Advances in Politics and Economics
ISSN 2576-1382 (Print) ISSN 2576-1390 (Online)
Vol. 5, No. 3, 2022
www.scholink.org/ojs/index.php/ape

Original Paper

Mapping the Landscape of the Inherent Right to Self-Determination of Peoples within Sovereign States

Emeka C. Adibe[1] & Obinne Obiefuna[1*]

[1] University of Nigeria, Faculty of Law, Enugu Campus, Nigeria

[*] Obinne Obiefuna, University of Nigeria, Faculty of Law, Enugu Campus. Nigeria

Received: May 28, 2022 Accepted: June 18, 2022 Online Published: June 25, 2022

doi:10.22158/ape.v5n3p43 URL: http://dx.doi.org/10.22158/ape.v5n3p43

Abstract

This essay explores the vexing question of the right to self-determination with particular reference to developments under both general international law and African regional law. It recognises the tension between the right to self-determination and the territorial integrity of states while arguing that the right to self-determination for peoples within sovereign independent states fits into emerging normative developments in international law practice and politics in Africa and beyond. These normative developments are a pointer that state-centric principles of territorial integrity are not inviolable. Meanwhile, they are also indices for identifying the limits of uti possidetis vis-à-vis the fundamental right of self-determination.

Keywords

self-determination, social contract, rights, sovereignty, international law, decolonization

1. Introduction

Given the importance accorded to the inviolability of colonial borders in international relations, the process of self-determination and the scholarship arising there from has consistently raised questions on discourse about the practice of self-determination under general international law and, significantly African regional law. The thrust of this paper is to critically review these issues by exploring fundamentally the philosophical foundations of self-determination as an inherent right for peoples within sovereign independent states based on the principles of the social contract. The study also examines the ways in which any assertion of the right to self-determination may be permissible in the face of international law indecisiveness and the extant African regional principle of "uti possidetis". Under this principle, African states have committed themselves to respect and upholding the colonial borders inherited upon independence. Using the success story of the exercise of self-determination of

Bangladesh, Kosovo, and South Sudan as a test case, this paper identifies a few conditions under which the exercise of self-determination may take place under extant international and African law and practice.

The research principally employs a qualitative approach with insight into the philosophical foundations of the doctrine of self-determination as well as its parameters under international law. In order to echo the emergent problems associated with the current application of the subject, critical insight and analysis into some recent antecedents of the exercise of self-determination were imperative hence the need for change in paradigm and remapping the boundaries for the exercise of the right to self-determination for peoples within sovereign independent states.

2. Social Contract, Sovereign States, and the Right to Self-Determination

The idea that people have an inherent right to decide their own matters and thus have a right to self-determination is of antiquity and has probably existed since the dawn of mankind. Social and political philosophers dating from the cradle of political engineering in Greek city-states made direct and indirect references to the importance of people taking charge of their affairs and organise themselves the way they deem fit and bringing about their happiness and fulfillment. People are motivated to engage in an activity in order to satisfy a person's core values or interests and then bring about their happiness and fulfilment. Aristotle claims that the final goal of every person's action is happiness. A self-determination struggle is an expression of people's inner beliefs and convictions relating to their quest for ideals of liberty, equality, and justice in human society.

The concept of self-determination is therefore intimately connected to such ideals as liberty and equality with irresistible appeal in the modern world. It speaks to the emancipation of the individual from any shackles of subjugation; liberation from drawbacks inherited from the past, determined by colonial frontiers. Self-determination appears to favour a culture of change in which socio-cultural stamps are continuously re-evaluated and re-appraised according to terms of contemporary narratives and drives.

It is arguable that its philosophical underpinnings could be linked to the development of Greek city-states founded on principles of democracy, freedom, and state autonomy and incidentally deeply rooted in Judaeo-Christian religious values and principles. However, one can also associate this concept with ideasof individualism and liberalism which gained remarkable currency within modern political thoughts. Greek thought and Roman wisdom gave much credibility to natural law. Therein, certain rights were considered universal to all human beings and this paradigm came to be associated with liberal political theories in the latter part of the Middle Ages. Among the early Greek thinkers, the state was more important than any member of the community. Greek thought recognized that the individual could not enjoy a number of benefits like the security of life and property unless he identifies with the community. As a result of the centrality of the state in the advancement of the individual, theories of government began to emerge which attempted to interrogate the absolute loyalty of individuals to the

state. Laws for the organization of state also became a popular feature in the society and individuals are expected to obey the laws of the state so to prevent anarchy. Upon imprisonment and condemnation to death by the state, Socrates refused to escape from prison, a condemnation which he believed to be wholly unjust. This is eloquently illustrative of this unquestionable loyalty to the laws of the state. For Socrates, "the state, despite its mistakes, was to him a mother who had given him life and had made him what he was" (S E Frost, *Basic Teachings of the Great Philosophers*, Revised Ed, Anchor Books, New York, 1989, p. 181).

