

**Abstract**

*Human rights are those rights that are inherent to all human beings, regardless of race, sex, religion, nationality, ethnicity, language or any other status. All human rights are indivisible, interdependent and interrelated. The right to self-determination is recognized under international human rights law as the right of all peoples including indigenous peoples to freely determine their political status and freely pursue their economic, social and cultural development. On the other hand, sovereignty entails the exclusive right of a state to rule over its internal affairs without interference. The paper examined the concept of human rights and the right to self-determination. The paper seeks to x-ray the principles of human rights and sovereignty in international law vis-à-vis the legality and viability of agitations for self-determination. It was found that prior to the colonization of Africa; different tribal, ethnic or indigenous peoples existed, operated and lived independently in somewhat well-organized political empires. The doctrinal method of legal research was employed. The primary source includes Acts, Laws and Statutes while the secondary sources are case laws, journal articles, international conventions etc. Human rights are fundamentally concerned with the relations between states and their nationals. Among other things, this paper recommended that states must effectively protect the human rights of its citizens in order to maintain its legitimacy and sovereignty.*

**Keywords:** Human rights, Self-determination, International law, Secession, Sovereign rights

**1. Introduction**

One of the essential principles of contemporary international law is the right of self-determination as identified by the International Court of Justice. However, it also remains one of the most unsettled norms in international law<sup>1</sup>. It is pertinent to note that the right to self-determination was introduced into international law in vague terms. For example, paragraph 1 of Common Article 1 of the International Covenant on Civil and Political Rights 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1966<sup>2</sup> reads: ‘All Peoples’ have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development<sup>3</sup>. With the passage of time there has not been a more determinate understanding of the scope and content of the right. The right to self-determination is an integral element of basic human rights and fundamental freedoms. Thus, respect for the principle of self-determination is a pre-condition for the enjoyment of other human rights and no other right can be fully enjoyed without it<sup>4</sup>. Human rights are those inalienable rights deemed universal rights shared by the whole of mankind. The Universal Declaration of Human Rights was adopted by the United Nations General Assembly in 1948. The preamble to this Declaration states ‘...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Human rights/basic right of each individual will not be sacred, if the right of self-determination of people as a group is not secured<sup>5</sup>.

In the international community, recognition of the right to independence and the right to equality is predicated on recognition as a sovereign state. The right to independence is the right to be recognized as a full fledged independent nation, eligible to join the international community as such<sup>6</sup>. The principal goal of this paper is to examine the concept of self-determination *viz-a-viz* the practice and protection of human rights issues and sovereignty in international law. Sovereignty is a compound doctrine that is best understood by examining the relationship between the sovereignty of a State and sovereignty of peoples. Even though exercises of sovereignty can be the source of violation of fundamental human rights, they can also be equivalent to expressions of fundamental human rights. Therefore, in some instances sovereignty and its exercise can be crucial to the protection of human rights because it can be an expression of how individuals and the communities that they form put into practice those elements of self-determination that are constitutive of human rights<sup>7</sup>. Thus, it is the contention of this paper that attack on sovereignty of a people is in direct conflict with the desire to protect fundamental human rights. Any undermining of the sovereignty of a people constitutes a threat to

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<sup>1</sup>D Z Cass, ‘Rethinking Self-Determination: A Critical Analysis of Current International Law Theories’, *Syracuse Journal of International Law and Commerce* (1992) 18.

<sup>2</sup> Together called the ‘Human Rights Covenants’.

<sup>3</sup>M Saul, ‘The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?’ *Human Rights Law Review* (2011) 11(4).

<sup>4</sup>Self-Determination Integral to Basic Human Rights, Fundamental Freedoms, Third Committee told as it concludes General Discussion, Available at <https://www.press.un.org>. Accessed 2nd July 2023.

<sup>5</sup>M Takayuki, ‘Human Rights, The Right of Self-Determination and the Right Freedom’, *The International Journal of Peace Studies* (1999) Vol.4 No.1.

<sup>6</sup>F R Araujo, ‘Sovereignty, Human Rights and Self-Determination: The Meaning of International Law,’ *Fordham International Law Journal* (2000) Vol. 24, No. 5.

<sup>7</sup> *Ibid.*

the most basic of international human rights that would include the concept of self-determination as understood in the context of the major human rights covenants.

