THE NIGERIAN UNITY AND THE CHALLENGE OF SELF-DETERMINATION AND SECESSION*

Abstract

Self-determination is no doubt one of the hallowed principles of international law, recognized under customary international law and enshrined in a number of international treaties, as a right of 'all peoples' to determine their political and socio-economic destiny. In contemporary times, the notion of self-determination has been interpreted to justify secession by distinguishing between 'internal self-determination' and 'external self-determination'. This distinction is an attempt to expand the ambit of self-determination to accommodate the rights of secession movements. Arguably, this expanded interpretation is apparently in conflict with the principle of 'uti possidetis juris', which is another principle of international law which seeks to maintain the territorial status quo by the preservation of traditional legal boundaries and stability. In this connection, it can be argued, that Section 2(1) of the Constitution of the Federal Republic of Nigeria 1999 which provides that 'Nigeria is one indivisible and indissoluble sovereign State' seeks to preserve the Nigerian territorial legal boundaries. To this extent, any secession bid from any part of the Nigerian territory is apparently unconstitutional and contrary to the Nigerian dream of one indivisible and indissoluble sovereign State bound in freedom, peace and unity. However, this paper deconstructs the concept of right to self-determination vis-a-vis right of secession. It argues that the right of secession is a circumstantial right that is subsumed into the larger right of self-determination. The paper concludes that the Nigerian dream can be realized in a sustainable manner on the condition of a restructured political economy which sincerely addresses its existential challenges of plurality, marginalization and inequity.

Keywords: Self-determination, Secession, Plurality, Sovereignty, Nigerian Unity

1. Introduction

It cannot be gainsaid, that the aspiration or national interest of a country as a people must be under-guarded by her national dream. Thus, a nation's national dream is the social compact and guiding principle for the management of national socio-economic and political interests. This implies that any nation that has no dream has no vision and therefore nothing to inspire and motivate the people for the actualization of their national aspiration or interest. A national dream must therefore, reflect the national identity and core values which all the citizens can hold on to, as the foundation of social cohesion. It provides an inspiration and motivation for the aspiration of the people and a unifying factor which must be rooted in mutual trust and confidence. Against the above background, the question arises as to whether indeed, Nigeria has a national dream. In addressing this question, it must be noted that there is no identifiable document stating in specific and precise terms what constitutes the Nigerian dream. However, the Nigerian dream can be gleaned from the various relevant provisions of the Constitution of the Federal Republic of Nigeria 1999[1] and various national statements. To begin with, the preamble to the Constitution, lays emphasis on 'promoting good government and welfare of all persons in our country on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people'. The other relevant constitutional provisions include: Section 14 (1) which provides that the Federal Republic of Nigeria shall be a State based on principles of democracy and social justice; Section 14 (3) 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, and also to command national loyalty'; Section 15 provides that the motto of the Federal Republic of Nigeria shall be 'unity and faith, peace and progress'; and Section 17 (1) provides that the State's social order is founded on 'the ideals of freedom, equality and justice'. On the other hand, the Nigerian National Anthem describes Nigeria as 'one nation bound in freedom, peace and unity,' while the last line in the Second Stanza of our national prayer, aims 'to build a nation where peace and justice shall reign'. Finally, the national pledge requires the citizens to 'defend her unity, honour and glory'.

The paper argues, that based on a synthesis of the foregoing provisions and statements, the content of the Nigerian dream can be abstracted. Thus, it cannot be gainsaid that the fundamentals of unity, peace and justice had long been recognized as the nation's core values which reflect the visions and aspirations of Nigeria and *ipso facto* summarises what constitutes the Nigerian Dream. A nation where peace and justice reigns has been described as the best height any nation could attain and that they are sacrosanct to any development and hence lies at the epicenter of the society itself[2]. Indeed, 'they are the fabric and glue, which must hold Nigeria together if it must continue to exist as one indivisible and indissoluble entity under God'.[3] Therefore, in the governance of the Nigerian society, both the government and the governed must seek unity and justice as the foundation for peace and stability and must not turn blind eyes to injustice. This informs the mandate that the security and the welfare of the people is the primary purpose of government. This is indeed, why government was instituted amongst men in society, as the social contract theory depicts. Therefore, any government or administration which falls short of this mandate has failed as a government and the country can then be properly described as a failed state. This implies that the country has been wittingly or unwittingly taken back to the state of nature where life was nasty, brutish and short.

Against the above background, it cannot be gainsaid, that the Nigerian dream of a united country where peace and justice reign is a condition for the corporate existence of Nigeria and indeed the antidote to the agitation for any form of self-determination. Therefore, the question is, whether under the contemporary governance system or the way and manner the Federal Republic of Nigeria is being run promotes unity, peace and justice? The answer to this question will assist us in attempting to resolve the controversy regarding the justifiability or otherwise of the agitations for restructuring or self-determination as the case may be, being witnessed in some sections of the country. In addressing the above question, it must be noted, that a juxtaposition of the

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[1] Hereinafter referred to as the Constitution.

[2] Kingson C. Uwandu, 'Is there still hope for the Nigerian dream?' The Guardian, 05 October 2020:https://guardian.ng/opinion/is-there-still-hope-for-the-nigerian-dream/ (accessed 20 November 2022)

[3] As above.