In his political discourse, **Plato** was convinced that the starting point for the inquiry about the best political order is the fact of social diversity and conflicting interests, which involve the danger of civil strife. He, therefore, argued that Justice is the foundation of good political order, and as such is in everyone's interest. (Plato: Political Philosophy, in Internet Encyclopaedia of Philosophy, <https://iep.utm.edu/platopol/>). He further opines that "Justice is not to the exclusive advantage of any of the city's factions, but is concerned with the common good of the whole political community, and is to the advantage of everyone. It provides the city with a sense of unity, and thus, is a basic condition for its health." (Plato, Political Philosophy). In one of his major works, The Republics, he categorically states that "Injustice causes civil war, hatred, and fighting, while justice brings friendship and a sense of common purpose." (The *Republic*, 351d, quoted in Plato: Political Philosophy, in Internet Encyclopaedia of Philosophy, <https://iep.utm.edu/platopol/>). In both the *Republic* and the *Laws*, Plato asserts not only that factionalism and civil war are the greatest dangers to the city, more dangerous even than a war against external enemies, but also that peace obtained by the victory of one part and the destruction of its rivals is not to be preferred to social peace obtained through the friendship and cooperation of all the city's parts. (Republic 462a-b, *Laws* 628a-b quoted in Plato: Political Philosophy, in Internet Encyclopaedia of Philosophy, <https://iep.utm.edu/platopol/>accessed 16/11/21)

In his advocacy for the best political order, Plato proposes a system that advances social peace in the community and promotes cooperation and friendship among different social groups, each benefiting from and each adding to the common good. In this political system, citizens have a voice in the affairs of the government since their common good is at stake. As a result of these ideals, in his last dialogue, the *Laws* Plato suggests a "traditional polity: a mixed or composite constitution that reconciles different partisan interests and includes aristocratic, oligarchic, and democratic elements." (Plato: Political Philosophy, in Internet Encyclopaedia of Philosophy, <https://iep.utm.edu/platopol/> accessed 16/11/21). Herein, one confronts the cradle of the right of self-determination speaking directly to the contemporary fact that injustice in the polity is at the root of the quest for self-determination of peoples within sovereign independent states.

Aristotle argues alongside his master Plato, that man is by nature a social animal and as such can realise his real self only in a society and among his kind. The end of social evolution starting with a family organisation is the city-state (Greek) and the city-state should be organised and conducted so

that it enables each member to become good and live a happy life. The state loses its lustre and becomes evil if it fails to realise its purpose for the members. The citizens of a political community are partners, and as with any other partnership they pursue a common good. (Aristotle: Politics, In Internet Encyclopaedia of Philosophy <https://iep.utm.edu/aris-pol/> accessed 16/11/21)In this light, the laws and the constitution of the state must be tailored to the nature and needs of the members of that particular group, taking cognisance also of the inequalities and peculiarities of the people within the state. Hence in the understanding of Aristotle, "a good constitution must recognise these inequalities and confer rights accordingly…" (Frosts, Basic *Teachings of the Great Philosophers*, p. 183).

Aristotle argues that people are fundamentally different and this difference within the city allows for specialization and greater self-sufficiency (Aristotle: Politics in Internet Encyclopedia of Philosophy). In his book, The Politics, Book II, he writes that, in such cities where persons are free and equal, "all cannot rule at the same time, but each rule for a year or according to some other arrangement or period of time. In this way, then, it results that all rule…" (*The Politics*, 1261 a 30). This alternation of rule where persons are free and equal speaks to the cradle of the doctrine of self-determination where the state stays preserved by reciprocal equality of persons and groups reflecting active involvement and participation in the decisions that affect their happiness and good life which is the *telos* of life.

The popular view during the renaissance period was that human beings are endowed with eternal and inalienable rights. Many of the philosophers of this era argued that certain rights pertain to individuals as human beings, chief among these rights are the right to life, liberty, and property. Some of these thinkers include John Locke, Jean Jacques Rousseau, and John Rawls. These philosophers turned their attention to social organisation and began to theorise about its origins in order to suggest the best form of social or political organisation.

