

STATEHOOD IN INTERNATIONAL LAW AND THE QUEST FOR THE RESTORATION OF BIAFRA: A FEASIBILITY STUDY*

Abstract

There has been a rising quest for the restoration of the defunct Republic of Biafra, which has led to the emergence of various pro-Biafran separatist movements in southeastern Nigeria. Many people have continued to key into these movements without adequate feasibility study of the anticipated restoration of the defunct Republic of Biafra. This paper examined the current state of international law vis-à-vis the growing clamour for the restoration of the defunct Republic of Biafra. The research methodology adopted by the researcher is purely doctrinal, whereas analytical, descriptive and prescriptive approaches were employed. This paper found that the clamour for the restoration of the defunct Republic of Biafra does not violate any provision of the contemporary international law; but that the defunct Republic of Biafra may only be restored through a unilateral declaration of independence because Nigerian political leaders have never hidden their aversion to the restoration of the defunct Republic of Biafra since the end of the Biafran War. Also, this paper found that such unilateral declaration of independence may not be successful unless it is supported by at least one veto-wielding member of the United Nations Security Council, which will not only provide diplomatic assistances and cover to the restored Republic of Biafra, but will also be on the ground to plead her cause at the global stage. This paper, therefore, recommended that leaders of various pro-Biafra separatist movements should engage in massive bridge-building across the globe so as to garner the requisite support of the members of international community. Also, this paper recommended that leaders of various pro-Biafran separatist movements should begin to sponsor candidates for various elective offices within the territories of the defunct Republic of Biafra, which will not only put pro-Biafran separatist leaders in de facto and de jure control of the Biafran territories, but will also persuade the members of international community to take the struggle for the restoration of the defunct Republic of Biafra seriously.

Keywords: Biafra, Independence, International law, Movement, Nigeria, Separatist, State

1. Introduction

Prior to the invasion and annexation of the territories comprising the present-day Nigeria by the British expansionists, those areas were inhabited by various ethnic and linguistic nationalities, who had little or nothing in common except their common boundaries and borders.¹ It was these ethnic and linguistic nationalities that were subsequently cobbled together by the British authority during the colonial era and christened “Nigeria”, a name coined by Miss Flora Shaw, the then colonial editor for *The Time* and girlfriend of the then Governor-General of Nigeria, Sir Fredrick Lugard.² Since the final amalgamation of these territories in 1914, the autochthonous and indigenous peoples of these territories had at various points in time manifested their desire to go their separate ways, starting with the then Northern Region of Nigeria, which sought secession from Nigeria in 1953. The move was predicated upon Chief Anthony Enahoro’s March 31, 1953 motion for self-government for Nigeria in 1956, which did not go down well with members of the Northern People’s Congress.³ Thus, After Enahoro’s historic self-government motion in Lagos, the members of the Northern People’s Congress met at Lugard Hall Kaduna and adopted an “Eight Point Programme” containing their call for secession of the Northern Region.⁴ Later on, Isaac Jasper Adaka Boro, the founder and leader of the Niger Delta Volunteer Force, declared independence of the Niger Delta territory from Nigeria on February 23, 1966 under the name Niger Delta Republic, which fought the Federal Government of Nigeria for 12 days before its eventual defeat and reintegration into Nigeria.⁵ Barely 15 months after the defeat of the stillborn Niger Delta Republic, leaders of the former Eastern Nigeria declared independence of the former Eastern Nigeria from Nigeria under the name Republic of Biafra with its seat of power in Enugu, the then capital of the former Eastern Nigeria. The defunct Republic of Biafra existed as an internationally recognized sovereign state for 30 months before it was defeated by the Nigerian Government

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¹ CE Okeke, ‘Rethinking the Rights of Indigenous Peoples in International Law: Africa in Perspective’, *African Journal of Law and Human Rights*, Vol 5, No. 2 (2021) , pp. 40-54 at 41.

² *The Time*, 8 January 1897.

³ RL Sklar, ‘Nigeria Political Parties: Power in an Emergent African Nation (African World Press) p. 182.

⁴ *Ibid*.

⁵ B Igali, ‘Fifty-Two Resounding Salutes to Major Isaac Jasper Adaka (Lion) Boro’, *Vanguard (Nigeria)* May 21, 2021.

through the active military support of European super states led by Britain.⁶ Even though it is now over fifty years after the end of the Biafran War, which claimed over three million lives, neither the remote nor the immediate causes of the ill-fated War have been addressed by the successive governments in Nigeria; and this is responsible for the growing agitations in the Southeast Geopolitical Zone for the restoration of the defunct Republic of Biafra. These agitations got to a worrisome level in recent times following the perceived exclusion of the Southeast Geopolitical Zone in the composition of the Buhari-led Federal Government, as well as in the distribution of critical public infrastructure and essential amenities. This development which violates section 14 (3) of the 1999 Constitution of Nigeria mirrored the systematic discrimination against the Igbos under the then British led-colonial government. It should be recalled that it was this systematic discrimination against the Igbos that compelled Dr. Nnamdi Azikiwe in 1949 to call for self-determination for the Igbo nation, which, according to him, was the only viable means of liberating the Igbos from the British-induced discrimination against them. This call for self-determination for the Igbo nation by Dr. Nnamdi Azikiwe, which was contained in Azikiwe's address delivered at Igbo State Assembly held at Aba on June 25, 1949⁷, has remained indelible in the sub-conscious mind of many Igbo people, because the factors that moved Azikiwe to make that peculiar call have not been addressed up till now, and there is no scintilla of indication that they shall be addressed in the near future. Obviously, the failure of successive governments in Nigeria to sincerely address various shades of injustice against the Igbos is responsible for the present quest for the restoration of the defunct Republic of Biafra, which has continued to gather momentum as days go by. Thus, the need to carry out a feasibility study of the anticipated restoration of the defunct Republic of Biafra under the contemporary international law has become unquestionably necessary.

