.gov.aupublic-sector-guidance> accessed 16 January 2023

covenant)[15] is a simplistic understanding of the meaning and scope of self-determination in view of other considerations which shall be discussed later in this paper.

Classification of Self-Determination

There are two aspects of self-determination. These are internal self-determination and external self-determination. Internal self-determination is akin to the concept of popular sovereignty i.e. the superiority of the people to their rulers or government.[16] A leading advocate of internal self-determination, Antonio Cassese states that internal self-determination, among other things, means that the population of a sovereign state has a right to choose its government without foreign dictation. Ethnic, racial, or religious minority groups within a state are entitled to protection from oppression and discrimination by the central government. [17] The major features of internal self-determination include the right of the people of a sovereign state to choose their constitution and governing laws; a right to autonomous status within the state (where appropriate) and the right to political inclusion.[18] Simply put, internal self-determination equates to a right to democratic government and basic freedoms. Internal self-determination amounts to a conceptualization of self-determination as an inherent right protecting the people against their own government.[19]

[15] An analysis of the differing contentions on the meaning of "peoples" in the self-determination context is unnecessary for the purposes of this paper and is thus omitted. But for a detailed explanation of the elements and attributes of "peoples", see Michael P. Scharf, "Earned Sovereignty: Judicial Underpinnings", (2003) 31 Denv. J. Int'l L. & POL'Y 373, 373–79"; Milena Sterio,'Self-Determination and Secession Under International Law: The Cases of Kurdistan and Catalonia' American Journal of International Law (2018) < https://www.asil.org/ > accessed 28 December 2022

[16] See the opinion of the government of the Netherlands on the subject in SUMMERS, James, Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations (Leiden/Boston: Martinu Nijhoff, 2007) 188 Google Scholar cited in SENARATNE, K. (2013). Internal Self-Determination in International Law: A Critical Third-World Perspective. Asian Journal of International Law *3*(2), 305-339. doi:10.1017/S2044251313000209 <https://www.cambridge.org/core/journals/asian-journal-of-international-law/article/internal-selfdetermination-in-international-law-a-critical-thirdworld-perspective/> accessed 20 December 2022

[17] Cassese Antonio, 'Political Self-Determination: Old Concepts and New Developments' in Antonio CASSESE, ed, UN Law/Fundamental Rights: Two Topics in International Law (Alphen aan den Rijn: Sijthoff & Noordhoff, 1979), 137 <Google Scholar> accessed 20 December 2022

[18] Rosas Alan, "Internal Self-Determination" in Thornberry, Patrick, 'The Democratic or Internal Aspect of Self-Determination with Some Remarks on Federalism' in Christian Tomuschat, ed, Modern Law of Self-Determination (Dordrecht/Boston/London: Martinus Nijhoff, 1992), 225 at 230-232 <GoogleScholar> 20 December 2022

[19] Salmon Jean, *Internal Aspects of the Right to Self-Determination: Towards a Democratic Legitimacy Principle*? in Tomuschat, ibid [253] at [265]

External self-determination, on the other hand, implies the right of a people to determine their own political status devoid of foreign domination and includes their right to form their own sovereign state.[20] External self-determination is applicable in situations where a people are deprived of their right to a political existence in the international arena by another state or people as in the case of colonialism.

Some scholars have employed other terminologies to classify self-determination although in real terms they still amount to internal self-determination and external self-determination. For example, James Anaya[21] uses the expressions 'constitutive self-determination' and 'on-going self-determination' instead of external self-determination and internal self-determination, respectively.[22] Also, Cass uses the terms "conventional view" and "controversial view" for external and internal self-determination, respectively.[23]

For the purposes of this paper, however, the commonly used terms of internal self-determination and external self-determination will be used as these are the expressions employed by the majority of states in discussing the question of self-determination.[24] The practical utility of self-determination in the context of the UN Charter is to provide a tool for decolonization and attainment of political independence by colonized peoples.[25]That amounts to external self-determination.

[20] Hurst Hannun, 'Legal Aspects of Self-Determination' *Encyclopedia Princetoniensis*, Princeton University <https://pesd.princeton.edu/node/51> accessed 22 December 20221 Zubeida Mustafa 'The Principle of Self-Determination in International Law' International Lawyer, Vol. 5, No. 3 (July 1971 American Bar Association) 479 ("Broadly speaking, this principle (i.e. self-determination) has two connotations- the internal and the external…The external aspect concerns itself with the right of the people to determine their nationality and statehood.")

[21] 'Indigenous People in International Law' (New York, Oxford: Oxford University Press, 1996) American Journal of International Law) 227

[22] Ed Brown, 'The United Nations, Self-Determination, State Failure and Secession' E-International Relations <https://www.e-ir.info/2020/05/29/the-united-nations-self-determination-state-failure-and-secession/> accessed 22 December 2022

[23]Cass Deborah, '*Re-thinking Self-determination: A Critical Analysis of Current International Law Theories'* Syracuse Journal of International Law and Commerce, (Vol. 18, No. 1 1992) Art. 4 [23] 29

[24] See the statements and comments of the various states in the Kosovo Case where they were the most liberally used terminologies in classifying the two aspects of self-determination.