John Locke as an outstanding social liberal thinker laid the foundation for a number of liberal political themes that were manifest thereafter in many modern constitutions. The overriding thought is that human beings have certain natural rights which are rooted in their very nature but sometimes these natural rights may be limited by the positive law of the state and these laws result from man's choice to live and surrender his freedom to the authority of the state or the sovereign. The state is therefore founded upon a contract that the people make with their ruler. Locke's political ideas may be summed up as follows: "Men naturally move towards social living. In society, men set up law, an impartial judge, and one executive power in order to attend to common interests. This structure is established by a social contract agreed upon by the members of the group" (Frost, p. 196). Locke's attempt was to provide a political space that restrains the state from considerable interference with the affairs of its members including their economic life. Except where the security of the state is compromised, no interference is legitimate. Locke's ideas echo considerably in the west in the later Middle Ages and became literally a flashpoint for the revolutionary agitations that swept the West specifically in North America and some parts of Europe epitomised by the English, American, and events of French revolutions. It thus gave impetus to the eventual declaration of the rights of man in the Americas and

universal acceptance of human rights on the international scene and its recognition in the United Nations instruments.

In the United Nations Universal Declaration of Humans rights of 1948, we observe boisterous support for the advancement of human rights. The underlining thrust of these rights is a notion of liberty that acts as a shield against the abuse and misuse of political power. As the content of human rights continues to be broadly defined at the various stages of modern history, the evolving perceptions of society came close to expanding rights not just for individuals but for communities and peoples. For Locke, the state must accommodate not only individual interests expressed in the rights language but also community aspirations which also border on the exercise of their liberty, right of equality, and justice which if not guaranteed provide a platform for irredentism and revolt against the state sovereign structure. In his word, "That which begins and actually constitutes any political society, is nothing but the consent of any number of freemen capable of a majority to unite and incorporate into such a society and that only could give the beginning to any lawful government in the world." (John Locke, *Two Treatise of Government* (ed. Peter Laslett), (Cambridge University Press, 1960, p. 333)

Mutual consent is at the base of any viable social contract within sovereign states. Mutual consent is anchored on an aspiration that the values of justice and equality must be respected for all, especially for peoples and minorities with less bargaining power within that social contract in the sovereign state. By extension, self-determination is an issue of inclusion and having a voice on the issues that affect people in the community. The sole purpose of government in any social contract is the maintenance of justice and equality. This idea is very vocal among such social contract philosophers like Rousseau and John Rawls who contend that marginalization is a puncture on the social contract as it defaces equality and justice.

Jean Jacques Rousseau extended Locke's idea of democracy and argued that natural society is based on a social contract by which the freedom of the individual is surrendered to self-imposed laws which are the result of the general will. The government tailors itself to the general will and the people reserve the right to recall their government and establish another in its place either through elections as in democratic systems or through other legitimate channels. Under the Social Contract, each person enjoys the protection of the common sovereignty predicated on the general will which is the source of law, and each person subjecting itself to that law being at the same time the individual's will. Rousseau argues 'that in order for the general will to be truly general it must come from all and apply to all. (Jean Jacques Rousseau, Stanford Encyclopaedia of Philosophy, <https://plato.stanford.edu/entries/rousseau/> accessed 8 July 2019). Laws emanating from the general will should therefore secure the common interest impartially and should not be burdensome and unnecessarily intrusive. At the same time, it must be general in application and universal in scope. In this sense, laws must accommodate a wide diversity of lifestyles, cultural differences, and social inequalities. To this extent, Rousseau subscribes to the doctrine of self-determination struggles without using such nomenclature in so far as the general will represents the aspect of the individual will without

more, and where the putative general sovereignty fails to achieve its objective, peoples and person may subscribe to another form of authority that fulfils their aspirations.

John Rawls, another social contract theorist, in his doctrine of Justice as Fairness argues in favour of the doctrine of self-determination following his emphasis on a well-ordered society. He postulates that in a well-ordered society, the 'public conception of justice provides a mutually recognized point of view from which citizens can adjudicate their claims of political right on their political institutions or against one another. (John Rawls, *Justice as Fairness*, A Restatement (ed. Erin Kelly), (2001, The Belknap Press of Harvard University Press, p. 9)