2. Nature and Creation of a State in International Law

A state is an international entity that possesses a permanent population, a defined territory, a government and capacity to enter into relations with the other states.⁸ The capacity to enter into relations with other states implies recognition of the entity as a state by the existing states, and it is the most practical evidence of statehood in international law.⁹ This is because it is the acknowledgment of the independence and sovereignty of the entity over its territory.¹⁰ Under international law, political independence could either be attained by a consensual declaration of independence or by a unilateral declaration of independence.¹¹ A consensual declaration of independence is a political independence attained with the consent of the parent state and it is usually resorted to where the emergent state lacks the political wherewithal to make a unilateral declaration of independence. Thus, this was in vogue during the decolonization of Africa, because most emergent African states lacked the political power to liberate themselves from the shackles of colonialism. Since the end of colonialism, the viability of consensual declarations of independence as an effective means of attaining political independence has radically reduced. This is because most states hide under the principle of territorial integrity to deny independence to any segment of their population agitating for political independence. In fact, most of consensual declarations of independence that occurred in the post-colonial era were preceded by violent armed conflicts¹² or protracted cold war,¹³ and so cannot truly be described as consensual declarations of independence.

On the other hand, a unilateral declaration of independence is the declaration of independence made without the concurrence of the parent state.¹⁴ Although unilateral declaration of independence has been a state practice since the American Declaration of Independence of 1776,¹⁵ the term "unilateral declaration of independence" was used first during Rhodesia's unilateral declaration of independence from the United Kingdom in 1965.¹⁶ Unilateral

⁶ C Achebe, *There was a Country: A Personal History of Biafra* (Pearson, 2012) p.154.

⁷ N Azikiwe, *Zik: A Selection from the Speeches of Nnamdi Azikiwe* (Cambridge University Press, 1961), pp. 242-245.

Nehru Odeh, 'Igbo the most Victimized People, said Nnamdi Azikiwe in 1949 Speech, *The News*,

⁸Convention on the Rights and Duties of States (Montevideo Convention) 1933, Art. 1.

⁹ R K Gardiner, *International Law* (London: Pearson Education Limited, 2003) p. 180.

¹⁰ J Crawford, 'Kosovo and the Criteria for statehood in International Law'. In M Milanovic and M Wood (Eds), *The Law and Politics of Kosovo Advisory Opinion* (Oxford University Press, 2015) pp. 280- 290.

¹¹CE Okeke, 'An Appraisal of the Legality of Unilateral Declaration of Independence: Distinguishing Crimea from Kosovo', *IJOCLEP* 1(3) 2019 115-124 at 116.

¹² South Sudan independence was preceded by years of violent armed conflict.

¹³ Soviet Union break-up was preceded by years of cold war.

¹⁴ CE Okeke, *ibid* at note 11, p.116.

¹⁵ See also Irish Declaration of Independence of 21 January 1919.

¹⁶ D Kenrick, *Decolonisation, Identity and Nation in Rhodesia, 1964-1979: A Race against Time* (Springer Nature, 2 Nov 2019) p.11.

declaration of independence is theoretically founded on the notion of natural law as evident in the American Declaration of Independence, but legally founded on the people's right of self-determination,¹⁷ which is the right of all people to freely determine their political status and freely pursue their economic, social and cultural development.¹⁸ Indeed, one of the major developments in international law during the twentieth century was the evolution of the right of self-determination,¹⁹ through which many states attained political independence. But the issue of whether the right of self-determination extends to right to unilateral declaration of independence in international law beyond the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, has continued to generate heated debate among scholars of international law and diplomacy.²⁰ The International Court of Justice (ICJ) deliberately evaded this question in *Kosovo Advisory Opinion case*²¹ on the ground that the issue was beyond the scope of the question posed to her by the United Nations General Assembly (UNGA).²² But, there was no way the ICJ could evade the question of whether international law prohibits unilateral declaration of independence, since it formed the essence of the question posed to her by the UNGA in *Kosovo Advisory Opinion case*. Thus, after examining the applicable rules of international law vis-à-vis unilateral declaration of independence, the ICJ ruled that there is no prohibition of unilateral declaration of independence under international law. This ruling of the ICJ has strengthened the hope of many separatist movements of attaining their independence someday including pro-Biafran separatist movements.²³

3. Sovereign State of Biafra: its Rise and its Fall

Biafra's unilateral declaration of independence from Nigeria adopted on 30 May 1967 by the leaders of the former Eastern Nigeria was the height of chain of events which began on 15 January 1966 following the bloody military coup d'état led by Major Chukwuma Kaduna Nzeogwu. This coup led to the death of the Nigerian Prime Minister, Abubakar Tafawa Balewa; the Premier of the Northern Region, Ahmadu Bello; the Premier of the Western Region, S. L. Akintola; and the Nigerian finance Minister, Festus Okotie-Eboh. The coup d'état was dubbed Igbo coup not only because most of the coup plotters were Igbo officers, but also because an Igbo officer, namely Major-General J.T.U. Aguiyi-Ironsi, emerged as the Head of State, as well as the fact that no prominent government functionary of Igbo extraction was killed during the coup. As Nkwocha noted, "both Dr. Nnamdi Azikiwe, the then President and Igbo man and Dr. Michael Okpara, the Governor of the Eastern Region, were spared by the military plotters, given the coup a tribal flare."²⁴ To make the matter worse, Major-General J.T.U. Aguiyi-Ironsi took no step to punish the coup plotters notwithstanding the gravity of their offences and the ethnic colouration of the coup. Rather, in an attempt to consolidate power, Major-General J.T.U. Aguiyi-Ironsi government promulgated Decree 43 of 1966, which abolished the regions and created a unitary government for the country. This Decree was viewed by the northerners, who were less educated at that time, as an attempt by the southerners to hijack the northern civil service, and so responded by indiscriminate killing of the easterners especially the Igbos in the Northern Region. This systematic killing of the easterners in the Northern Region which lasted for months led to the counter-coup of 29 July 1966 which saw the killing of Major-General J.T.U. Aguiyi-Ironsi and taking-over [the takeover] of power by Lieutenant Colonel Yakubu Gowon, a northerner. Notwithstanding the killing of Major-General J.T.U. Aguiyi-Ironsi and the installation of Gowon as the new Head of State, the killing of the easterners in the Northern Region and looting and destruction of their property did not abate, rather it became more widespread. In his official broadcast to the people of the North in September 1966 over the senseless looting and killing, Gowon stated as follows: "I receive complaints daily that up till now easterners living in the North are being killed and molested and their property looted. I am very unhappy about