Nigerian dream and the right to self-determination especially, *vis a vis* secession will generate controversial conclusions regarding the legality of self-determination. The first argument is that if the principle of self-determination denotes the legal right of a people to decide their own political, economic and socio-cultural destiny, this must include the right of the people to determine the form of government they want, whether in association with an existing state or in an independent state.[4] The second argument is that the right to self-determination exists without prejudice to another core principle of customary international law which recognizes respect for the sovereignty and territorial integrity of States, established by treaties as well. In this connection, any exercise of the right of self-determination by way of a secession bid by any group from any part of a State will tantamount to a violation of recognized territorial legal boundaries of a State. In this context, secession could be unconstitutional and antithetic to the Nigerian dream of one indivisible and indissoluble sovereign State bound in freedom, peace and unity.[5]

However, this paper deconstructs the concept of right to self-determination *vis-a-vis* the right to secession and argues that the right of secession is a circumstantial or consequential right, which is subsumed into the larger right of self-determination. Therefore, where the government of a State fails to govern on the bases of the principles of democracy and social justice and rather promotes bigotry, neopatrimonism, oppression, marginalization or exclusion, to the obvious disadvantage of a particular group up to intolerable proportion, agitation cannot be unexpected. Such a group may be forced to have no alternative than to exercise her right to self-determination, even by resorting to secession as a last resort. Thus, the paper contends that the Nigerian dream can be realized and sustained only on condition of a restructured political economy which sincerely addresses its existential challenges of plurality, divisiveness, marginalization, economic exploitation, inequity and injustice in the governance of the country.

In analysing the above issues, the paper is outlined in sections as follows: Section one is this introduction while section 2 briefly explains the key concepts; Section 3 analyses and deconstructs the right to self-determination *vis a vis* the right to secession; Section 4 deals with the deconstruction of the right to self-determination in the light of the contemporary Nigerian situation with reference to life cases; Section 5 is the closing remarks with the conclusion that the Nigerian dream can only be realized in a restructured Nigeria which sincerely addresses the existential challenges of the plurality and various forms of social injustices being witnessed in the present system. This is recommended as the only panacea to the present cacophony of agitations of secession bids by the aggrieved federating nationalities.

2. Explanation of Keywords

Self-determination

Self-determination is one of the core principles of international law. The principle of self-determination denotes the legal right of a people to decide their own political, economic and socio-cultural destiny in the international order. The right to self-determination was confirmed by the UN General Assembly in the Declaration of Friendly Relations, which was unanimously adopted in 1970 and is considered an authoritative indication of customary international law. Article 1, common to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), reaffirms the right of all peoples to self-determination, and lays upon state parties the obligation to promote and to respect it.[6] Thus, Article 1 of International Covenant on Civil and Political Rights provides that:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
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.[7]

The above provisions imply that all peoples have the right to direct their future in terms of: having control over how they live their lives, where, and with whom; and having authority over the resources that support or sustain them. The principle is generally associated with, and indeed consistent with the principles of the rights to independence, free association, and integration with an existing State.[8]The principle arose from customary international law, but also recognized as a general principle of law, and enshrined in a number of international treaties.[9] Based on the Aboriginal perspective, Self-determination includes governance, so indigenous peoples are entitled to choose their own forms of government, within existing States. The UN Charter clarifies two meanings of the term '*self-determination'*. First, a state is said to have the right of self-determination in the sense of having the right to choose freely its political, economic, social, and cultural systems. Second, the right to self-determination is defined as the right of a people to constitute itself in a State or otherwise freely determine the form of its association with an existing State.[10]

Based on the contemporary notions of self-determination, the concept can be broadly classified as 'internal' and 'external'. This suggests that self-determination exists within a spectrum accommodating the internal self-determination and the external self-determination.[11] Internal self-determination has been defined as the right of the people of a state to govern themselves without outside interference. More recently, it has been postulated that the right to self-determination can be exercised 'internally' by

[4] This argument assumes that a group of people from an existing state reserve the right to decide not to remain in the parent state and form an independent state of their own by way of secession.
[5] See Sections 1 (2) and 2 (1) of the Constitution respectively.
[6] https://www.diakonia.se/ihl/resources/international-law/self-determination-international-law/ (accessed 19 October 2022).
[7] See also Article 20 of the African Charter on Human and Peoples' Rights
[8]GA Res 1541, 15 UN GAOR Supp (no 16) at 29, UN Doc A/4684 (1960).
[9] http://www.nzlii.org › journals › AukULRev › 7.pdf (accessed 22 November 2022).
[10] See https://www.britannica.com/topic/self-determination (accessed 22 November 2022). See also art 1(2) and art 55 (1) of the UN Charter.
[11]https://www.law.cornell.edu/wex/self_determination_(international_law) (accessed 22 November 2022).

allowing a people broader control over their political, economic, social and cultural development, while stopping short of secession.[12]On the other hand, external self-determination is the right of peoples to determine their own political status and to be free of alien domination, including formation of their own independent state.[13]

It is apposite to conclude that the principle of self-determination is an evolving one. It evolved from its recognition as a right for the colonial peoples and minorities, to a legal right recognized under international law. The principle nevertheless continues to evolve and re-invent itself in consonance with contemporary developments.[14]

Secession

Secession simply means withdrawal of an area or a group from an existing larger area or group, entity, organization or union to which the seceding group originally belonged, to become independent. Based on the above classification into 'internal' and 'external' self-determination, it can be argued, that secession falls within the spectrum of external self-determination which refers to full legal independence/secession for the given 'people' from the larger politico-legal or country or larger group to which it belonged. Thus, the right to self-determination is 'externally' exercised by secession from a colonial power to form a new state. Without controversy, the right of colonial peoples to external self-determination is well established beyond controversy in international law.