## 2. Conceptual Clarifications

**Self-Determination:** The concept is multi-faceted. Self-determination and the rights of minorities are two sides of the same coin<sup>8</sup>. It is a concept of liberation<sup>9</sup>. However, there is no definite meaning or definition of the term. The right of peoples to self-determination is their right to freely determine their political status and freely pursue their economic, social and cultural development<sup>10</sup>. It has a central position in international law as a primary principle in the creation and destruction of states. It features in Article 1 of the United Nations Charter (1945) as one of the purposes of the organization. It is positioned as the first right in the twin Human Rights Covenants (the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant in Economic, Social and Cultural Rights (ICESCR). The principle of self-determination has two connotations; the internal and the external. The internal aspect implies the right of the people of a State already recognized by international law to determine their own form of government. The external aspect concerns itself with the right of a people to determine their nationality and statehood. Self-determination cannot be applied to individuals, but has been understood as being exercised either by whole peoples of a territory seeking freedom from colonial rule, or by substantial groups markedly distinguished from the remainder of the community in which they live by virtue of their physical characteristics, habitual language, religious belief or political affiliations<sup>11</sup>.

Self-determination refers to the rights of the majority within a generally accepted political unit to the exercise of power. In other words, it is necessary to start with stable boundaries and to permit political changes within them<sup>12</sup>. Self-determination also refers to the right claimed by a 'people' to control its own destiny-despite the fact that such a people has not yet achieved the status of 'statehood' under international law<sup>13</sup>.The principle or rights of self-determination is a global issue. Self-determination has been most frequently and vigorously invoked in the post-World War II period to claim the right of independence for colonies<sup>14</sup>. Today, a multitude of indigenous, ethnic and other groups have invoked the concept of self-determination in making demands against actual or perceived oppression of the status quo. On the other hand, while efforts to achieve some measure of political autonomy are framed in terms of self-determination, so too are movements to install or enhance democratic governance<sup>15</sup>.

It was based on self-determination that Africa, Asia, and other countries broke the formal bonds of colonialism and became independent states. The principle of self-determination has been addressed in several United Nations resolutions, declarations and conventions. For example, the United Nations General Assembly's 1970 Declaration of Principles Among States in Accordance with the charter of the United Nations States.

By virtue of the principle of equal rights and self-determination of peoples enshrined in the charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the charter<sup>16</sup>

Self-determination also denotes the legal right of people to decide their own destiny in international order<sup>17</sup>. Self-determination is a core principle of international law, arising from customary international law, but also recognized as a general principle of law and enshrined in a number on international treaties. The scope and purpose of the principle of self-determination has evolved significantly in the 20<sup>th</sup> century. In the early 1900's, international support grew for the right of all people to self-determination. This led to successful secessionist movements during and after World War 1 & 2 and laid the groundwork for decolonization in the 1960s<sup>18</sup>.

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<sup>8</sup>Patrick Thornberry, 'Self-Determination, Minorities, Human Rights: A Review of International Instruments, *International & Comparative Law Quarterly* (1989) 38(4)

<sup>9</sup> *Ibid*

<sup>10</sup>J Sumner, Self-Determination in International Law. Available at <https://www.oxfordbibliographies.com>. Accessed 2<sup>nd</sup> June, 2023.

<sup>11</sup>Z Mustafa, 'The Principle of Self-Determination in International Law, *International Lawyer* 9 (1971) Vol. 5 No. 3.

<sup>12</sup>R Higgins, *The Development of International law through the Political organs of the United Nations*, London, 1963, P. 104

<sup>13</sup>N Berman, 'Sovereignty in Abeyance: Self-Determination and International Law', *Wis. Intl J Law* (1981) Vol. 51.

<sup>14</sup>V P Nanda, 'Self-Determination under International Law: Validity of Claims to Secede', *Case Western Reserve Journal of International Law* (1981) Vol.13 No. 2.

<sup>15</sup>S J Anaya, 'A Contemporary Definition of the International Norm of Self-Determination', 3 *Transnat. Laws and Contemporary Probs.* (1993) 131.

<sup>16</sup>Declaration on Principle of International Law concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), U.N. GAOR 25<sup>th</sup> Session, supp. No. 28, at 123 U.N. Doc. A18082(1970).