¹⁷CE Okeke, above at note 11, p.116.

¹⁸ International Covenant on Civil and Political Rights 1966, Art. 1(1).

¹⁹ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports, 2010, para. 82.

²⁰ D French, *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law* (Cambridge University Press, 2013), pp. 60-61.

²¹Above at note 19, para. 122.

²²*Ibid*, para. 83.

²³ In fact, Crimea's unilateral declaration of independence from Ukraine in 2014 was specifically premised on this ruling of the ICJ.

²⁴ O Nkwocha, *Republic of Biafra: Once Upon a Time in Nigeria: My Story of the Biafra-Nigerian Civil War - a Struggle for Survival (1967-1970)* (AuthorHouse, 2010), p. 63, <https://books.google.com.ng/books?id=O0taSdhz_roC&pg=PA62&source=gbv_toc_r&cad=4#v=onepage&q&f=false> accessed on 1 June 2021.

this. We would put a stop to these. It appears that it is going beyond reason and is now at a point of recklessness and irresponsibility.”²⁵

In response to the continued killing of the Easterners in the Northern region and elsewhere, the Military Governor of the then Eastern Region, Lieutenant Colonel Chukwuemeka Odumegwu Ojukwu, called on the easterners residing outside the Eastern Region to return home since their safety and that of their property could no longer be guaranteed outside the Eastern Region. Thousands of the easterners who headed eastward in keeping with the call by their Governor were waylaid by the marauding northerners and murdered in cold blood. As, Okoronkwo noted, “between May and October, over 50,000 Easterners lost their lives, several thousands were maimed, and over two million fled from other parts of Nigeria back to the East.”²⁶ Even though this pogrom and ethnic cleansing of the Igbos by the northerners were widely reported across the globe, the United Nations and its Security Council chose to stay aloof in a manner akin to conspiracy of silence. This may not be unconnected with Article 2 (7) of the United Nations Charter which provides that United Nations shall refrain from intervening in matters which are essentially within domestic jurisdiction of any state. But this provision does not generally apply when the relevant state has failed to prevent gross violation of human rights and rules of international humanitarian law within its territory. In a situation like that, the responsibility to prevent gross violation of international law ought to shift from the relevant state to the Security Council, which has the primary responsibility for the maintenance of international peace and security.²⁷ Thus, by operation of international law, the failure of Gowon to “put a stop to” the ethnic cleansing of the Igbos by the northerners as he vowed, should have automatically activated the responsibility of the Security Council to protect the Igbos against the raging genocide,²⁸ but the Security Council deliberately abdicated its statutory duty in this regard. A directive from the Security Council to the Nigerian government to bring the culprits to book would have gone a long way to halting the said irresponsible killings, but as usual the United Nations ignored this call to duty because Biafra is in Africa.²⁹ Dugard and Raic amply captured this when they noted as follows: “the United Nations abstained from involvement in the conflict on the ground that it was essentially an African problem”.³⁰

In a bid to prevent to budding civil war in Nigeria, a rapprochement otherwise known as Aburi Accord (Accord) was reached between Lieutenant Colonel Gowon, the Nigerian Head of State, and Lieutenant Colonel Ojukwu, the Governor of Eastern Region, in Aburi under the auspices of General Ankrah, the then Head of State of Ghana, in which it was, among other things, voluntarily agreed by both sides that Nigeria will adopt a confederation system of government under which each region will manage its resources and affairs.³¹ However, rather than a full implementation of the said Accord, Gowon resorted to partial implementation of the Accord by promulgating Decree No. 8 of 17 March 1967 which embodied few terms of the Accord. But the Accord was latter abandoned altogether when Gowon promulgated Decree No. 14 of 27 May 1967 which divided Nigeria into 12 states. Under this new arrangement, the then Eastern Region was split into three different states, namely East-Central State, South-Eastern State and Rivers State. This divide and rule approach which was aimed at whittling down the influence of Ojukwu in the Eastern Region turned out to be the last straw that broke the camel’s back. Thus, on the same 27 May 1967, a meeting of the Advisory Committee of Chiefs and Elders and the Consultative Assembly of the leaders of the then Eastern Region was held at Enugu, the Capital of the then Eastern Region, in which a resolution was adopted mandating Ojukwu, to “declare at the earliest practicable date Eastern Nigeria a free, sovereign, and independent state by the name and title of the Republic of Biafra.”³² In keeping with this mandate,

²⁵ A A Atofarati, ‘The Nigerian Civil War: Causes, Strategies, And Lessons Learnt’, CSC, 1992, <<https://www.globalsecurity.org/military/library/report/1992/AAA.htm>> accessed on 1 June 2021.