[25] Milena Sterio, 'The Right to External Self-Determination:*"Selfistans,*" Secession and the Great Powers' Rule', 19 MINN. **J.** INT'L **L.** 137**,** 137-38 (2010) cited in Waters, Timothy W. 'Misplaced Boldness: The Avoidance of Substance in the International Court of Justice's Kosovo Opinion' (2013). Articles by Maurer Faculty. 2601. <https://www.repository.law.indiana.edu/facpub/2601 > accessed 20 December 2022

The principal distinction between internal self-determination and external self-determination is that internal self-determination takes place within the context of a sovereign and recognized state, often in the relationship between a government and the people of an independent state while external self-determination occurs in the process of a subjugated people trying to attain freedom from external rulers and achieve statehood. In other words, external self-determination is essentially a quest for independence.[26]

Evolution of Self-Determination:

Although the French and American revolutions had raised the level of awareness about such liberal concepts like freedom, peoples' rights and democracy,[27] the principle of self-determination (at least external self-determination) in its contemporary form is a fallout of World War 1 and the Treaty of Versailles which effectively dismembered Germany and her allies especially Austro-Hungary and the Ottoman Empire after their defeat in World War I.[28] The first concrete foundations of self-determination were laid by US President, Woodrow Wilson in his famous 14 points proposals for post-war Europe.[29] While pitching for it at the League of Nations in 1919, President Wilson described self-determination as the right of every people to choose the sovereign under whom they live, to be free of foreign rulers, and not to be shared among different rulers like goods.[30] At Versailles, the European powers accepted these proposals to a large extent.[31]

[26] Ibid (n 24); Accordance with International Law of Unilateral Declaration of Independence by The Provisional Institutions of Self-Government of Kosovo (Request for Advisory Opinion) Statement Of The Federal Republic Of Germany.33:

[27] Danspeckgruber, W. and Gardner A., 'Self-Determination', *Encyclopedia Princetoniensis,* Princeton University, <https://pesd.princeton.edu/node/656> accessed 20 December 2022

[28]The following nine new states were created and recognized under the Treaty of Versailles: Finland, Austria, Czechoslovakia, Yugoslavia, Poland, Hungary, Latvia, Lithuania and Estonia

[29] The 14 points were contained in a speech delivered before Congress on 8th January, 1918 in which the president outlined his vision for a postwar world to include: "the nations' conduct of foreign policy, including freedom of the seas and free trade and the concept of national self-determination, with the achievement of this through the dismantling of European empires and the creation of new states. Most importantly, however, was Point 14, which called for a "general association of nations" that would offer "mutual guarantees of political independence and territorial integrity to great and small nations alike." See The National WW1 Museum, 'The Fourteen Points of Woodrow Wilson and the U.S. Rejection of the Treaty of Versailles' <https://www.theworldwar.org/learn/peace/fourteen-points > accessed 22 December 2022

[30] Quoted in Cass, Deborah (n 23) 23-24

[31] (n 28) for the list of the peoples and territories that attained statehood and thus self-determination at Versailles

Ironically, the United States undermined the attainment of international unanimity on its own proposals by declining to join the League of Nations.[32]

Two major features distinguish the understanding and application of self-determination in the inter-war years from its contemporary conceptualization. First, the League of Nations and the European states applied a Euro-centric approach to self-determination. Third world peoples did not feature among those considered due for self-determination. All the nine new states created at Versailles were European states. Second, only external self-determination was countenanced, i.e. decolonization. The conditions of the population of a state was a matter within the domestic jurisdiction of the state and remedial secession could only be accepted in extreme circumstances. Indeed, the League of Nations did not consider self-determination as a legal right but merely as a political issue.[33] In the *Aaland Islands case*,[34] the Aalanders, a minority group of Finnish nationals of Swede ethnic stock, claimed a right to hold a plebiscite to decide whether to join Sweden or remain in Finland. The Council of the League of Nations appointed a Commission of Rapporteurs to advise it on the claim. The Commission said that the right to self-determination was not then recognized under international law as it was not part of the Covenant of the League of Nations. The mere recognition of the principle by a number of states did not make it a rule of customary international law. According to the commission, self-determination was no more than a mere ideal of justice and freedom on which there was no consensus of meaning and scope among international jurists.

At the end of World War II, the global community through the UN elevated self-determination from the status of a mere principle to a right.[35] The mere fact of codification of self-determination

[32] The US Congress failed to ratify the Treaty of Versailles due largely to political and ideological differences between the president (a democrat) and the republican-majority senate. When the Senate rejected it on 19 September 1919, the Treaty of Versailles became the first peace treaty to be rejected by the Senate in US history; United States Senate, 'Senate rejects the Treaty of Versailles' < https://www.senate.gov/about/powers-procedures/treaties/senate-rejects-treaty-of-versailles.htm > accessed 28 December 2022

[33] Malcolm Shaw, *International Law* (7th edn, Cambridge University Press 2014) 183

[34] LN Council Doc. B7 21/68/106 (1921)

[35] Article 1 of the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 and article 1 of International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3. These instruments use the word "right" in reference to self-determination unlike articles 1 (2) and 55 of the UN Charter that refer to self-determination as a "principle".

has enhanced its status beyond a political issue to a legal one. The UN Charter imposed on colonial masters a duty of administering their colonies in the best interest of the colonial populations and of accountability to the UN for the socio-economic status of their colonies.[36] In 1946, the General Assembly adopted Resolution 66 (1) setting up a committee to analyse and advise the General Assembly on the Secretary-General's summary of the reports from the colonial powers pursuant to Article 73 (5) of the Charter. The UN went further in 1960 to adopt the 'Declaration on the Granting of Independence to Colonial Countries and Peoples'[37] wherein the General Assembly recognized the right of all peoples to self-determination and consequently committed to bringing all forms of colonialism to swift end.

Also, in the Declaration on Principles of International law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations[38], equal rights and self-determination of people were included as two of such principles. The declaration further mentioned the acceptable forms of the exercise of self-determination. These are creation of a sovereign state, freedom to associate with or be incorporated into an existing sovereign state and the freedom to determine a people's political status by the people.