<sup>17</sup> Self-Determination in International Law, Available at <https://www.law.cornell.edu>. Accessed on June 2, 2023.

<sup>18</sup> *Ibid*.

## **Human Rights**

Human right is the language of the entire world in the realm of politics, international relations and law.<sup>19</sup> To many scholars it is now deemed the dominant discourse of our day, and it is becoming more broadly so daily. The United Nations defined human rights as rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status<sup>20</sup>. Human rights are a set of principles concerned with equality and fairness. They recognize our freedom to make choices about our lives and to develop our potential as human beings<sup>21</sup>. Human rights have also been defined as rights that one has because one is human. The word 'right' in English has two central, moral and political senses: rectitude and entitlement. In the sense of rectitude, we speak of 'the right to do' or something being rights (for wrong) in the narrower sense of entitlement we speak of someone having a right. To have a right to a thing is to be entitled to that thing. It is owed to you and it belongs to you in particular. And if the right is threatened or denied, then the right-holders are authorized to make special claims<sup>22</sup>.

Human rights are equal rights: one either is or is not a human being and therefore has the same rights as everyone else. Human rights are inalienable rights, one cannot stop being human. Human rights are universal, in the sense that today all members of the species *Homo sapiens* 'human beings' and thus holders of human rights. Human rights traditionally have been thought of as moral rights of the highest order. A set of human rights thus can be seen as a standard of political legitimacy. The Universal Declaration of Human Rights, for instance presents itself as a 'standard of achievement for all peoples and all nations'. Governments protect human rights, as they are legitimate. Most importantly, human rights authorize and empower citizens to act vindicate their rights, to insist that these standards be realized, and to struggle to create a world in which they enjoy (the objects of) their rights. It is pertinent to note that human rights claims are not mere aspirations, suggestions, requests, or laudable ideas, but rights-based demands for change.

## **3. Human Rights and Self Determination**

It has been estimated that there are about 5,000 discrete ethnic or national groupings in the world and most of the armed conflicts presently are between groups in a State or between a group and the State<sup>23</sup>. While every state has the obligation to promote the realization of the right of self-determination and the duty to respect this right in accordance with the provisions of the United Nations Charter, there is concern about international peace and security and a fear of a disintegration of the current international system if the right of self-determination is exercised by all who claim it<sup>24</sup>. The concept of human rights places particular emphasis on equality. Thus, two of the purposes of the United Nations set forth in the Charter adopted at San Francisco in 1945 were as follows:

- a. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace
- b. To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion<sup>25</sup>. With respect to right to self-determination, the United Nations has long ago determined that it is a form of human right which can be enforced like every other human right. Thus, in its Resolution 637 adopted on the 16th day of December, 1952 and known as The Right of Peoples and Nations to Self-determination, the United Nations General Assembly declared in the opening paragraph of the preamble to the Resolution that '[t]he right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights.' Indeed, the two major international covenants on human rights namely the International Covenant on Civil and Political Rights (ICCPR)<sup>26</sup>, 1966 as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966<sup>27</sup>, clearly provided in their common article 1 that:
  1. All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
  2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
  3. The States Parties to the present Covenant, including those having responsibility for the administration of non-self-governing and Trust Territories shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

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<sup>19</sup> H V Conde, *A Handbook of International Human Rights Terminology* (University of Nebraska Press: London).

<sup>20</sup> Human Rights, Available at <https://www.un.org/en/global-issues/humanrights>. Accessed on 5th June, 2023.

<sup>21</sup> An Introduction to Human Rights, Available at <https://www.humanrights.gov.au> Accessed on 6th June, 2023.

<sup>22</sup> J Donnelly, *Universal Human Rights*, (Cornell University Press: USA 2013).

<sup>23</sup> R Mc Corquodale, 'Self-Determination: A Human Rights Approach', *International & Comparative Law Quarterly* (1994) 43(4).

<sup>24</sup> The UN Secretary-General, Boutros Boutros-Ghali, in his Agenda for peace, stated in part 1 that "if every ethnic religious or linguistic group claimed statehood, there would be no limit to fragmentation and peace, security and economic well-being for all would become ever more difficult to achieve", reproduced in A. Roberts and B Wingsbury, *United Nations, Divided World* (2<sup>nd</sup> edn, 1993) App. A

<sup>25</sup> I Brownlie, 'The Rights of Peoples in Modern International Law', *Bull. Austl.Soc.Leg. Phil.* (1985) 9, 104.