²⁶ P L Okoronkwo, ‘Self-Determination and the Legality of Biafra’s Secession under International Law’, 25 Loy. L.A. Int’l & Comp. L. R. ev. 63 (2002), pp. 63-115 at 70. <<http://digitalcommons.lmu.edu/ilr/vol25/iss1/3>> accessed on 1 June 2021.

²⁷ United Nations Charter 1945, Art. 24.

²⁸ 2005 World Summit Outcome, A/RES/60/1, Oct. 24, 2005, para. 139.

²⁹ C Tomuschat, ‘Secession and self-determination’, in MG Cohen, *Secession: International Perspective* (Cambridge University Press, 2006) pp. 23-45 at 45, <<http://www.corteidh.or.cr/tablas/r32589.pdf>> accessed on 1 June 2021.

³⁰ J Dugard and D Raic, ‘The role of recognition in the law and practice of secession’, in MG Cohen, *Secession: International Perspective* (Cambridge University Press, 2006) pp. 94-137 at 111, <<http://www.corteidh.or.cr/tablas/r32589.pdf>> accessed on 1 June 2021.

³¹ O Ike, ‘The Utilization of the Literary Techniques in Flora Nwanpa’s *Wever Again* and Chimamanda Adichie’s *Half of Yellow Sun*’, EJOTMAS, P. 129-152 at 135.

³² O Nkwocha, *Republic of Biafra: Once Upon a Time in Nigeria: My Story of the Biafra-Nigerian Civil War - a Struggle for Survival (1967-1970)* (AuthorHouse, 2010) p. 63.

Ojukwu reluctantly declared independence of Biafra from Nigeria on 30th May 1967, following the threat by the said Consultative Assembly to replace him if he refused to announce the creation of the Republic of Biafra.³³ As expected, this unilateral declaration of independence of the Republic of Biafra sparked off a protracted civil war between the Nigerian Government and the new Republic of Biafra, which ended on 15 January 1970 in favour of the former.

4. Factors Responsible for the Fall of the Defunct Republic of Biafra

A number of factors were responsible for the defeat of Biafra during the 30-month Biafran War. The first factor is the non-availability of arms and ammunitions including military hardware, which compelled Biafran military engineers and scientists to improvise by sourcing and producing most of the arms and ammunition needed to prosecute the war locally. It was said that Biafran Research and Production Unit locally developed a great number of rockets, bombs including *Ogbunigwe*³⁴ and telecommunication gadgets, as well as an ingenious indigenous strategy for refining petroleum.³⁵ The situation was compounded by the failure of many states, especially the powerful states in Europe, Africa and elsewhere to recognize Republic of Biafra as a sovereign state even though it met all the criteria for statehood under international law. Instead, they treated Biafran as an insurgent group, and as such, refused to provide diplomatic help and assistance to the new Republic of Biafra, which was very necessary for its survival as an independent state. Even the former Soviet Union abandoned its posture of non-intervention in Nigerian affairs on the eve of the Biafran War and openly supported Nigerian Federal Government. As Achebe noted, “the Soviet Union and Britain not only supplied Nigeria with brand-new MIG-17 and 11-28 Beagle (Ilyushin) jet but also with Soviet T-34 battle tanks, anti-aircraft guns, AK-47 rifles, machine guns, grenades, mines, bombs, etc.”³⁶ Similarly, relevant international organizations including the United Nations Organization and Organization of African Unity (OAU) also refused to recognize Biafra as a sovereign state, and so, neither approved Biafra’s repeated application for membership nor intervened in the conflict, which they considered as an internal matter in line with Article 2(7) of its Charter which forbids its member states from interfering in the internal matters of member states,³⁷ As a result of this, most states could not take any step that might be interpreted as recognizing Biafran as a sovereign state.³⁸ A similar provision was also contained in the OAU Charter,³⁹ which was invoked by the OAU to justify its support for the Nigerian government and its refusal to recognize Biafra as a sovereign state even though it clearly fulfilled all the criteria for statehood under international law.⁴⁰ In fact, for the 30 months that the defunct Republic of Biafra existed as a sovereign state, only 5 small-size and medium-size states recognized its sovereignty.⁴¹ Tanzania, the first state to recognize Biafra’s sovereignty did so after about 11 months of Biafra’s declaration of independence just because of the noninterference principle.⁴²

Another major factor that led to the collapse of Biafra was the splitting of the then Eastern Region into three states, namely East-Central State, South Eastern-State, and Rivers State on the eve of the War, which rendered the East-Central State, the bedrock of Biafra and its seat of power, wholly landlocked. This among other things made it almost impossible for Biafra to source arms and ammunition from the neighbouring Republic of Cameroon, which is the only country that has land border with the new Republic of Biafra. This was strengthened by the gentleman agreement between Almadou Ahidjo, the then President of Cameroon, and Yakubu Gowon, the wartime Nigerian Head of State, which extended the land and maritime boundaries between Nigeria and Cameroon further into the Gulf of Guinea in favour of Cameroon as a consideration for Cameroon’s pledge to close its border with the new

³³D Anele, ‘The phenomenon of Biafra (11)’, *Vanguard* (Online version) 8 Oct., 2017, <<https://www.vanguardngr.com/2017/10/phenomenon-biafra-11/>> accessed 1 June 2021.

³⁴ *Ogbunigwe* is a weapon of mass destruction which may be likened to the modern-day nuclear weapon.

³⁵ C Achebe, above at note 11, p. 156.

³⁶*Ibid*, p. 154.

³⁷ United Nations Charter 1945, Art. 2 (7).

³⁸See C Tomuschat, above note 29, p. 45.

³⁹ OAU Charter 1963, Art. III (2).