It must be noted, that the development of a new conception of 'Peoples' has evolved with the development of the idea of internal self-determination. In this context, the definition of 'peoples' is not only limited to the population of a fixed territorial entity but also encompasses indigenous groups and potentially some minorities.[15]Secession can therefore, arise from internal war of independence from the country to which the group belongs as in the cases of Sri Lanka, the former Yugoslavia and Chechnya. It could be as a result of war of independence, a military attempt by a rebel movement to have a territory break away (secede) from a sovereign State to form a new sovereign State in its own right as was the case in the American Civil War (1861–1865),[16] Quebec and Biafra which may be successful or repressed. On the other hand, disintegration as in the case of the former USSR could engineer secession.

Plurality

Plurality ordinarily describes a state of being plural in the sense that a number of a particular thing or issue exists. In the context of this paper, plurality is used in the sense of a situation in which people of different social classes, religions, races, cultures and various ways of life live together in a society but continue to have their different traditions and interests.[17] It connotes the belief that people of different social classes, religions, races, etcetera, could live together in a society or one country. Nigeria for instance is a plural country the system of which is described as unity in diversity.

Sovereignty

In international law, sovereignty means that a government possesses full control over the affairs within its territorial or geographical area or limit. State sovereignty refers to the legal authority and responsibility of an independent state to govern and regulate its political affairs without foreign interference. It is one of the characteristics or indicia of statehood without which nations cannot be accepted into the club of global actors. Sovereignty as a concept can be defined as 'the absolute, supreme and ultimate dominion and authority of a political state subject to no higher power, expressed within its territory in full self-government and in complete freedom from any outside influence'.[18] As one of the essential attributes of statehood, territorial sovereignty implies that a state exists and operates within a territorial area over which it exercises supreme authority. The concept of territorial sovereignty therefore signifies that there is a territorial domain within which a state exercises exclusive jurisdiction over persons and property in relation to other states. Hence, Max Huber, Arbitrator in the *Island of Palmers Arbitration* case described territorial sovereignty as signifying independence to a portion of the globe in 'the right to exercise therein, to the exclusion of any other state, the functions of a state'.[19] Thus, the exclusive exercise of the functions of a state is the hallmark of the existence of territorial sovereignty.

Accordingly, International relations are based on the principle of sovereign equality of all states.[20] The United Nations Organization recognized the fundamental importance of this principle hence it provides in Article 2 (1) of its Charter that the organization is based on the principle of the sovereign equality of all its members. Among others the Charter goes on to provide as follows: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or settlement under the present charter'.[21] When therefore, we talk of domestic jurisdiction under international law we mean the totality of the foregoing as captured and protected under Article 2(1) and 2(7) of the United Nations Charter. By the logic of sovereignty, a state is sovereign to the extent that it monopolizes the exercise of governmental authority at home, rejecting the right of foreign states or other external actors and even internal groups

[12]https://minorityrights.org/law/self-determination/ (accessed 22 November 2022).
[13] As above. The cases of Independence of Kosovo (from Serbia), advisory proceedings currently pending before the ICJ and Independence of Abhkazia (from Georgia are typical examples.
[14]Obinna James Ede and Portia OziomaChigbu, 'Analyses of the Interaction between the Right of Self-Determination and the Crime of Terrorism', *The Nigerian Journal of International Law*Vol 2. No 1, 2019, p 234.
[15]https://minorityrights.org/law/self-determination/ (accessed 30 November 2022).
[16]https://en.wikipedia.org/wiki/War_of_secession (accessed 22 November 2022).
[17]https://www.britannica.com/dictionary/pluralism (accessed 22 November 2022).
[18] 'What is sovereignty? Definition and meaning' www.businessdictionary.com/definition/sovereignty.html (accessed 12 July 2017).
[19] See *The United States of America v. Netherlands see Year book of the ILC.*
[20] OE Nwebo, 'Constitutionalism Rule of Law and Democratic Governance in Africa: The Challenge of State Sovereignty', *The Nigerian Journal of International Law,* Vol 2. No 1, 2019, p 93.
[21] See art 2(7) of the UN Charter (1945).

to assert or exercise any authority or right that undermines its domestic political order.[22] However, as we argue in this work, membership of international organizations and their obligations thereby, may constitute an obstacle to full political control of state activities and the rights of the citizens, including the right to self-determination.

3. Deconstructing the Right to Self-Determination and Secession

When the question arises as to whether there is a right to self-determination, the answer is generally and emphatically in the affirmative. Thus, as earlier stated in this paper, self-determination is a core principle of international law. It evolved from customary international law and is also recognized as a general principle of law enshrined in a number of international treaties. At the global level, Chapter 1, Article 1, part 2 of the UN Charter states that its purpose is: 'To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,[23] and to take other appropriate measures to strengthen universal peace'. The International Covenant on Civil and Political Rights (the ICCPR), provides that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.[24]At the regional level, it must be pointed out that right from the era of the Organization of African Unity (OAU) the right of a new State to emerge from an existing State through the process of self-determination was recognized. The preamble to the OAU Charter states that the Heads of African States and Governments are 'convinced that it is the inalienable right of all people to control their own destiny. Upon the transformation of the OAU into the African Union (AU), the Constitutive Act of the African Union provides as one of its objectives, 'to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments'.[25] For the avoidance of doubt, Article 20 of the African Charter on Human and Peoples' Rights provides as follows:

1. All peoples shall have the right to exist. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political statute and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized and oppressed peoples shall have the right to free themselves from the bonds of by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of all states parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