<sup>26</sup> Dec. 19 1966 art. 1, 999 U.N.T.S. 171

<sup>27</sup> Dec. 16 1966, art. 993 U.N.T.S.3.

In its General Comment No. 12 on Article 1 of the International Covenant on Civil and Political Rights, adopted in its Twenty-first Session on 13th March, 1984, the UN Human Rights Committee declared as follows:

In accordance with the purposes and principles of the Charter of the United Nations, article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants.

Furthermore, in the year 1972, following the adoption and ratification of the International Human Rights Covenants by many member States of the United Nations, the International Commission of Jurists had cause to observe that, ‘The principle of the right of a people to self-determination seems self-evident’<sup>28</sup> Moreover, at the African regional level, Articles 19 and 20 the African Charter of Human and Peoples’ Rights, 1981, also recognizes self-determination as a form of human right. It is worthy to note that most member States of the United Nations and African Union have adopted and ratified the International Human Rights Covenants and the African Charter respectively. That being the case, the Covenants and the Charter now have binding effects on all those States who ratified them including Nigeria. Consequently, in view of the above-mentioned legal instruments, it can be readily argued that self-determination is no longer a mere human rights principle but rather a fundamental right which forms the ‘prerequisite for the enjoyment of all the fundamental human rights’ thereby creating a claimable right with duty as a correlative of the right so created. Therefore, it is no longer a surprise why many learned authors have described self-determination as a ‘critical human right’<sup>29</sup>. Additionally, in his explanation of self-determination not only as a right inhering to human beings as human beings rather than sovereign entities but as well as having universal application like every other human right, James Anaya has also opined that, ‘self-determination is presumptively universal in scope and thus must be assumed to benefit all segments of humanity’<sup>30</sup>. In the opinion of Matthew Saul, it was in 1966 that self-determination gained the status of a human right. But, like Nickel and Reidy<sup>31</sup> who posited that human rights are not ‘generally absolute’, Saul also believed that self-determination, like every other human right, is not an absolute right. He then opined that the solutions that may arise from this balancing with other human rights ‘will not necessarily be secession for a group within a state claiming a right to self-determination. Rather, in light of the need to accommodate the individual rights of inhabitants within a territory, other options, such as the creation of a federation, might be deemed more appropriate’<sup>32</sup>. From the foregoing therefore, self-determination is a form of human rights or ‘fundamental human rights’ (as employed by the UN Charter and the African Human Rights Charter) which inheres in every man and so distinguishes him from the lower animals. That being the case, such rights can and is capable of being enforced against another person and so makes it a claimable right with the correlative of duty. This is in line with the international legal instruments which have made ample provisions on self-determination as a claimable right as we have shown above.

From the wordings of these international instruments, self-determination is a right that belongs to collectivities known as ‘peoples’ and not to individuals. It is pertinent to note that there are numerous problems in defining both ‘peoples’ and what they are entitled to ‘determine’. In the twentieth century, some people tried to interpret ‘right of every people’ as right of people ethnically, culturally or religiously to have its own independent state. However, International law has not yet recognized such. One reason for this is that, because practically the world’s entire surface is now divided among sovereign States, self-determination defined as the right to create a new State would necessarily imply a right to secession. However, no state, no foreign ministry and very few disinterested scholars suggest that every people has the right to a state and they implicitly or explicitly reject a right to secession<sup>33</sup>. The only two exceptions to the above would be first, right of secession when there have been massive and discriminating human rights violations that approach genocide and secondly when a group, community or region has been systematically excluded from political and economic power. The second exception would only apply when the Central government has been so intransigent that, for example, it refuses to

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<sup>28</sup> The Events in East Pakistan: A Legal Study by the Secretariat of the International Commission of Jurists (Geneva, 1972) at p.65.

<sup>29</sup>J Falkowski, “SECESSIONARY SELF-DETERMINATION: A JEFFERSONIAN PERSPECTIVE”, *Boston University International Law Journal*, Vol.9 (1991) 209, at pp. 210-211. See also P I Okoronkwo, “Self-Determination and the Legality of Biafra’s Secession under International Law”, 25 *Loy. L.A. Int’l & Comp. L. Rev.*63 (2002), at p.75. Available at: <http://digitalcommons.lmu.edu/ilr/vol25/iss1/3> and accessed last on 23 June, 2023.