⁴⁰ J Dugard and D Raic, ‘The role of recognition in the law and practice of secession’, in MG Cohen, *Secession: International Perspective* (Cambridge University Press, 2006) pp.94-137 at 111, <<http://www.corteidh.or.cr/tablas/r32589.pdf>> accessed on 1 June 2021.

⁴¹ *Ibid* at 174.

⁴²These states are Tanzania, Gabon, Ivory Coast, Zambia and Haiti. Although France tactically supported Biafra, it never formerly recognized it as a sovereign state. See D. A. Ijalaye, ‘Was ‘Biafra’ at Any Time a State in International Law?’ 65 *AJIL*, 1971, 551-559 at 554.

Republic of Biafra. This mutual agreement was later formalized in 1975 by the signing of the Maroua Declaration by Almadou Ahidjo and Yakubu Gowon, which was later upheld by International Court of Justice as a valid international treaty.⁴³ The failure of the Nigerian Government to observe the rules and principles of warfare as encapsulated in the Geneva Conventions of 1949 and their Protocols, which Nigeria was a party to was also another factor that adversely affected Biafra during the ill-fated War. For example, contrary to the express provisions of Additional Protocol I, Nigerian Government stopped the International Committee of the Red Cross and other relief agencies from supplying relief materials to Biafran civilians.⁴⁴ As was captured in an editorial in the Washington Post of July 2, 1969, “One word now describes the policy of the Nigeria military government towards secessionists Biafra: Genocide. It is ugly and extreme but is the only word which fits Nigeria decision to stop the International Committee of the Red Cross, and other relief agencies, from flying food to Biafra.”⁴⁵

5. Key Changes in International Law that Favour the Restoration of Biafra

Since the end of the Biafran War in 1970, a lot of changes have taken place in international law especially in the area of international humanitarian law. As a result of these changes most of the actions that were carried out during the Biafran War without consequences could hardly take place today without international sanctions and heavy consequences. For example, the adoption of Additional Protocols to the Geneva Conventions in 1977, which was revolutionary in the history of international humanitarian law, has greatly redefined the conduct of wars. This is because these Protocols block most loopholes in the Geneva Conventions of 1949 with regards to means and methods of warfare. Under Additional Protocol I, the right of parties to armed conflicts to choose methods and means of warfare is no longer unlimited. In fact, most of the means and methods of warfare resorted to by the Nigerian government during the Biafran War are now expressly prohibited, like its infamous starvation policy. Thus, according to Pejic, starvation of civilians as a method of warfare/combat is expressly prohibited in both international and non-international armed conflict. This prohibition is violated not only when a lack of food or denial of access to it causes death, but also when the population is caused to suffer hunger because of deprivation of food sources or supplies.⁴⁶ Another important development in international humanitarian law after the Biafran War is the establishment of the International Criminal Court (ICC) in 1998 as a permanent court which is vested with jurisdiction to try perpetrators of war crimes and other international crimes like crimes against humanity and genocide which were massively committed during the Biafran War. Again, most of the means and methods of warfare employed during the Biafran War like the starvation policy of the Federal Government, ethnic cleansing, and willful massacre of captured Biafran combatants are now punishable under the ICC’s Statutes as war crimes.⁴⁷ Furthermore, international humanitarian law has evolved the concept of universal jurisdiction under which any person that commits grave breaches of international humanitarian law could be arrested and tried by any state irrespective of the locus of the offence. The concept of universal jurisdiction is founded on the notion that some obligations under international law are owed to the entire world community (*erga omnes*)⁴⁸, like obligation to comply with rules and principles of international humanitarian law, and so, are binding on all states (*jus cogens*).⁴⁹ Indeed, a number of persons have been tried and convicted under the principle of universal jurisdiction. For example, Hissene Habre, was arrested in Senegal on 30 June 2013 by Senegalese police for a war crime and other international crimes which he committed about 25 years prior to his arrest, when he was the Chadian President and was tried under Senegal’s criminal justice system, convicted and sentenced to life imprisonment. He died on 24 August 2021 while still serving his jail term.⁵⁰ Also, François Bazaramba was sentenced to life imprisonment in Finland in 2010 for participation in the Rwandan genocide of 1994.⁵¹ Finally, the emerging doctrines of

⁴³ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroun v Nigeria) (Judgment) (2002) I.C.J. Reports, p. 264.*

⁴⁴ Protocol I to Geneva Conventions, Art. 70(1)-(5).

⁴⁵ S Osuji, ‘There was a country: Blockade, starvation and a requiem for Biafra’ *The Nation* (Lagos), October 23, 2012, <<https://thenationonline.net/there-was-a-country-blockade-starvation-and-a-requiem-for-biafra/>> accessed on 1 June 2021.

⁴⁶ J Pejic, ‘The right to food in situations of armed conflict: The legal framework’, *IRRC* December 2001 Vol. 83 No 844, pp. 1097 -1109 at 1099, <<https://www.icrc.org/en/doc/assets/files/other/irrc-844-pejic.pdf>> accessed on 1 June 2021.

⁴⁷ Rome Statute of the International Criminal Court 1998, Art. 8 (2) (b) (xxv).

⁴⁸ LS Sunga, *Individual Responsibility in International Law for Serious Human Rights Violations* (Martinus Nijhoff, 1992) p. 252.

⁴⁹ Vienna Convention on the Law of Treaties between States and International Organizations 1986, Art. 64.

⁵⁰ Note that Habre was hitherto indicted in Belgium over the same offence.