From the forgoing, it is apparent that self-determination moved from the periphery to the centre of international concern under the guidance of the UN. In practical terms, the UN considers itself to have successfully delivered on the decolonization arm of self-determination. According to the UN, it has achieved huge success in the area of self-determination. At the formation of the UN in 1945, there were about 750 million people accounting for one third of the world's population living in colonies, dependencies and other non-self-governing territories. Since then, the UN has overseen the independence of more than 80 former colonies including all Trust Territories. Hitherto dependent territories were taken off the list of Non-Self-Governing territories because they achieved self-determination via either attainment of independence or free association with an existing state. Currently, less than 2 million people are living in about 17 Non-Self-Governing

[36] Article 73 (5) of the UN Charter.
[37](General Assembly resolution 1514 (XV) commonly referred to as Declaration on Decolonization
[38] General Assembly resolution 2625 (XXV), 1970

Territories.[39] With the task of decolonization nearly accomplished, the focus of self-determination has shifted in contemporary times from decolonization to secession. This has been observed in Eritrea, South Sudan, Kosovo, South Ossetia, Abkhazia, among others. The prospects and challenges of this new trend take up the remaining sections of this paper.

Judicial and Diplomatic Attitudes to Self-Determination-

That there is a divergence of opinion among states on the application of self-determination in real life is a function of the lack of precision and clarity in defining the subject. The views differ on the recognition of internal self-determination as a distinct right in international law as well as the exercise of external self-determination outside of a colonial context. In the *Kosovo Advisory Opinion*,[40] some states in their written statements and comments saw internal self-determination as a distinct right cognizable and enforceable at international law[41] while others left it to the municipal jurisdiction of each state.[42]

A more consequential subject of controversy is the question of the legality of external self-determination outside of a colonial context. Put another way, can a portion of a sovereign state lawfully secede? The traditional or conservative view is that internal self-determination is limited to giving a disadvantaged people of a state better conditions of life within that state. James Anaya for example argues that the key elements of self-determination for indigenous peoples are non-discrimination, cultural integrity, land and autonomy.[43] Thus, a fraction of a sovereign state may not legally secede from their parent state if these elements are present in the parent state. Timothy Waters argues that self-determination in its current form is different from its original conception by President Wilson. Wilson wanted a delineation of national borders to fit political communities while the UN-era doctrine of self-determination jealously guards existing international borders

[39] The United Nations, 'The United Nations and Decolonization' <https://www.un.org/dppa/decolonization/en/about> accessed 29 December 2022

[40] Accordance with International Law of the Unilateral Declaration of Independence In Respect Of Kosovo ICGJ 423 (ICJ 2010)

[41] E.g. Finland and Netherlands

[42] E.g. Germany that contended that a factual situation had occurred in Kosovo with which international law had no business other than the acceptance of the fact of the new reality. Germany declared at page 3 of it Written Statement that "Kosovo's independence is and will remain a reality."

[43] (n 21)

notwithstanding how incongruous they may be. In other words, irrespective of the wishes of the population, international boundaries are sacrosanct. External self-determination is encouraged through decolonization. But once independence is achieved, fragmentation of the state into smaller independent states is discourage. Self-determination is available to the entire population of the state and not to a fraction of it. Thus the scope of self-determination cannot be stretched to permit a division of the population of a state to secede.[44]

In the *Kosovo Opinion*, China strongly argued that the right to self-determination is exercisable only in decolonization contexts and remains confined to the colonial context even after the end of colonialism.[45] The conservative view finds a lot of support in customary international law and sate practice. The principles of territorial sovereignty and integrity have been embedded in international legal instruments and has now assumed an almost inviolable status. For instance, in the 'Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in Accordance with the Charter of the United Nations' (1970), sovereign equality of states, inviolability of the territorial integrity and political independence of states and non-interference in the domestic affairs of states were recognized as the basic principles of international law.

The inviolability of the territorial sovereignty and integrity of a state is linked to the principle of *Uti Possidetis Juris* (UPJ). This is a Roman law principle that permitted a party in possession of property to continue in possession pending further directives.[46] In international law, it implies that a newly independent state is entitled to inherit its colonial boundaries irrespective of the cultural validity of its source of title.[47] It is an important factor in stabilizing the boundaries of newly independent states in South America and Africa by committing the new states to accept the colonial boundaries they inherited from the colonial masters.[48]

[44]Waters Timothy W, (n 25) 290

[45] 'Written Statement of the People's Republic of China to the International Court of Justice on the Issue of Kosovo' 5 ("Even after colonial rule ended in the world, the scope of application of the principle of self-determination has not changed.")

[46] (n 6)

[47] *Frontier Dispute (Burkina Faso/Republic of Mali* (1986) *ICJ* Rep 554.

[48] Article 4 (a) and (b) of the Constitutive Act of the African Union provides that the AU is founded on the principles of sovereign equality and interdependence among Member States and respect for colonial boundaries existing at the achievement of independence.

The implications of the conservative view of self-determination are that post-colonial self-determination must not be exercised to the detriment of the territorial sovereignty and integrity of a state and that a state in possession of a territory may continue to hold it notwithstanding the aspirations of the local population. In the *Aaland Islands case*, the Committee of Rapporteurs stated the customary international law on the matter to the effect it was not possible for a minority ethnic population of a state to unilaterally secede from their parent state and become a part of another sovereign simply because it was their good pleasure to do so. Acknowledging a right to self-determination amounting to secession would open the flood gate to wholesale instability and anarchy both domestically and in the international space. Furthermore, it would destroy the very idea of the state as a political and territorial unit.[49]

The liberal view on the other hand sees self-determination (both internal and external aspects) as a permanent right which can be exercised outside the colonial context. For example, the Final Act of the Organization for Security and Co-operation in Europe (OSCE) (commonly referred to as the Helsinki Final Act) provides in its Principle VIII provides for the recognition of the rights of all peoples have the right to the decide at any time their internal and external political status independent of external interference. This right also includes the freedom to pursue on their own terms their political, economic, social and cultural development.