<sup>30</sup>S J Anaya, “A Contemporary Definition of the International Norm of Self-Determination”, *Transnational Law & Contemporary Problems*, Vol.3, Spring, 1993, 131, at p 134.

<sup>31</sup> Nickel, James and Reidy, David A., “Philosophical Foundation of Human Rights”, (July 11, 2009). Available at SSRN: <https://ssrn.com/abstract=1432868>. Accessed last on 15th June, 2023.

<sup>32</sup> *Ibid.*

<sup>33</sup>H Hannum, ‘The Specter of Secession: Responding to Claims for Ethnic Self –Determination, Foreign Affairs (1998).

allow the minority to speak its own language, it excludes minority members from participation in the parliament, or it refuses to accede to demands for minimal, local or regional power-sharing<sup>34</sup>.

Defining self-determination for the twenty-first century is to impose a limit or a price on its exercise by requiring that any ethnic group that succeeds in establishing a new state based on principles of ethnicity, religion, language or culture should be willing to grant to other groups within the new state the same right of self-determination and secession that it has just exercised<sup>35</sup>. This principle might cause potential secessionists to think more carefully about the consequences of their actions and would give newly trapped minorities a way out without resorting to violence. Historically, international law was concerned only with the rights and duties of independent sovereigns, mostly disregarding the face of humanity beyond the sovereign. However, under the modern human rights, international law is increasingly concerned with upholding rights deemed to inhere in human beings individually as well as collectively. Extending from core values of human freedom and equality expressly associated with peoples instead of States and affirmed in a number of international human rights instruments, the international norm of self-determination is properly understood to benefit human beings as human beings and not sovereign entities as such<sup>36</sup>. While human beings are the beneficiaries of self-determination, the norms objects are the institutions government under which they live. Self-determination is extra ordinary among human rights norms in its concern with the essential character of government structures, a concern which may extend to the point of enjoying them to yield authority or territory. In its most prominent modern manifestation within the international system, Self-determination has promoted the demise of colonial institutions of government and the emergence of a new political order for subject peoples.

Given the prominence of decolonization in the international practice of self-determination, there has been a tendency to define or associate self-determination by reference to the specific prescriptions developed in that context, which for most of the subject territories meant procedures resulting in independent statehood. Thus, the substantive content of the international norm of self-determination therefore inheres in the precepts by which the international community held colonialism illegitimate and which apply universally to human beings in regard to their governing institutions<sup>37</sup>. In self-determination's consultative aspect, core values of freedom and equality translate into a requirement that individuals and groups be accorded meaningful participation, commensurate with their interests, the procedures leading to the creation of or change in the institutions of government under which they live. This aspect of self-determination corresponds with the provision common to the International Human Rights covenants and other instruments which state that peoples 'freely determine their political status' by virtue of the right of self-determination.<sup>38</sup> The International norm of self-determination entails a universe of precepts extending from core values of freedom and equality and applying in favour of human beings in regard to the institutions of government under which they live. In its constitutive aspect, the norm entitles individuals and groups to meaningful participation in episodic procedures, leading to the creation of or changes in the governing institutional order. In its ongoing aspect, self-determination requires that the governing institutional order itself be one in which individuals and groups live and develop freely on a continuous basis.<sup>39</sup>

#### **4. Sovereign Rights and National Security**

Sovereignty is the exclusive right to exercise supreme political authority (legislative, judicial, executive) over a geographical region or over a group of people. Security in this context can simply be said to be the state of being secure, especially from danger or attack. National security can therefore be said to be the state of a nation being secure, especially from danger or attack. National security is a vital interest of any nation which invariable means that without national security, there can hardly be the nation itself. Berkowitz and Bookes<sup>40</sup> defined national security as a 'nation's ability to preserve its internal values from external dangers is still inadequate<sup>41</sup>. States are skeptical about agitations for self-determination especially secessionist movements as these movements allegedly undermine the state's territorial integrity

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<sup>34</sup>H Hannum, 'The Right of Self-Determination in the Twenty-First Century', *Washington and Lee Law Review* (1998) Vol. 55. No. 3.