It is pertinent to note that the Charter of the AU does not limit the application of this principle and does not condemn secession in any member State, nor has the Charter been amended to insert this item. It is also instructive to note that the Federal Republic of Nigeria (Nigeria) is a State Party to the African Charter on Human and Peoples' Rights, having ratified same on 22 June 1983 and incorporated it into Nigerian Law as the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act. In order to enable the enforcement of the African Charter, the Fundamental Rights (Enforcement Procedure) Rules, 2009included the African Charter among the domestic and international instruments to which the Rules apply, for the purpose of advancing the applicants rights and freedoms.[26]In particular, Order 11 (1) provides that: 'Any person who alleges that any of the fundamental rights provided for in the Constitution or in the African Charter on Human and Peoples' Rights and to which he is entitled, has been, is being or likely to be infringed may apply to the High Court in that State where the infringement occurs or is likely to occur, for redress'.

However, most of the arguments in support of the principle of self-determination as a legal right and as a peremptory norm is couched in generalisations and little attempt is made to define the content of the right with certainty and precision hence it remains unsettled.[27] Thus, self-determination is not an end in itself that is reached once a people have been able to decide whether they want independence, it is rather a process, which comes with the need to build a new state and state institutions.[28] The controversy gets escalated when the question specifically borders on secession as a right, also giving rise to controversial answers. Principally, the argument against the recognition of secession as a right subsumed and protected under the right to self-determination is predicated on the principle of sovereignty especially, the right to the protection of the territorial integrity and independence of states.

Originally, self-determination was linked to decolonisation and freedom from forceful or illegal occupation. To this extent, no controversy arises and the UN and other world bodies are supportive of its realization. However, when the demand for self-determination involves minority ethnic groups and Indigenous peoples, issues arise as to who possesses the right to self-determination, hence the principle itself displays a certain degree of vagueness.[29] Moreover, the consequence of a claim to the right to self-determination by indigenous peoples or groups is secession, which invariably threatens an existing state's territorial integrity.The support for such claim by the UN and other stakeholders will depend on a number of variables two most important of which seem to be the degree of destabilisation of the mother country as a result of violent conflict of which the State has right to use reasonable force to restore order and the degree to which the responding government represents the people belonging to the territory.[30]

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[22] As above, n 13, p 94.
[23] Underlining is mine, for emphasis.
[24] See art of the International Covenant on Civil and Political Rights (the ICCPR)
[25] See art 3 (h) of the Constitutive Act of the African Union 2000/2001.
[26] See 3 (b) (1) of the preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009, on the overriding objectives of the Rules.
[27] see John Dugard, Recognition and the United Nations (Cambridge: Cambridge University Press, 1987) p160.
[28]Kerstin Tomiak, 'Self-Determination as a Process: The United Nations in South Sudan'. https://www.e-ir.info/2020/03/10/self-determination-as-a-process-the-united-nations-in-south-sudan/ (accessed 30 November 2022).
[29] As above
[30] As above

For the avoidance of doubt, territorial integrity is a principle of international law which entitles sovereign states to defend their territorial boundaries or borders. The argument is that to acknowledge the right to self-determination beyond its colonial context by including secession will tantamount to a violation of the right of the parent state to territorial preservation and territorial sovereignty which are protected under international law.[31] This protection extends to both internal and external sovereignty. Thus, the control and preservation of the territorial jurisdiction and oneness or wholeness of the state is one of the indicia of statehood which states do not want to compromise. Furthermore, the right to secession appears to be inconsistent with the customary international law principle of *uti possidetis juris*, requiring the maintenance of the territorial *status quo*, *vis a vis* the boundaries of colonies that emerged as States. The rationale is to preserve stability, order and traditional legal boundaries.

However, in justification of self-determination by secession, it is instructive to note, that the philosophy and purpose behind the principle of self-determination is the democratization of government and defence of human rights violations. Therefore, the principle of self-determination demands that people should be ruled by their own consent, should play commensurate roles in government, should have government of their choice and should determine their political, economic and social future.[32]Political self-determination, that is, the principle where the political future of a colony or similar non-independent territory is determined in accordance with the wishes of its inhabitants, has particularly since 1960's been taken into consideration in issues of statehood.[33] Therefore, self-determination may be expressed legitimately without violating established international provisions protecting territorial integrity.[34] Hence it is submitted that statehood or territorial integrity is respected under the implied condition that the human rights interest of both the majority and minorities are equally protected.[35]

In another dimension, a functional approach can be adopted in justification of self-determination as a legal right. In this regard, it is argued that functionally the operation of self-determination may be considered relevant as an additional criterion for statehood. Self-determination in this context requires a free and genuine expression of the will of the peoples concerned. Based on this approach, it can be claimed that the development of self-determination provides an additional criterion of statehood, the denial of which would obviate statehood. However, it has been opined that this functional approach can only be acknowledged in relation to self-determination which would not operate in the case of secession from existing state.[36]On the other hand, there is no reason why a nation or a group of people with common ethnic identity or similar political ambitions cannot seek to create its own independent government or state.[37]

On the issue of human rights protection, including the rights of minorities, reference can be made to the declaration on the guidelines on the recognition of new states in Eastern Europe and the Soviet Union[38]which demanded that '…respect for the U.N. Charter, the Helsinki Final Act and the Charter of Paris, especially with regard to the rule of law, democracy and human rights… guarantees for the rights of the ethnic national groups and minorities'.[39]

Thus, the paper advances the position that the right to self-determination is a legal right under international law. However, it remains one of the most unsettled norms in international law, both in its legal content and its normative status.[40]The controversy only arises in the context of its interpretation especially on whether the right self-determination accommodates the right of secession. It is argued, that the right of secession can be justified based on the presumed-right of every people to self-determination broadly interpreted. Therefore, the right to self-determination should apply to all peoples, whether in metropolitan or colonial territories and whether they are minorities or majorities. It should apply to people with identifiable interest that may be geographical, cultural, religious, professional, or what have you,[41] the larger the number of people involved, the easier it is to recognize and acknowledge their right to self-determination. Hence, self-determination has been so widely accepted and supported that it has now acquired the attribute of a jus cogens rule.[42] Furthermore, by virtue of its *erga omnes* status, it is the responsibility of all states to ensure that this right is realised in appropriate circumstance, whether internal or external.