The use of internal and external self-determination indicates the availability of self-determination outside of the colonial context.[50] The liberal thinking has come up with the concept of remedial secession as a self-determination tool. That is the notion that an oppressed or persecuted people may secede from the persecuting state.[51] This paper observes that remedial secession is not an altogether novel idea as the law had since the days of the League of Nations recognized a people's

[49] The *Aaland Islands* (n 9) 4

[50]CASSESE Antonio, 'Political Self-Determination: Old Concepts and New Developments' in Antonio CASSESE, (ed *UN Law/Fundamental Rights: Two Topics in International Law* (Alphen aan den Rijn: Sijthoff & Noordhoff, 1979), 137 at 137 cited in SENARATNE, K. (2013). Internal Self-Determination in International Law: A Critical Third-World Perspective. Asian Journal of International Law, *3*(2), 305-339. doi:10.1017/S2044251313000209

[51]Senaratne K, Internal Self-Determination in International Law: A Critical Third-World Perspective. Asian Journal of International Law, *Cambridge University Press, (2013) 3*(2), 305-339. doi:10.1017/S2044251313000209 <https://www.cambridge.org/core/journals/asian-journal-of-international-law/article/abs/internal-selfdetermination-in-international-law-a-critical-thirdworld-perspective/D50802D44C5C534376496283B78D220B > accessed 20 January 2023

right to secede in the face of oppression and persecution by their parent state. This was why the Treaty of Versailles created new sovereign states from the defeated powers of World War I.

The attitude of international law to secession is neutrality.[52] It is commonly understood that international law, as a general rule, neither permits nor prohibits secession. But remedial secession constitutes an exception to the rule as it may be justified in certain situations. In *Reference re Secession of Quebec*,[53] the Canadian government referred three questions to the Canadian Supreme Court for determination. Two of those questions were on the constitutionality of a unilateral secession of Quebec from Canada by either the central legislature of Canada or the regional government of Quebec and availability of a right to such unilateral secession at international law. On the first question which borders on the constitutionality of a unilateral secession by a sub-national government, the court after emphasizing the supremacy of the Canadian Constitution and the necessity of reading it as a whole to give effect to its intent on any subject of interest, stated that notwithstanding a clear referendum result in favour of secession, Quebec could not legally secede from Canada under the guise of self-determination. The referendum itself was held to be illegal because of its inconsistency with the principles of federalism, human and minority rights as espoused in the Canadian Constitution. The court held that:

(a) No right of unilateral secession exists under the Canadian constitution
(b) Democratic expression of self-determination (e.g. referendum) is subject to the constitution.
(c) The Federal Government cannot arbitrarily deny a region secession if a clear majority in that region vote for it.
(d) Both parties need to engage each other to work out a political solution.

On the second question which is of more relevance to this paper, the court stated that international law neither permits nor prohibits secession. However, a successful secession would violate both the Canadian constitutional order and customary internal law on the stability of international

[52] (n 23) ("secession (outside the colonial context) is traditionally understood as a political question not expressly regulated by international law")
[53][1998] 2 S.C.R. 217 < https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do> accessed 29 December 2022

boundaries. Notwithstanding the silence of the law on unilateral secession the court, laid down the conditions under which self-determination amounting to unilateral secession may take place.

Secession of a part of a state from its parent state is justified only in the colonial context or in the case of an oppressed and persecuted people who are not afforded any meaningful exercise of their right to self-determination. Any group that does not belong to these categories of people cannot unilaterally secede under the guise of self-determination but should achieve self-determination through the framework of the existing state. The law as stated by the Canadian court is a restatement of the report of the Commission of Rapporteurs in the *Aaland Islands* case where the Commission said that secession can be countenanced as a last resort only in an extreme situation.[54] While international law does not permit secession, it does not deny that secession can take place de facto, its illegality notwithstanding. Where a people have successfully seceded from their parent state and purport to form an independent state, international law would not pretend that a factual situation of secession had not occurred. It is said that International law has always acknowledged that a secession had in fact taken place once the constitutive elements of statehood are present notwithstanding any perceived illegality in the process adopted to accomplish that fact.[55] The legality of a secession is therefore a function of its success. This means that effective secession would be acknowledged by international law even if it is alleged to be unlawful. This position is a pragmatic one that admits that an event had occurred even though that event may not be legally sanctioned.[56]

Where a people have on the ground effectively seceded from their parent state, the acceptance of the new state and its legal status would depend on the level of recognition it receives from other states. Recognition itself is a political decision and no state is under any obligation to recognize another.[57] For example, Somaliland effectively seceded from Somalia thirty years ago and has all the attributes of a self-governing state with strong and democratic institutions. Yet no state has

[54] *Aaland Islands* case (n 9) 4
[55] Chr. Haverland, "Secession", in: R. Bernhardt (ed.), *Encyclopedia of Public International Law*, 4, 354 et seq., at 355 cited the Written Statement of Germany in Kosovo Opinion, (n 42)
[56] S.A. deSmith, Constitutional Lawyers in Revolutionary Situations, **7** W. ONT**.** L. REV. 93, 96 (1968**)** cited in Waters, Timothy W., (n 44)
[57] Waters, (n 44)

accorded it recognition.[58] Also, Taiwan has been self-governing since the 1990s.[59] However, despite its trade relations with many countries of the world,[60] only 15 countries have recognized it as a sovereign state.[61]

Just as illegality or lack of recognition does not derogate from the effectiveness of a successful secession, recognition does not confer independence or sovereignty on a non-self-governing people. The Self-styled Saharawi Arab Democratic Republic (Western Sahara) has enjoyed recognition from about 40 countries,[62] yet facts on the ground show that, despite an ICJ ruling in favour of their right to self-determination,[63] the people of the territory are far from being self-governing. Rather Western Sahara is still under the control of Kingdom of Morocco.[64] A more apposite example of the futility of recognition alone in the course of attainment of statehood is the case of Palestine. Palestine claims to enjoy recognition as a sovereign state from 139 states (approximately 72 %) of the members of the UN.[65] Yet, Palestine exists at the sufferance of Israel. The ICJ in the *Kosovo Opinion*[66] stated that a unilateral declaration of independence by persons acting in their private capacity did not offend international law because international law does not prohibit a declaration of independence. The decision has been seen in some quarters as an expansion of the law on self-determination and remedial secession.[67] This paper opines that the