⁵¹ J Karuhanga, ‘Finnish court hands life to Bazaramba for Genocide’, *The New Times*, June 12, 2010, <<https://www.newtimes.co.rw/section/read/20818>> accessed on 1 June 2021.

responsibility to protect and humanitarian intervention have substantially whittled down the absolute nature of the non-intervention doctrine that prevailed during the Biafran War. It should be recalled that under the 2005 World Summit Outcome, the United Nations and other regional bodies now have the responsibility to use appropriate measures to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.⁵² It should be recalled that the United Nations Security Council adopted resolution 1674 on 28 April 2006 which reaffirmed paragraph 138 and 139 of said 2005 World Summit Outcome Document regarding responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The resolution also commits the Security Council actions to protect civilians in armed conflict.⁵³ Also, article 4 (h) of the Constitutive Act of the African Union expressly empowers the Assembly of the Union to intervene in respect of war crimes, genocide and crimes against humanity notwithstanding the non-intervention doctrine.⁵⁴

6. The Return of Biafra Separatism and the Need for Nigeria to Tread with Caution

There has been a rising agitation for the restoration of the defunct Republic of Biafra in recent times and the reason for this is clear – 50 years after the end of the Biafran War, neither the remote nor immediate causes of the Biafran War have been addressed. In fact, the only thing that has changed is the methodology of the war, while the war itself has continued to rage on in the cold form between the vanquished Biafra and victorious federal government to the extent that the scope of the war has expanded. Onumah aptly captured this when he noted as follows: “we will be deluding ourselves to think for once that the civil war is over. Everywhere you turn in Nigeria, the angst, fear and loathing that were the hallmark of the civil war impose themselves. Fifty years after the end of the Civil War, we have expanded the scope of the vanquished. Our country is as divided, if not more divided, as it was at the beginning of the war in 1967.”⁵⁵ As Kobo noted, “the constant reference to the civil war as the source of Nigeria’s lack of unity and periodic instability suggests that the federal government won the war but lost the peace.”⁵⁶ This could be juxtaposed with what obtained at the end of the American Civil War where the victorious North and the vanquished South met at a round-table and mutually addressed the remote and immediate causes of the War. This was followed by the three Reconstruction Amendments to the American Constitution, *to wit*, Thirteenth, Fourteenth and Fifteenth Amendments which were ratified within the five years immediately following the Civil War. The Fourteenth Amendment which was ratified in 1868 specifically addressed citizenship rights and equal protection of the laws for all persons. In Nigeria the reverse is the case even though the Gowon-led Federal Government launched a programme for Reconstruction, Rehabilitation and Reconciliation at the end of the Biafran War code-named “3R’s”. According to some scholars, the programme was merely used to rebuild and reconstruct the Nigerian territories bordering Biafra which were affected by the 30-month war, but were never implemented in the Igboland which was the major theatre of the war. Thus, according to Eze, “Igboland the major theatre of the War was denied social and economic reconstruction by the Gowon’s administration. Igboland seems to have been deliberately excluded in his post-war reconstruction and rehabilitation agenda. Treated as the neglected, hated and vanquished in the polity by the Federal military Government, the Igbo have ever since lived with that shock, pain and horror.”⁵⁷ As if that was not enough, the Federal Government, upon the advice of its wartime Finance Minister, Chief Obafemi Awolowo, adopted a banking policy that confiscated any account operated by Biafrans before and during the Biafran War, and approved a flat paltry sum of twenty pounds for each Biafran depositor of the Nigerian currency irrespective of the amount in the person’s account.⁵⁸

⁵² 2005 World Summit Outcome, A/RES/60/1, Oct. 24, 2005, para. 139.

⁵³ S/Res/1674, 28 April 2006, para. 4.

⁵⁴ B. Rioko, ‘The Right of Intervention under the African Union’s Constitutive Act: From Non-Interference to Non-Intervention’, *IRRC*, December 2003, Vol. 85, No. 852, pp. 807-825 at 815.

⁵⁵ C. Onumah, ‘Of Victors and Vanquished: Biafra, 50 Years After’ *Modern Ghana* (Online version) 10 Jan. 2020. <<https://www.modernghana.com/news/978200/of-victors-and-vanquished-biafra-50-years-after.html>> accessed on 1 June 2021.

⁵⁶ O. M. Kobo ‘January 2020: ‘No Victor and No Vanquished’ -Fifty Years after the Biafran War’, *Origins*, <<https://origins.osu.edu/milestones/nigerian-civil-war-biafra-anniversary>> accessed on 1 June 2021.

⁵⁷ J. Eze, ‘The Nigeria - Biafra Civil War And North Central Nigeria’s Border Communities Of The Otrukpo Division: A Reading Of General Gowon’s 3r’s (Post War Reconstruction) Programme, 1968 – 1970’, *IOSR – JHSS*, Volume 25, Issue 1, Series 3 (2020) 39 – 45 at 44, <<http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2025%20Issue1/Series-3/G2501033945.pdf>> accessed on 1 June 2021.

⁵⁸ D. Anele, ‘The phenomenon of Biafra (11)’, *Vanguard* (Online version) 8 Oct., 2017, <<https://www.vanguardngr.com/2017/10/phenomenon-biafra-11/>> accessed on 1 June 2021.