<sup>35</sup> *Ibid.*

<sup>36</sup>S J Anaya, 'A Contemporary Definition of the International Norm of Self-determination', *Transnat'l Law & Contemp Probs.* (1993) 3 131.

<sup>37</sup> *Ibid*

<sup>38</sup>International Covenant on Economic, Social and Cultural Rights, art. 1 *op cit*; International Covenant on Civil and Political Rights, *op cit* art 1.

<sup>39</sup> S J Anaya, *op cit*

<sup>40</sup> M Berkowitz and P G Booke, 'National Security' in D L Sills (ed.) *International Encyclopedia of Social Sciences* (vol 11, New York: Macmillan Free Press 1968) 4 cited in JA Jack & A Bumi, 'Human Right Protection, Sovereignty and National Security in Nigeria Emerging Perspective and Contemporary International Law' *International Journal of Business & Law Research* (2023) 11(1) 53 – 65 <<https://seahipaj.org/journals-ci/mar-2023/IJBLR/full/IJBLR-M-6-2023.pdf>> accessed on 16 June 2023.

<sup>41</sup>J A Jack & A Bumi, 'Human Right Protection, Sovereignty and National Security in Nigeria Emerging Perspective and Contemporary International Law' *International Journal of Business & Law Research* (2023) 11(1) 53 – 65 <<https://seahipaj.org/journals-ci/mar-2023/IJBLR/full/IJBLR-M-6-2023.pdf>> accessed on 16 June 2023.

and sovereignty<sup>42</sup>. Griffioen,<sup>43</sup> while recognizing the inherent tension between self-determination and the territorial integrity of States, submitted firmly that ‘the right of self-determination is a universal right which is applicable outside the decolonization context and should be defined as broadly as possible’<sup>44</sup>. Nevertheless, he submitted that ‘for reasons of international peace and security the right of self-determination needs to be balanced with other principles of international law, in particular the sovereignty and territorial integrity of States’<sup>45</sup>. The right to self-determination complements fundamental principles of public international law like State sovereignty, the equality of States and territorial integrity, including the prohibition of force and the principle of non-intervention. With self-determination as a slogan, minorities or indigenous groups raise claims of either secession from an already sovereign State entity or independence and freedom from foreign domination. This right does not only exist under public international law but also under international human rights law where it contains, among other things, the equal rights of peoples within a State.

### **5. The Urgent Need to Elevate Human Rights above Sovereign Rights**

From the continent of Africa to Asia, America and Europe human rights lives and habitations have been laid to waste in the course wars arising from territorial expansion and or protection. From Nigeria /Biafra war to Rwanda, Somalia and Sudan the story is the same. The human carnage was succinctly summed up in the iconic photograph of Kevin Carter where a child dying of starvation could not be rescued even while a vulture was patiently waiting to devour that child upon last grasp of breath.<sup>46</sup> The wars did not achieve the desires of the first warlords that started the war neither of the later. The example of Ethiopia to annex Eritrea and make it part of Ethiopia failed woefully. The ancient Europe knew no peace until the Treaty of Westphalia in 1648. The Treaty no doubt established the sovereignty of States and respect for rights of national self-determination.

The concept of sovereignty of states and respect for rights of national self-determination seem to have changed as there is no absolute sovereignty of state where the state cannot protect or violates the human rights of her citizens<sup>47</sup>. The neglect of human rights in the course of wars is always apparent. It is until you are alive that you may have to talk about human rights. Mills in one of his writings rightly argued that the aim of supporting territorial integrity is to achieve stability and prevent conflict. However, he concluded that both these ends were pursued in Yugoslavia and both ends failed.<sup>48</sup> The wars having failed to achieve the desired outcome resulted in nationalism in the light of identity politics being re-invigorated globally. The idea behind it is not far-fetched. If the laws of the state cannot protect me, it may be necessary and proper to identify with my particular ethnic group or race for protection and peace. Nationalism is principally what gave rise to ethnicity and or racism due to failure of central government or gradual collapse of the so-called social contract. The former Yugoslav Republic disintegrated on ethnic or racial divide. The several wars fought in Europe did not stop it from disintegrating on ethnic or racial microcosm.