[58] Claire Felter, 'Somaliland: The Horn of Africa's Breakaway State' Council on Foreign Relations, <www.cfr.org/backgrounder/somaliland> accessed 4 January 2023

[59] 'Taiwan', *Encyclopedia Britannica*, < https://www.britannica.com/place/Taiwan> accessed 4 January 2023

[60] 'Taiwan-Country Commercial Guide' < https://trade.gov/country-commercial-guides/taiwan-market-overview> accessed 4 January 2023

[61] These 15 states do not have official diplomatic relations with China who claims sovereignty over Taiwan. They are: Belize, Guatemala, Haiti, Holy See, Honduras, Marshall Islands, Nauru, Nicaragua, Palau, Paraguay, St Lucia, St Kitts and Nevis, St Vincent and the Grenadines, Swaziland (Eswatini) and Tuvalu. <https://www.dfat.gov.au/geo/taiwan/australia-taiwan-relationship> accessed 5 January 2023

[62] This is admittedly a far cry from the two-thirds of the members of the UN required for admittance to the membership of the UN. The UN currently has 193 members

[63] *Western Sahara Advisory Opinion* (1976) ICJ Reports 12; Stephen Zunes, (2008): 'Western Sahara: Self-Determination and International Law' <https://www.mei.edu/publications/western-shara-self-determination-and-international-law> accessed 5 January 2023

[64] After years of resisting Moroccan claim of sovereignty, Western Sahara in 1991 accepted a UN-promised independence referendum for the territory. But 30 years after, the referendum has not held due to the intransigence of Morocco. Western Sahara Profile <https://www.bbc.com/news/world-africa-14115273> accessed 30 December 2022

[65] Permanent Observer Mission of the State of Palestine to the United Nations, New York, "Diplomatic Relations" <https://palestineun.org/about-palestine/diplomatic-relations/> accessed 5 January 2023

[66] (n 41)

[67] For example, Ojukwu and Okoli claim that 'Kosovo seems to have raised right to self-determination "from the dead" especially that of ethnic groups like the Igbos and the Kurds.' See Ojukwu and Okoli, 'A Critical Appraisal of

Kosovo Opinion did not really champion the cause of self-determination and remedial secession as may seem at first glance.

The background to the Kosovo Opinion is the breakup of the former state of Yugoslavia and the decades of oppression and persecution of the Kosovar Albanian population of Kosovo.[68] In 1999, a regular war developed between the Serbian security forces on the one hand and the Kosovo Liberation Army (KLA) and NATO forces on the other hand. On 10th June, 1999 the UN Security Council passed Resolution 1244 (SC/R 1244) creating a UN mission to Kosovo (UNMIK); demilitarizing the KLA and other armed militias operating in the region and authorizing the establishment of interim civil administration in Kosovo pending a final settlement of the conflict. Pursuant to Resolution 1244, elections were held in 2001 in Kosovo and Provisional Institutions of Self-Governance (PISG) created.

In 2004, violence broke out once again between the central government of Serbia and the people of Kosovo. Negotiated settlement failed and on 17th February, 2008, the president and members of the Kosovo parliament declared independence. Serbia brought the development to the UN General Assembly and persuaded it to request the ICJ to issue an advisory opinion on the accordance with international law of the unilateral declaration of independence by Kosovo. The precise question put to the court was whether the unilateral declaration of independence by the PISG was in accordance with international law. The question put to the court was narrowly framed and admitted of no extraneous discussion of ancillary matters like secession and self-determination generally. The court was also asked by both Serbia and her opponents to limit itself to the question put it and proceed no further.[69] The court held that the authors of the Unilateral Declaration of Independence (UDI), although were members of the PISG, did not act in that capacity when they declared independence.[70] This point is decisive in that the PISG was set up pursuant to Security Council Resolution 1244 with clearly defined mandate. The resolution reserved the final solution to the Kosovo crisis to the Security Council and thus the PISG would have acted ultra vires if it

the Right to Self Determination under International law' Nnamdi Azikiwe University of International Law and Jurisprudence (NAUJILJ) 12 (1) 2021 127 at 130

[68] Waters, (n 44)

[69] (n 40)

[70] Ibid

had gone on to declare independence. The UDI would have been contrary to international law as contained SC/R 1244 if it was authored by the PISG. However, the court held that although the authors of the UDI were responsible officers of the PISG, they made the UDI in their private capacities as citizens. Since no provision of SC/R 1244 was directed at them in their private capacity, their authorship of the UDI could not be described as a violation of the resolution. According to Waters,[71] the decision of the court that there is nothing in international law that stopped a group of private citizens from writing and signing what appeared to them as a declaration was both extraordinary and to be expected. The court could not prohibit in the course of adjudication what the law never did.