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[31] See art 2(4) of the United Nations Charter.

[32] UO Umozurike, *Introduction to International Law* 3rd ed. Spectrum Books Ltd, p. 52.

[33]Schwarzenberger, Manual of International, 6th ed. 1976.

[34]U.N. Secretary General, Boutrous Boutrous Ghali, Agenda for peace reproduced in A Robert and B Kingsbury, United Nations, Divided world (2nd ed. 1903).

[35] Territorial integrity cannot be used as a shield to protect the parent state which engages in all forms of injustice against a particular group within its territory. For instance, a state that commits genocide, denies a section or group of its citizens of social amenities and appointments, as well as participation in governance and exploitation of their natural resources cannot claim sanctuary on the principle of sovereignty and territorial integrity. In such circumstance, the state loses its legitimacy and integrity as far as the oppressed group is concerned and the demand for self-determination, even by secession becomes a natural consequence.

[36] The Alma Ata Declaration, issued by the Foreign Minister's of European Economic Council on December 1991.

[37]This point is consistent with the view promoted by the US President, Woodrow Wilson During World War I. see https://www.carnegiecouncil.org/explore-engage/classroom-resources/1919-the-year-of-the-crack-up/wilson-self-determination (accessed 30 November 2022).

[38] The Alma Ata Declaration, issued by the Foreign Ministers of European Economic Council on December 1991.

[39] Similar conditions were demanded in respect of those entities claiming recognition as states following the breakup of former Yugoslavia in 1991.

[40] Mathew 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* HRLR 11 (2011), 643.

[41] Including the politically and economically marginalized and oppressed group.

[42] See the case of Portugal v Australia ICJ Reports 1995, where the International Court of Justice asserted that the right to self-determination is a fundamental principle of international law that must not be unduly restrained. See also the decision of the Canadian Supreme Court 1998, 161 DLR (4th) 305. Both cases were cited in Obinna James Ede and Portia Ozioma Chigbu,

However, questions regarding the legality of secession as a means of actualizing the right to self-determination narrowly or restrictively interpreted remain controversial. In this context, secession is seen as revolt or insurrection which is a challenge to sovereignty and territorial integrity which must be defended. Even where it is assumed that the right of secession exists, there is still no clear formula for determining when the right inures and how it can be legitimately espoused. On this issue however, Ekweremadu opines that:

> While the right to self-determination is guaranteed under the international systems, specifically the United Nations and African Union, this right has laid down procedures that must be religiously followed. In other words, while the call for referendum is legal, it does not come by fiat.[43]

Thus, our position is that the call for referendum is a legitimate means of initiating the process of self-determination by way of secession. It must be noted that it is the ultimate result of wide and long negotiations, consultations, and processes involving the international community as we have seen from a number of instances which either succeeded or failed. For instance, there were referenda conducted in the United Kingdom over the Scotland and Quebec in Canada. In the case of the UK, the Scottish voted to determine if they should stay as a part of the UK and Northern Ireland, or become an independent sovereign state. In the case of Canada, Quebec held a referendum on independence from Canada in 1995. In both cases, the separatists lost, so also in the case of Catalonia in Spain. Kosovo, which declared autonomy from Serbia on February 17, 2008, has been administered by the United Nations since 1999. The single nation of Serbia and Montenegro, formed after the collapse of Yugoslavia in 1991, changed into the State Union of Serbia and Montenegro in 2003, eventually ended up as two separate states of Serbia and Montenegro in 2006. Eritrea as an autonomous region within the Ethiopian declared independence following a referendum. Czechoslovakia was dissolved by parliament into two countries: The Czech Republic and Slovakia, while East Timor, now Timor-Leste, secured independence on May 20, 2002, also following a referendum. From Sudan emerged the South Sudan, which declared her independence, following a referendum.

Reference could also be made to the recent Russia-backed breakaway Eastern Ukraine, though they still use the Ukrainian international passport and currency, several years after. The case of the so-called referendum in Crimea which is part of the sovereign state of Ukraine raises the issue of the violation of the territorial integrity of Ukraine. This is because the said referendum was organized by the neighbouring State of Russia after her invasion of that part of Ukraine in breach of international law and to the condemnation of the international community.[44]There is also the case of the breakaway South Ossetia and Abkazia from Georgia though only recognised by Russia more than 10 years after, though the international community still recognises them as citizens of Georgia. Recently, the British Government organized a referendum for Island which did not favor the separatists. Recently also, the African Court on Human and Peoples' Rights in Arusha, Tanzania, in a landmark judgment held that: the continued occupation of the SADR by Morocco is incompatible with the right to self-determination of the people of SADR as enshrined in Article 20 of the African Charter on Human and Peoples' Rights.[45] The Court in its judgment noted, that at the core of the instant application lies the applicant's allegation that the admission of Morocco to the AU was not opposed by Respondent States in spite of their individual and collective obligation to defend the sovereignty of Western Sahara. Therefore, it held that all states have legal obligations to assist the Sahrawi people in the full realisation of their right to self-determination and independence.[46]

In light of the foregoing, it cannot be seriously denied that self-determination even by way of secession is legitimate especially, through the process of referendum. However, the question arises as to what happens in a situation where the right to have a referendum remains stoutly resisted or denied in the face of continuous marginalization, oppression and injustice against a people. International law is at a cross-road here and the international community has a challenge to determine when self-determination by way of secession can be justified and the need to formulate clear procedure to be adopted for its actualization where the issue arises.