It should be recalled that the idea of League of Nations and UN arose out of search for peace. One of the core values of the UN is respect for equal rights of peoples. These rights cannot be respected in the course of territorial integrity quest. The elevation of human rights through efficient mechanism as it is with other UN resolutions will bring about the much-needed peace sort after and preservation of the sovereign territorial rights of the states. Adam Hall<sup>49</sup> argued that failure to respect human rights can generate conflicts that may ultimately affect territorial integrity of states concerned. The effectiveness of human rights within any state will prevent the state from maltreating her population and provide great protection for the most venerable among them.<sup>50</sup> This will give rise to absolute peace and the resonance of identity politics or nationalism leading to agitations will not likely emerge. Respect for human rights is akin to respect for territorial integrity. The persons that may agitate for secession if treated equally with every other member of the society and respected will have no cause for it. The law then will relatively evenly be applied to the general population.

Hall further argued that many situations involving human rights violations have been qualified by the UN Security Council as a threat to peace. These countries include former Yugoslavia, Somalia, Liberia, Haiti, Rwanda, East Timor, Sierra Leone and Sudan. If this has been so described it is then the UN responsibility to ensure its enforcement by

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MG Kohen (ed), *Secession: International Perspectives* (New York: Cambridge University Press, 2006) p. 3 <<https://www.corteidh.or.cr/tablas/r32589.pdf>> accessed on 16 June 2023

<sup>43</sup> C Griffioen, *Self-Determination as a Human Right: The Emergency Exit of Remedial Secession* (The Hague: Cip Gegevens Koninklijke Bibliotheek, 2010).

<sup>44</sup> D. Raič, *Statehood and the Law of Self-Determination* (The Hague: Kluwer Law International, 2002), p. 2

<sup>45</sup> *Ibid.*

<sup>46</sup> Available at <https://www.google.com/amp/s/thehindubusinesslive.com/blink/watch/the-vulture-in-the-frame/article>. Accessed on 25<sup>th</sup> June, 2023.

<sup>47</sup> It ought to be emphasized that RES 2625 of NU General Assembly qualifies RES 1514 prohibition applying only to states that conduct themselves in compliance with principles of equals rights and self-determination of peoples. The government of such a state must represent all peoples within its territory without distinction as to race or creed or colour.

<sup>48</sup> See FN 10 ante.

<sup>49</sup> Adam Hall; *The Challenges to State Sovereignty from the Promotion of Human Rights*. Available at <https://www.e-ir.info>. Accessed on 14<sup>th</sup> June, 2024.

<sup>50</sup> See FN 28

providing mechanism without necessarily interfering in domestic affairs of any state. In the circumstance absolute sovereignty without showcasing to the international community (UN) that the state can protect her citizens' right is not tenable anymore. States that claim sovereignty deserves respect only as long as it protects the basic rights of its subjects.<sup>51</sup> The intervention action of the UN thus far has been to protect individuals within a state from the grasp of unruly States unwilling to show regard for the basic human rights. This being the case it is our proposition that elevation of human rights above territorial and sovereign integrity will bring about the much-needed peace that seem to have eluded the world and by so doing territorial and sovereign integrity is somewhat preserved.

#### **6. Conclusion and Recommendations**

In conclusion, the right of a people to self-determination should receive a liberal interpretation in so far as the people have definite territory, permanent population, distinct language and culture. It is evident that in the international space, independent states have moved beyond states values towards human values. This in effect will guarantee the much-needed peace that is sort after in the world today. The following are hereby recommended;

- a. That a comprehensive legal regime on self-determination especially with regard to secession be evolved by the international community, especially the African community, to forestall further spillage of human blood on the claims and counterclaims of the right.
- b. That in line with the articles of the Proposed Model Draft Articles, a Committee on Self-Determination be set-up by the United Nations General Assembly or the Heads of States and Government of the African Union to oversee the issues of claims and counterclaims to self-determination by different groups of peoples.
- c. That international tribunals, such as the ICJ, the African Court of Justice and Human Rights, etc., be strengthened and empowered to give proper interpretation to the existence or non-existence of the right to self-determination in appropriate circumstances.

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<sup>51</sup> Stanley Hoffmann, *The Politics and Ethics of Military Intervention Survival* (37); 4, p.35