The court did not embark on a discussion of the question of self-determination or on the effectiveness of the UDI. The court limited itself to whether the UDI had violated any general rule or principle of international law or whether its legality could be affected by the provisions of SC/R 1244. In the opinion of a commentator, the court did not make any comments on Kosovo's status and recognition by third parties as an independent state. They did not also discuss the legality of unilateral secession outside the colonial context. Neither did the court offer any opinion of the legal status of remedial secession. The court merely addressed the issue of whether or not the UDI was in accordance with international law.[72]

In answering the narrow question put to it, the court merely said that international law, as gleaned from state practice, did not prohibit declarations of independence. This means that in the absence of a rule of international law prohibiting the UDI, the court could not hold it to be contrary to international law.[73] Some commentators have seen this decision as a restatement of the principle in the *Lotus case* (*France v. Turkey*)[74] to the effect that what is not expressly prohibited by international law is permitted.[75]

[71] Waters, (n 44) 314

[72] Christakis T, 'The ICJ Advisory Opinion on Kosovo: Has International Law Something to Say about Secession?' Leiden Journal of International Law, (2011)24 (1), 73 <https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/abs/icj-advisory-opinion-on-kosovo-has-international-law-something-to-say-about-secession/> accessed 8 January 2023

[73] Waters, (n 44) 305,

[74] (1927) P.C.I.J. (Ser. A) No. 10, 18-19

[75] Anne Peters, 'Does Kosovo Lie in the Lotus-Land of Freedom?' (2011) 24 Leiden Journal of International Law 95.

The *Kosovo Opinion* is also regarded as *sui generis* in that the court did not purport to lay a general rule of international law for all times on the matters discussed in the opinion but was only concerned with the law as applied to the specific circumstances of the case.[76] Therefore the *Kosovo Opinion* did not expand the scope of self-determination to accommodate or legalize unilateral declarations of independence by secessionist agitators. The opinion simply was to the effect that in the circumstances of the case the UDI was in accordance with international law there being no rule prohibiting it.

The *Kosovo Opinion* might have provoked thoughts and debates in intellectual circles but it does not add any practical value to the contentious aspects of self-determination like secession and recognition. These are still political issues which are not regulated by international law but by the effectiveness of their processes. In the event of remedial secession, the principle enunciated in the *Aaland Islands case* (that it is a last resort in extreme situations) is unaltered by the *Kosovo Opinion and* remains good law. The customary international law and treaty rules on the territorial sovereignty and integrity of states are still sacrosanct notwithstanding any group's claims to self-determination.

In practice, diplomatic rhetoric aside, the international community is hostile to secession in principle and instances of unilateral secession outside of the colonial context are relatively rare.[77] In most cases of secession, there is always some compliance with some set of rules mutually agreed upon by the parent state and the emerging state.[78] The even rarer incidents of state-extinction as happened to the defunct Yugoslavia and the USSR in the 1990s are, strictly speaking, not secession. It is a situation where a state simply ceases to exist and its component parts fashion new statuses for themselves. But secession means the loss of sovereignty by an existing state over a part of its territory and population to a breakaway fraction of it. In summarizing the judicial and

[76] The sui generis character of the Kosovo case was emphasized by some pro-Kosovo states. See for example, the written statements of the United Kingdom and Germany. The court itself further held that determination of the case did not affect the Security Council arrangements under SC/RES1244

[77]Christopher J. Borgen, 'The Language of Law and the Practice of Politics: Great Powers and the Rhetoric of Self-Determination in the Cases of Kosovo and South Ossetia' (2009) 10 (1) 3 Chicago Journal of International Law <www.chicagounbound.uchicago.edu > accessed 10 January 2023

[78] James Crawford, The Creation of States in International Law, (2nd edn 2006) 394-402 cited in Borgen (ibid)

diplomatic attitudes to self-determination, it is submitted that the judiciary is always ready to uphold the right to self-determination of a people where a clear case for it is established as seen in the *Western Sahara case*. But state practice does favour stability over secession.

Remedial secession is permitted in exceptional and extreme situations as was decided in the *Aaland Islands case* and in *Reference re Quebec Secession*. However, the judiciary is wary to extend its jurisdiction to entertain solely political questions like secession and recognition of states. Those matters are left for the diplomats and politicians who are very sceptical of secession as a tool of self-determination. There is no right per se to unilateral secession.

Separatist Agitations in Nigeria

Separatist agitations in Nigeria which the agitators often describe as the exercise of their right to self-determination date back to the early post-independence days. The early self-determination activism was framed around the imperialism of international oil companies in the Niger Delta region of Nigeria. As early as February 1966, Isaac Adaka Boro had declared the independence of the Republic of Niger Delta and taken up arms against the Nigerian state. The secession attempt was crushed within two weeks.[79] Apart from the Boro revolt, the history of Nigeria is one of a series of conflicts and struggles often assuming self-determination coloration.

Nigeria gained independence from the British in 1960. Within six years, political upheavals resulted to a bloody military coup on 15th January 1966 that marked the end of the first civilian government of post-independent Nigeria and the assumption of power by the military. The fallout of the January 1966 coup in Nigeria was a series of crises and killings-including a revenge coup on 29th July, 1966-that culminated in the then Eastern Region led by the regional governor, Lt. Col. Odomegwu-Ojukwu purportedly seceding from Nigeria and forming a Republic of Biafra on 30th May, 1967. The secession of the Eastern Region from Nigeria provoked a 30-month civil war between Nigeria and the secessionists leading to the loss of an estimated one million lives on both

[79]Frank Amugo, 'Ethnis Self – Determination Protests in the Niger Delta: From Isaac Boro's '12 Day Revolution' to Contemporary Militancy' (2018) 1 (6) 198 International Journal of Education and Social Science Research (ISSN 2581-5148 < https://ijessr.com/link.php?id=102> accessed 10 January 2023

sides.[80] On 15th January, 1970, the secessionist attempt failed and Biafra surrendered. It was re-absorbed into Nigeria.