4. Contemporary Nigeria and the Challenge of Self-Determination and Secession

In analyzing the Nigerian situation *vis a vis* the challenge of self-determination, it is instructive to note without sentiments, that Nigeria is a sovereign State, with a defined territory recognised by the international community. As such Nigeria is entitled to her rights under international law. The rights include her right to defend the territorial integrity of her national boundaries and would not compromise any break- up of the country or loss of any part of her territory to any internal or external authority. Hence, 'the Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution'. The Constitution went further to provide that 'Nigeria is one indivisible and indissoluble sovereign state….' The above provisions make it abundantly clear that any form of self-determination by way of secession is unconstitutional.

However, as have been argued in this paper, Nigeria is a member of the United Nations, African Union, and the Economic Community of West African States, among others. This implies that Nigeria is bound to respect her international obligations arising

'Analyses of the Interaction between the Right of Self-Determination and the Crime of Terrorism', *The Nigerian Journal of International Law* Vol 2. No 1, 2019, p 247

[43] See Ike Ekweremadu, 'Biafra: Legal, economic and social questions', in Punch Newspaper, September 18 2017: https://punchng.com/biafra-legal-economic-and-social-questions/ (accessed 5 December 2022).

[44] Currently, there is war going on in Ukraine, following further Russian invasion on what Russia termed special military operation. Ukraine has however vowed to recover all her territories under Russian occupation and is indeed responding effectively to the Russian attacks.

[45]See 'African Court upholds right to self-determination of Saharawi people', 25 September 2022: https://www.vanguardngr.com/2022/09/african-court-upholds-right-to-self-determination-of-saharawi-people/ (accessed 5 December 2022).

[46] As above.

from the provisions of treaties to which she is a party. These treaties made unequivocal provisions upholding the right to self-determination in all its ramifications. Based on the above, the paper proceeds with the analyses of the Nigerian contemporary self-determination challenges.

Based on the hindsight of the history of the Nigerian constitutional development, it is contended that *ab initio*, the Nigerian state was established on a deformed structure. In other words, 'with the anomalies in the convoluted federal arrangement and structure becoming permanent scars, the country is perpetually troubled'.[47]From the hindsight of the history of the constitutional development of Nigeria certain facts are on record. In the first place, the various administrative structures which were merged to become Northern and Southern Protectorates respectively were conquered territories by British companies and the creations of the colonial administration. The merger of the protectorates of the Northern protectorate and the Southern Protectorate to form the present one Nigeria in 1914 was the initiative of the Colonial Administration under Lord Lugard. The ensuing struggle for independence and the constitutional conferences leading to the various constitutional development of Nigeria and the pseudo-independence constitution of 1960 and the Republican Constitution of1963, the making of which were teleguided by the Colonial Administration.

The Nigerian Federal Structure under successive administrations after the collapse of the First Republic following the 1966 military coup, virtually left the country with lopsided and skewed federal constitutional arrangement with all its contradictions. Till date, issues bordering on National questions especially the Nigerian plurality, resource control and governance architecture remain unresolved. As a result, the call for the restructuring of the Nigerian federal arrangement under an autochthonous constitution continues to reverberate and a paradigm shift continues to be opposed by the beneficiaries of the jaundiced structure. The 2014 Constitutional Conference report which was an attempt to provide a workable and autochthonous constitution was thrown away with the bath water without regard to the huge resources and effort put in the making. It must be noted that the idea of restructuring of this country is not necessarily to dismember the country but to enthrone equal opportunity to enjoy the potential benefits of the advantages of the vast strength of a diverse country, by reflecting the collective interest of all the stakeholders in the Nigerian project.

On a general note, it cannot be gainsaid, that there is widespread dissatisfaction over how Nigeria is presently constituted and run. In the contemporary Nigerian governance system, there are complaints of unbridled nepotism, sectionalism and undisguised marginalisation of certain major sections of the country in pursuit of (an ethnic) agenda which is continued with impunity.[48] The state of the Nation is that of the menace of the Boko Haram Islamic insurgency in the North East, the Bandits menace in the North West, the Fulani herdsmen invasions and massacres in the Middle Belt and South, militancy ferment in the Niger Delta and Biafra agitations in the South East and parts of South-South are already responding to the poor diversity management of government establishments.[49] As a result, the nation has of recent been caught in a cacophony of agitations by different groups and sections of the country canvassing for the restructuring of the country.