Up till today, the Nigerian government has continued to subject former Biafrans to all manner of discriminations and inhuman treatments which were taken to an unimaginable level under Buhari administration⁵⁹ contrary to various provisions of the 1999 Constitution of Nigeria.⁶⁰ In fact, various blockades that prevailed during the Biafran War have continued to exist in various forms. For example, there is no single seaport in the entire Southeast Geopolitical Zone of Nigeria, even though Onitsha International Market, which is the largest market in the entire West Africa, is within the Zone.⁶¹ Similarly, there is no true international airport in the entire Southeast Geopolitical Zone, even though southeasterners are not only the most travelled people in Nigeria, but also one of the three largest ethnic nationalities in Nigeria.⁶² The worse is the exclusion of the entire Southeast Geopolitical Zone in the ongoing railway programme of the Federal Government, even though the Buhari-led Federal Government was gracious enough to extend the programme to various towns and cities in the neighbouring Niger Republic. Also, the people of the Southeast Geopolitical Zone are technically excluded in the composition of the Buhari-led federal government especially in the security sector. In fact, no single Nigerian of southeast extraction is a member of the National Defence Council, a statutory federal executive body directly established by the constitution.⁶³ As a result of the exclusion of the southeast in the political governance of Nigeria and obvious disparity against them in the distribution of the key government infrastructure and social amenities, the average southeasterner has lost faith in the Nigeria state thus the growing agitation for the restoration of the defunct Republic of Biafra which poses a serious threat to Nigeria's corporate existence and unity.

Obviously, only a sincere and teleological effort geared towards addressing the perceived injustices and discrimination against the people of the southeast could halt these growing agitations. However, instead of toeing this vital lane, the Fulani-dominated Federal Government has continued to deploy brute military force to quell these agitations, which has led to loss of many lives in the southeast. Thus, according to Amnesty International, over 150 pro-Biafra activists were killed by Nigerian security agencies in 2016 while celebrating Biafran Day.⁶⁴ President Buhari who himself is a Fulani man has never stopped threatening at every slightest opportunity to visit upon pro-Biafran separatists the mayhem of the Biafran War, which recently compelled Twitter, a leading microblogging and social networking company, to delete one of President Buhari's official tweets.⁶⁵ The president is probably oblivious of the fact that most factors responsible for the defeat of the defunct Republic of Biafra during the Biafran War no longer exist today as observed above. Of course, from every indication if another civil war broke out in Nigeria today, it would certainly not be between the Igbos and other Nigerians, but clearly between the Fulanis and the rest of the Nigerians. For example, the Yorubas who were once dependable allies of the Fulanis have clearly turned their back against them following persistent killing of their kith and kin by dreaded Fulani herdsmen who are visibly protected by the Nigerian security agencies.⁶⁶ This development has also led to the emergence of various Yoruba separatist movements, who, like pro-Biafran separatist movements, are calling for the creation of Oduduwa Republic.⁶⁷ Even the so-called one-north (Arewa) mantra, which the Fulani oligarchy has always championed, has broken down irretrievably. Thus, from Benue State through Kaduna State to Katsina State, various indigenous nationalities are rising up daily against the nomadic Fulani herdsmen, who have been slaughtering indigenous northerners in droves only to confiscate their lands for cattle grazing. As a result of this,

⁵⁹ C Onumah, above at note 55.

⁶⁰ Like its section 42 The Constitution of the Federal Republic of Nigeria 1999, as amended, which guarantees citizens right to freedom from discrimination on the basis of ethnic group, place of origin or circumstances of his birth, as well as its section 14 (3) which provides that the composition of the Government of the federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity.

⁶¹ CE Okeke, 'Judicial Activism as a Tool for Implementing Federal Character Principle in Nigeria', *International Review of Law and Jurisprudence*, Vol 3, No. 2 (2021), pp. 75-83 at 77.

⁶² *Ibid.*

⁶³ Constitution of the Federal Republic of Nigeria 1999 as amended, Third Schedule, Part 1, Item G.

⁶⁴ Amnesty International, 'Nigeria: Bullets were Raining Everywhere': Deadly Repression Of Pro- Biafra Activists, *Amnesty International*, November 2016, p. 1, <<https://www.amnesty.org/download/Documents/AFR4452112016ENGLISH.PDF>> accessed 3 March 2020.

⁶⁵ *Ibid.*, Item K

⁶⁶ S Ogundipe, 'Military, Police complicit in killings across Nigeria – T.Y. Danjuma', *Premium Times Nigeria*, 24 March 2018, <<https://www.premiumtimesng.com/news/headlines/262959-military-police-complicit-in-killings-across-nigeria-t-y-danjuma.html>> accessed on 4 March 2022.

⁶⁷ S Oyeleke, 'UN Protest: Yourba Nation Aggitators List Six Demand as Buhari Departs Nigeria', *Punch*, 19 Sept. 2021, <<https://punchng.com/un-protest-yoruba-nation-aggitators-list-six-demands-as-buhari-departs-nigeria/>> accessed on 1 June 2021.

Nigeria is currently on the verge of disintegration which can only be avoided through the instrumentality of justice, because as Pope Paul VI noted, “if you want peace, work for justice.”⁶⁸ Unfortunately, instead of embracing justice as a panacea to sustainable unity and peace in Nigeria, successive governments in Nigeria have refused to address perceived injustices in the Nigerian body polity, which is directly responsible for the resurgence of Biafran separatism and other separatist movements in Nigeria.