Some thirty years after the re-integration of the territory of the defunct Eastern Nigeria into the Nigerian Federation, one Ralph Uwazurike, floated a group called Movement for the Actualization of the Sovereign State of Biafra (MASSOB) with the express aim of resuscitating the Biafran secession from Nigeria.[81] Several other separatist groups have since sprung up across Nigeria seeking political independence from Nigeria. These groups are mostly found in the southern part of the country.[82] It seems that the default response of any aggrieved Southern Nigerian to any public issue is the balkanization of the country along ethno-religious lines. This has led some commentators to the conclusion that every agitation for a fairer deal in the Nigerian federation is necessarily a separatist agitation.[83] Professor Adibe, writing for the Brookings Institute stated that there exists a universal feeling of marginalization among the constituent parts of Nigerian federation which has worsened mutual mistrust and thereby encourage separatist agitations.[84]

One common thread that runs through the campaigns of these diverse groups is their appeal to the principle of self-determination enshrined in the United Nations Charter and other international instruments as the legal basis of their claim to secession and sovereignty.

This paper will focus on the most prominent and visible of these separatist groups, the Indigenous People of Biafra (IPOB) which is currently championing a secessionist agitation for the excision of the territory of the former Eastern Region of Nigeria and other contiguous areas from Nigeria.

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[80]Adaobi Tricia Nwaubani, 'Remembering Nigeria's Biafra war that many prefer to forget', *The BBC* <https://www.bbc.com/news/world-africa-51094093.> The casualty figures vary wildly from one source to another. A CNN report put the number of the dead at between one and three million people; Shayera Dark, 'Biafra war: Survivors relive account 50 years after Nigerian civil war ends' <https://edition.cnn.com/2020/01/15/africa/biafra-nigeria-civil-war/index.html> accessed 10 January 2023

[81] Immigration and Refugee Board of Canada, 'Nigeria: Movement for the Actualisation of the Sovereign State of Biafra (MASSOB)' < https://www.refworld.org/docid/3df4be7b20.html > accessed 10 January 2023

[82]Adibe, J. 'Separatist agitations in Nigeria: Causes and trajectories' <https://www.brookings.edu/blog/africa-in-focus/2017/07/12/separatist-agitations-in-nigeria-causes-and-trajectories/> accessed 12 January 2023. Professor Adibe, however, considers the activities of Boko Haram, armed bandits and murderous herdsmen in the northern part of the country as manifestations of separatist tendencies in that part of the country

[83] For example, it is difficult to locate Sunday Igboho's Yoruba Nation activism within internal self-determination (i.e. demand for cessation of incessant and unprovoked attacks on his Yoruba kinsmen by marauding herdsmen) or external self-determination (a genuine program to lead the Yoruba of south-west of Nigeria out of the Nigerian federation).

[84]Adibe, J. (n 82)

The Vanguard of May 30, 2020 carried the following headline, "Demanding self-determination is not treason – Nnamdi Kanu." The story quoted Nnamdi Kanu, the leader of IPOB as saying that self-determination is legal in Nigeria by virtue of Section 20 of the African Charter on Human and Peoples' Right which is domesticated as CAP. A9, laws of the Federation of Nigeria, 20024. This appeal to Article 20 of the African Charter on Human and Peoples' Rights (ACHPR) as a justification for IPOB's secessionist campaign betrays a dearth of knowledge of what self-determination entails and even less of Africa's attitude towards it.

Africa has a history of supporting self-determination within the colonial context but does not admit of post-colonial self-determination and the institutions which Africa has set up to administer her people do not have any sympathy for secession. The Constitutive Act of the African Union (AU) does not commit to self-determination unlike the UN Charter.

The meaning of self-determination in the context of Article 20 of the ACHPR does not offer secession and independence for the asking. In *Katangese Peoples' Congress v. Zaire*,[85]the Katangese Peoples' Congress brought an application under Article 20(1)[86] of the ACHPR. The application requested the recognition of the Katangese Peoples' Congress as a pro-independence movement. The application further solicited support for the independence of the Katangese people and the removal of the administration of Zaire (now Democratic of Congo) from Katanga.[87] The Commission found that no specific rights were alleged to have been abused apart from a claim of denial of the right to self-determination.

The Commission held that all peoples are entitled to self-determination and went on to state the various ways of exercising self-determination. These include independence, self-government, local government, federalism, confederation, unitary or any other form of relations that not only accord with the wishes of the people but also in full cognizance of other recognized principles like sovereignty and territorial integrity. It went further to state that the Commission is obligated to uphold the sovereignty and territorial integrity of Zaire.

[85] Comm. 75/92, 8th ACHPR AAR Annex VI (1994-1995)
[86] The same provision to which IPOB is staking its claim to Biafran secession and independence
[87] Ibid (n 85)

The Commission concluded that for the complaint of the Katangese people to justify an alteration of the territorial integrity of Zaire by way of secession, there must be evidence of their denial of the right to participate in the government of their country as provided for by Article 13 of the African Charter. There being no evidence of such deprivation, the people of Katanga must exercise their right to self-determination within the constitutional framework of Zaire.

In the more recent case of *Kevin Mgwanga Gunme et al v. Cameroon*,[88] the African Commission made specific pronouncements on the utility of the ACHPR in the self-determination movement when it said, that a complainant who alleges a violation of Article 20 must establish two elements namely, 'oppression' and 'domination'. In the instant case, the African Commission held that these elements were not proved.