The South-East region of Nigeria in particular, has no doubt, been at the worst receiving end of the structural imbalances with ripples of disequilibrium in the distribution of resources and opportunities since the end of the civil war in 1970. The people of the region feel that the situation became worse since after the 2015 general election. This has been perceived as the root cause of the disquiet and renewed agitation by various groups for a sovereign State of Biafra. With particular reference to the Biafran agitation, going down memory lane, it will be recalled that though the Nigerian Civil War ended more than 50 years ago, it continued to rage in the hearts of the power oligarchs from the victorious side with punitive mindset exhibited in their governance style. This remains so till today, despite the General Yakubu Gowon's (retd) declared 'No Victor, No Vanquished' and the purported Reconstruction, Reconciliation and Rehabilitation programme. The post-war Biafra was not attended by any genuine efforts to heal the wounds of the war or seek reconciliation nor even to identify and address the issues that caused the war. Instead, the successive regimes pursued the path of punitive retributions against those who lost the war Rather, what we have witnessed is decades of vengeance, arrogance and conspiracy against the Igbo. In other words, the general perception is that Nigeria's governance has been carried out in a manner that reminds the people that there were winners and losers of the war and this continues to militate against genuine reconciliation and nation building.

To buttress the above point, reference could be made to the violation of constitutional mandate to every administration to ensure that federal character is maintained in recognition of 'the need to promote national unity and to command national loyalty.' The rationale for the federal character provision is to manage the Nigerian plurality reality of a multi-tribal, multi-cultural, multi-lingual and multi-religious groups, to ensure balance in forming a government or in making appointments, there should be no predominance of persons from a few States or from few ethnic or other sectional groups in that Government or in any of its agencies. It is only when this is done, that the government can easily command national loyalty and promote the Nigerian dream of national unity and social justice. Unfortunately, this has always been more honoured in its breach than observance especially, in this present dispensation. The irresistible consequence of such breach of this core principles in the 1999 Constitution (federal character) which was intended to foster unity and spirit of brotherhood among the different ethnic groups is the agitation for restructuring and even disintegration.

Apart from the agitation for secession by the Indigenous people of Biafra, the Yoruba ethnic group have also joined and is clamouring for Oduduwa Republic. Recently, a prominent Yoruba Diaspora group, Yoruba One Voice, YOV, is reported to have warned the Federal Government against clamping down on the self-determination agitators, insisting that it is the right of every ethnic nationality to seek justice, fair- play and good governance, as well as self-determination, especially, when it becomes very

[47]Kunle Oderemi, 'Nigeria: The Quest for Self-determination', Tribune, 11 April 2021: https://tribuneonlineng.com/n-i-g-e-r-i-a-the-quest-for-self-determination/ (accessed 22 November 2022).
[48]https://www.vanguardngr.com/2020/01/50-years-after-the-nigerian-civil-war-2/ (accessed 7 December 2022).
[49]https://www.vanguardngr.com/2020/01/50-years-after-the-nigerian-civil-war-2/ (accessed 7 December 2022).

necessary.[50] The Yoruba diaspora organization also identified prolonged insecurity, bad economy, and loss of hope as recipe for seeking self-autonomy by the various ethnic nationalities, stating further that the present situation in the country is setting Nigeria up for an imminent break-up within two years.[51] Majority of Yoruba sons and daughters in the diaspora are seeking self-determination because the experience back home is nothing but harrowing. According to Iba Gani Adams, who is also the Grand Patron of the diaspora group, the Yoruba quest for self-autonomy or an independent nation should not be a crime and proposed regional system in the alternative, insisting that there are countries all over the world that sought their freedom peacefully.[52]

Oderemi aptly summarized the contemporary Nigerian situation thus:

> The culture of discrimination and other forms of injustice and lack of equity and fairness underlines the increasing wave of inter-ethnic tension, ethno-religious fracas, boundary disputes, just as it has sustained the clamour for resource control, power devolution, restructuring and oiled the renewed calls for self-determination by some individuals among the ethnic nationalities. Such demands cut across the Middle Belt zone, the South-South, South-East and the South-West with their protagonists/promoters claiming to be exercising their rights under the provisions of the United Nations Charter on self-determination. All these challenges have crystallised in the variegated security problems confronting the country, which include banditry, insurgency, armed robbery, abduction, kidnapping, cultism and all manner of cyber-crimes.[53]

In justification of the right to self-determination and the demand for secession, the statement of Bala Mohammed, the Governor of Bauchi is very instructive. He was quoted as having said thus:

> If you are not fair and equitable in your administration, in your management, if there is nepotism, only one section is given positions in government; what the Southern governors said smacks of some truth – where some people are given too much attention to the detriment of the other side. What we know in this country, as a federalist, there is always a balance in terms of appointments of federal officers, in terms of appointments even at the local level, because if you don't practise fairness at the top, then you cannot get it at the lower level. And people will begin to think of self-actualisation, self-determination and so on.[54]

The point is that in a system of governance where there is obvious unjust treatment of a section or group, sectional domination of the Government and its agencies by a privileged section or group in utter violation of the Federal Character principle provided for in the Constitution which is intended to give all Nigerians a sense of belonging, agitations for self-determination are bound to rear their heads. In another dimension, where there are different standards or qualifications for appointment into Federal positions, or admission into Federal institutions, or discrimination against certain ethnic nationals on grounds of non-indigeneship, patriotism will be killed and this will have negative impact on the realization of the national dream.

On the issue of the preservation of the territorial integrity of States, it is submitted, that the intention is majorly to protect the territory of a member state against other States and not against forces inside a State itself. Therefore, it is argued, that if self-determination refers to 'the freedom of a people to choose their own government and institutions and to control their own resources,[48] then, there seems to be a striking contradiction between the right of 'all peoples' to self-determination and the right of a State to its "territorial integrity', the latter precluding secession. This contradiction is also obvious in the UN prescriptions and practice in self-determination as well as in the practice of States as can be seen from the analysis of the Bangladesh and Biafra cases.