7. New Approaches to the Quest for the Restoration of Biafra

As the quest for the restoration of the defunct Republic of Biafra continues to gather momentum, leaders of various pro-Biafran separatist movements are bound to be very cautious, because once bitten, twice shy. They must not only adopt a new approach in their struggle for the restoration of the defunct Republic of Biafra, but must also do so with the full benefit of hindsight, otherwise history cannot but repeat itself. In the first place, various pro-Biafran separatist movements should possibly amalgamate or at least form a common front, for united they stand, divided they fall. Thus, they must quickly close ranks so as to avoid unnecessary bickering and rivalry among them which may hinder the actualization of their common aspiration: restoration of the Republic of Biafra. Secondly, there is a need to take the movement for the restoration of the Republic of Biafra to the next level by sponsoring candidates for various elective offices within the territory of the defunct Republic of Biafra. This is very important because no country will take pro-Biafran movements seriously unless they are in effective control of the Biafran territory. They should borrow a leaf from the Catalonian separatist leaders who were in both *de facto* and *de jure* control of the entire Catalonian territory. As a matter of fact, the only reason the leaders of the defunct Republic of Biafra were able to successfully declare its independence in 1967 was because they were in effective control of the territory. Furthermore, various pro-Biafran separatist movements should improve their external influence and relations. So far, only the proscribed Indigenous People of Biafra (IPOB) has taken up the role of driving the Biafran external relations.⁶⁹ Although no state could overtly enter into serious relations with any pro-Biafran separatist movement without being accused of violating Nigeria’s right to territorial integrity or at least interfering in its domestic affairs, yet no entity has successfully achieved statehood in recent times without external support from at least one of the powerful states. As a matter of fact, neither Kosovo nor Crimea could have successfully declared their independence unilaterally without the overt support of the United States and Russia respectively.⁷⁰ On the other hand, one of the major reasons why the Catalonian unilateral declaration of independence in 2018 failed was because of lack of external support.⁷¹ Therefore, leaders of various pro-Biafran separatist movements should engage in aggressive bridge-building across the globe. Also, they should in particular mobilize their intelligentsia to expose the apparent contradictions in the national policies of some pro-Nigerian states, like the United Kingdom, which encourages Nigeria to deny right of self-determination to Biafrans only to grant the Scots their full right of self-determination, including right of periodic referendum in Scotland to determine her political future. Finally, Biafran separatist movements must resist the temptation of engaging in any form of kinetic action against the Nigerian state. This has become very necessary considering the fact that they may not withstand a sovereign state like Nigeria in conventional warfare. They should rather exploit other options like civil disobedience approaches in driving home their points like IPOB’s mondaily sit-at-home. Indeed, experience has shown that civil disobedience is not only one of the deadliest weapons in self-determination movements, but also one of the easiest ways of arousing the sentiment and interest of the international community in favour of the separatist movements. As a matter of fact, it was the said IPOB’s mondaily sit-at-home that moved the CNN to air a documentary on the oppressed people of Biafra Nigeria for the first time.⁷²

8. Conclusion and Recommendations

Since the end of the Biafran War and the concomitant reunification of Nigeria, there has never been any time the drive to restore the defunct Republic of Biafra has been as visible as it is today. In fact, the proscribed IPOB has attained a considerable measure of legitimacy within the Southeast Geopolitical Zone of Nigeria notwithstanding

⁶⁸ Pope Paul VI, ‘Message of His Holiness Pope Paul VI for the Celebration of the World Day of Peace,’ January 1, 1972, <<https://www.usccb.org/committees/laity-marriage-family-life-youth/strengthening-bonds-peace-pastoral-reflection-women>> accessed on 1 June 2021.

⁶⁹See CE Okeke, ‘Implementation of Self-Determination in Africa through Secession: An Appraisal of the Legal Hurdles’ p.176.

⁷⁰CE Okeke, *ibid* at note 11, p. 123.

⁷¹ D Muro et al, ‘Does International Recognition Matter Support for Unilateral Secession in Catalonia and Scotland’, *Nations and Nationalism*, 26 (2019), pp. 176-196 at 177.

⁷²‘Tension in Nigeria: Biafran Separatist Movement Resurfaces’, CNN, <<https://www.youtube.com/watch?v=HEWokDMumzc>> accessed on 1 June 2021.

its proscription by the Federal Government as the inhabitants of the Zone usually comply with its directives most times without compulsion especially its occasional sit-at-home orders. Obviously, the generality of the people of the Southeast Geopolitical Zone of Nigeria have continued to lose faith in the Nigerian state following the consistent pattern of discrimination, inequality and humiliation, which successive governments in Nigeria have meted out to them since the end of the Biafran War, which were taken to the unimaginable level under the Buhari-led Federal Government. Southeast Geopolitical Zone of Nigeria is not only deliberately excluded in the key developmental plans of the Buhari-led Federal Government like the ongoing railway programme, but has also been visibly excluded in the composition of the critical federal government agencies like the security agencies. President Buhari who himself is a veteran of the Biafran War has continued to bask in the euphoria of Nigeria's victory during the Biafran War instead of taking proactive steps to address the remote and immediate causes of the return of Biafra separatism. Obviously, President Buhari and other political bigwigs in Nigeria do not know that most of the factors responsible for the defeat of the defunct Republic of Biafra during the Biafran War have either radically changed or ceased to be. Nigerian political leaders must therefore tread with caution as Nigeria may not survive another civil war. In the light of the findings of this paper, the following recommendations are made:

- I. Pro-Biafran separatist leaders should not only be very circumspect in their quest for the restoration of the defunct Republic of Biafra, but should also adopt more realistic approaches going forward. Thus, they should at all times resist the temptation of engaging the Nigerian state in any form of kinetic warfare because doing so will inevitably lead to huge collateral damages in the Southeast Geopolitical Zone. They should rather embrace less suicidal approaches like civil disobedience actions.
- II. Pro-Biafran separatist leaders should endeavour to take the movement for the restoration of the Republic of Biafra to the next level by sponsoring candidates for various elective offices within the territory of the defunct Republic of Biafra. This will enable them to be in de facto and de jure control of those territories like the Catalan separatist leaders, who are politically in control of the Catalonian region in northeastern Spain.
- III. Pro-Biafran separatist leaders should as a matter of urgency improve their external relations since the defunct Republic of Biafra may not be successfully restored without diplomatic assistance and support of the existing states, especially one or two veto-wielding members of the United Nations Security Council.
- IV. Various pro-Biafran separatist movements should scale down their usual bickering and quickly close ranks and possibly form a common front, for united they stand, divided they fall.