In that case, 14 persons representing the people of Southern Cameroon presented a complaint bordering on alleged violations by the Government of the Republic of Cameroon of sundry provisions of the ACHPR against the people of Southern Cameroon. The African Commission made a finding that the respondent state had violated 10 articles of the ACHPR.[89] Despite this finding, the African Commission declined to grant the Complainants' claim of a right to self-determination amounting to secession. The African Commission then stated its policy on the subject to the effect that the various forms of self-determination (e.g. federalism, unitary, confederation, etc.) are exercisable only in compliance with the territorial integrity and sovereignty of the parent state. The procedure for the exercise of the different forms of internal self-determination recognized by the African Commission is left to the discretion of the state concerned. The African Commission emphatically declared that secession is not among the forms of self-determination recognized by the African Charter.[90]

From the decision of the African Commission in Gunme's case, it is submitted that there is no right to secession as a human right or right to self –determination under the ACHPR. Therefore, the assertion by IPOB that its brand of self-determination is recognized under Nigerian law by virtue of Nigeria's domestication of the ACHPR is misconceived and unfounded. Moreover, there

[88] 266/03
[89] These are Articles 1, 2, 4, 5, 6, 7.1, 10, 11, 19 and 26 of the ACHPR
[90] See paragraph 200 of the decision

is no evidence of "oppression "and "domination" of the people that IPOB wants to lead out of Nigeria. It is further submitted that the IPOB separatists would be ill-advised to seek legal justification for their secessionist activities by appealing to any African regional instrument or institution. The African Commission is not in the business of legalizing secession under the guise of human rights enforcement.[91]

This paper entertains the considered view that from the legal and logical perspectives, the approaches currently followed by IPOB in its quest for secession from Nigeria are inadequate to deliver that result.[92] The pacifist approach would naturally require compliance with Nigerian laws and processes. This is an obvious dead end as the Nigerian constitutional framework does not contemplate a secession of any part of Nigeria from the federation.[93] The indivisibility of Nigeria means that no government of Nigeria worth its salt would contemplate a referendum as demanded by IPOB for the purpose of facilitating the breakup of Nigeria. This is the intellectual basis on which the government of Nigeria has been adamant that the unity of Nigeria is not negotiable.[94] The pacifist approach is therefore untenable for its manifest unconstitutionality.

Still on the futility on the pacifist approach, it would appear with the benefit of experience that IPOB's fixation on referendum as their preferred exit strategy from Nigeria is naive, to put it bluntly. Successful referenda have failed to deliver unilateral secession to the peoples of Catalonia and the Kurds in Iraq.[95] As in Nigeria, the leaders of separatist movements in Spain are either in

[91] Simon M. Weldehaimanot,'The ACHPR in the Case of Southern Cameroons', (2012) 16 (1) International Journal on Human Right Issue, in which it is argued the African Commission, by its decision in the Southern Cameroon case has virtually denied people the right to internal self-determination amounting to secession.<https://sur.conectas.org/en/achpr-case-southern-cameroons/> accessed 14 January 2023

[92] An observation of the tactics of IPOB would reveal that the group has adopted a two-pronged strategy to achieve its objective. These are pacifist means evidenced by its call for referendum and disavowal of violence and the armed insurgency that it adopted since its creation of the Eastern Security Network in December 2020 and Nnamdi Kanu's violent rhetoric and incitement to violence in the wake of ESN's alleged violent campaign against security forces and state institutions in the south east in 2021.

[93] The Constitution of the Federal Republic of Nigeria 1999, s 2 (1) "Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria."

[94] Terhemba Daka, 'Nigeria's Unity not Negotiable, Buhari Insists' *The Guardian* (Abuja, 5 March/2021); Adejumo Kabir, 'Why Nigeria's unity is non-negotiable — Osinbajo' *Premium Times* (January 11, 2021) < https://www.premiumtimesng.com/news/top-news/436062-why-nigerias-unity-is-non-negotiable-osinbajo.html > accessed 15 January 2023

[95]Milena Sterio, (n 15)

jail now or hounded for arrest.[96] The militant route taken by the Eastern Security Network (ESN) is of course unsustainable and ill-advised because of its clear criminal implications. Armed skirmishes are not the ideal and legal means to pursue self-determination. Violence begets violence as the government will respond in kind culminating in creating another theatre of death and suffering for people supposedly seeking freedom.

Conclusion

This paper set out to interrogate the claim by would-be secessionists that their agitation is an exercise of self-determination. The paper conducts a survey of the meanings and conceptual usages of the term and concludes that self-determination like other legal phenomena is plagued by indeterminacy of meaning and scope. The paper argues that from its introduction into international law at the end of World War I, self-determination has been circumscribed and limited by other principles of international law like territorial sovereignty and integrity of states.

Although international law neither permits nor prohibits secession, the international community especially African states adopt a hostile policy to it and generally limit external self-determination to the colonial context except in extreme situations. In the case of internal contradictions in Nigeria giving rise to secessionist agitations, the paper calls for a de-escalation of the tension between the government and the agitators and calls for both sides to renounce violence and recommit to dialogue and compromise. It is hoped that if the suggestions made in this paper are considered and implemented, the right to self-determination of every Nigerian would be greatly enhanced.

Recommendation

The paper suggests that both the government of Nigeria and the separatist agitators do well to heed the dictum of the Canadian Supreme Court in *Reference re Quebec Referendum* that matters of this nature are best resolved through negotiation. Compromises should be made so that each side can guaranty some form of movement from hard positions. Both parties must acknowledge that finality is not the language of politics.[97]

[96] BBC, 'Violent clashes erupt as Spanish court jails Catalonia leaders' *BBC News* < https://www.bbc.com/news/world-europe> accessed 15 January 2023

[97] Benjamin Disraeli (1804-1881)

It is further suggested that both parties must commit to legality and due process. To this end, government must take the moral high ground by guaranteeing a verifiable cessation of all extra-judicial killings in containing the secessionist threats. The secessionist agitators on their part must ensure that their movement does not become a euphemism for criminality. Where a self-professed non-violent movement is associated with burning of police stations, government offices, murders of alleged saboteurs, violent restriction of movement of people of a whole geo-political region and other atrocious escapades, it loses the legitimacy which it requires to be taken serious by any government. The resort to outlawry by IPOB will further give the government the excuse, nay the duty to appeal to arms instead of to dialogue.

For the long term, since IPOB claims to seek secession through a democratic referendum, it may consider supporting its members and supporters into responsible positions in government to help effect changes that will allow for referendum for secession. This will not only give IPOB effective platforms to propagate its message with some means of enforcement but will also confer some level of legitimacy on its agitation.