The paper therefore, contends that the international organizations cannot employ force or diplomatic pressure to compel a body of citizens of a member state, which has opted for self-determination to renounce their independence in order to preserve the territorial integrity of the parent State. This is because essentially, the issue is within the domestic affairs of the parent State to resolve. On the other hand, it is submitted, that there is nothing sacred about the concept of territorial integrity, for the territories of a state to alter with the changing fortunes of the state, and sometimes even disappear altogether. These are within the 'right' of 'all peoples' to self-determination hence sovereignty belongs to the people as their natural and inalienable right.

Thus, the concept of territorial integrity is intended to protect the sovereignty of the people of a State and their wellbeing and should not be construed as an instrument of their oppression or subjugation. In support of this contention, reference could be made to the fact that at its 25th session, the General Assembly unanimously declared that all peoples have the right to determine their political, economic, social and cultural destiny without any external interference.[46] Concomitantly, it urged all states to promote the principle of self-determination of peoples.[47] Thus, it is submitted, that under certain persistent oppressive circumstances in violation of state responsibility to protect the human rights of a group or section of its citizens, a claim to self-determination by the group, even in a non-colonial setting, is justified and should be upheld.

5. Conclusion

In light of the foregoing, it cannot be overstressed, that the right to self-determination is a universal right recognized globally, regionally and even by States. However, its content, standards, limits and processes for actualization remain imprecise and

[50]See Dapo Akinre**fon,** https://www.vanguardngr.com/2022/09/yoruba-nation-agitations-for-self-determination-ll-continue-if-yov/Yoruba Nation: Agitations for self-determination 'll continue If… – YOV (accessed 12 December 2022).
[51] As above.
[52] As above.
[53]Kunle Oderemi, 'Nigeria: The Quest for Self-determination', Tribune, 11 April 2021. https://tribuneonlineng.com/n-i-g-e-r-i-a-the-quest-for-self-determination/ (accessed 12 December 2022).
[54]https://tribuneonlineng.com/nepotism-fuels-demand-for-self-determination-bauchi-gov-mohammed/ (accessed 12 December 2022).

controversial. The matter becomes more controversial when it relates to the right of secession. The paper has however argued, that the right of secession is a circumstantial or a consequential right which is subsumed into the larger right of self-determination. Admittedly, the analysis of the right to self-determination by way of secession is apparently in conflict with the right of a State to defend its sovereignty and territorial integrity. However, the paper submits that the right to State sovereignty and territorial integrity is intended to protect a State against external intervention or aggression and not to fetter continued oppression and denial of the protected rights of internal groups.

It has been argued, that the Nigerian contemporary existential challenges and consequent cacophony of self-determination threats are attributable to fundamental Nigerian structural defects, compounded by the systematic domination, marginalization and injustices perpetrated by the successive Federal ruling oligarchs against certain sub-nationalities. This is perpetrated in utter violation of the federal character principle. The ensuing imbalance renders nugatory the Nigerian dream of having a nation built on the principles of unity, Peace and Justice, thereby promoting unity in adversity instead of unity in diversity. Nevertheless, the paper opines that the Nigerian dream is realizable by taking necessary steps to genuinely manage the Nigerian plurality challenges. Thus, where the issue of secession is seriously in contention, the paper recommends the approach of the Supreme Court of Canada in the case of secession bid by Quebec. In the first place, it must be noted, that the Canadian Constitution did not give secession right from Canada unilaterally, like in the case of Nigeria. Accordingly, the Court held that secession of a province 'under the Constitution' is illegal and could not be achieved unilaterally, that is, without principled negotiation with other participants in Confederation within the existing constitutional framework. Thus,'if a clear majority of Quebecers unambiguously opts for secession, the federal government and the other provinces would have a constitutional duty to negotiate'.[55]The broader statement of the Court on the democratic rights of the citizens including Quebecers is very instructive thus:

> Our democratic institutions necessarily accommodate a continuous process of discussion and evolution, which is reflected in the constitutional right of each participant in the federation to initiate constitutional changes. This right implies a reciprocal duty on the other participants to engage in discussions to address any legitimate initiative to change the constitutional order. A clear majority vote in Quebec on a clear question in favour of secession would confer democratic legitimacy on the secession initiative which all of the other participants in Confederation would have to recognize. This is an obligation that the court declared to be implicit in the principles of 'federalism, democracy, constitutionalism and the rule of law, and respect for minorities.[56]

Drawing inference from the above case, it is recommended that Nigerians should freely engage with themselves in order to agree on the terms and form of the political union that can work effectively for all by taking on board the diverse concerns of the sub-nationalities. The outcome of the negotiation will help to remove the existential structural imbalances, redress socio-economic injustices, prebendalism and identity politics. Unprovoked ethnic profiling, killings, assaults, destruction of property and various forms of threats to the life and property of the Igbo in particular, in some parts of the country that were witnessed during the 2023 general elections without protection are cases in point. Thus, it is concluded, that constitutional restructuring, which must involve honest and free negotiation of the terms of the Nigerian unity remains the only antidote to agitations for self-determination or secession. The outcome of the negotiation will invariably engender good governance, mutual trust, patriotism, just and equitable treatment of all citizens and socio-economic development. These are the conditions for the realization of the Nigerian dream of a nation built on the principles of unity, Peace and Justice.

[55]*Re Secession of Quebec*, [1998] 2 S.C.R. 217.
[56]As above.