The role of the principles of justice is to specify the fair terms of social cooperation within the political entity. These norms specify the basic rights and duties prescribed by recognised political and social institutions. These institutions regulate the allocation of benefits arising from social cooperation and equally apportion the burdens as the case may be. In a democratic society, citizens are regarded as equal and free, hence justice within such political space must specify fair terms of cooperation between the groups be it, tribal groups, ethnic nationalities, or minorities so contemplated. Any constitutional democratic regime must therefore seek to respond to the overarching objective which is to adopt the most acceptable idea of justice that "specify fair terms of cooperation between equal citizens; terms which are in themselves rational, reasonable and sustainable from one generation to the next" (John Rawls, p. 8) John Rawls underscores the importance of a synergy between formal and substantial justice for any social cooperation whatsoever. Formal justice speaks to an aspect of the rule of law that supports and secures legitimate expectations. (John Rawls, p. 51) It equally ensures that laws be executed within the given structured framework which may of itself be unjust. For instance, there seems to be nothing wrong with a court of law ruling in favor of discrimination in a society that allows arbitrary forms of discrimination using slave trade laws as in the days of the slave trade in the United States. This is to say that sometimes formal justice sanctions unjust arrangements and the beneficiaries of such arrangements for the most part will be reluctant or are not likely to let anything unsettle their interests on the strength that it is the rule of law. Substantive justice speaks to political justice and is connected with 'the desire or at least the willingness to recognise the rights and liberties of others and to share fairly in the benefits and burdens of social cooperation (John Rawls, p. 52). Rawls believes that in any genuine social contract, the strength of the claims of formal justice, of obedience to the system; clearly depends upon the substantive justice of institutions and the possibilities of their reform. Such claim must defer essentially to the two principles of justice, the first of which "ensures equal basic liberties compatible with a scheme of liberties for others while the second principle guarantees social, economic and inequalities arranged to everyone's advantage and attached to positions and offices that are open to all." (John Rawls, p. 53) In any social contract true to its name, by extension, Rawls insists that these principles must govern the assignment of rights and duties, and regulate the distribution of social and economic advantages within the social cooperation at the group level and for individual members within the cooperation. Injustice in Rawlsian thought is simply inequalities that are not to the

benefit of all. Possibilities for reform of the social contract are both necessary and inevitable where the operation of the two principles of justice are not only maximised but transparently absent.

3. Review of the International Legal Regime on the Right to Self-Determination

The growing consciousness of the ethno religious identities within sovereign states especially in some parts of Europe and many parts of Africa has made the right to self-determination a recurrent subject in international law. The right to self-determination is as important as it is contentious in modern international law. It has served as a powerful slogan and a vital justification for the independence of many peoples, most significantly the independence of colonial peoples. In fact, the colonial context is what readily comes to mind when the right to self-determination is brought up and it is the colonial aspect of this right that is uncontested. Understood in the context of decolonization, the right to self-determination in contemporary international law poses no problems. It is ludicrous to question the legitimacy of the right to self-determination in the context of decolonization.

Although the reach and breadth of the right of self-determination have remained a very controversial subject matter in public international law, no one has doubted that it consists of many elements beyond its de-colonization contextual application. Burak Cop and Dogan Eymirlioglu reaffirm this point in the opening statement of their article thus: "Self-determination which is a controversial issue in public international law has many characteristics formulated on different legal platforms." (Burak Cop & Dogan Eymirlioglu, The Right of Self Determination in International Law: Towards the 40th Anniversary of the adoption of ICCPR and ICESCR, (2005) *Perceptions, Winter*, p. 116). Self-determination as a legal principle denotes the legal right of people to decide their own destiny in the international order. This right has been understood as a core principle of customary international law and is also enshrined and protected under a number of international legal instruments such as the United Nations Charter and the International Covenant on Civil and Political Rights as rights of all peoples. The right to self-determination is the right to develop a society in the way that a particular people see fit which may or may not be synonymous with the right to claim of those people to claim independence or to secede though it may not be entirely excluded.

Woodrow Wilson, one of the first statesmen to articulate the right of self-determination realizes the grave consequences of his earlier statement on self-determination and had to attempt a reconstruction of that statement. He had earlier stated in his message to Russia that "No people must be forced under sovereignty under which it does not wish to live." He later explained that "…all peoples should have the government they desire, but the reality of implementing this idea is that states and the international system based on statehood would break down with hundreds of groups claiming independence." (Frederic Kirgis Jr, The Degrees of Self-Determination in the United Nations Era, (1994) 88 *American Journal of International Law (AJIL)*, p. 304). The signal of the United Nations regarding the reach and application of self-determination appears to be unclear and has been interpreted with varying degrees of emphasis.

The UN Charter introduces the principle of self-determination as a principle of international law and makes it mandatory for parties to accord self-determination to their peoples. This is derived from the provision of Article 1(2) and Article 55 of the Charter. The mention of self-determination in the Charter as should be pointed out is within the context of developing friendly relations among nations and in conjunction with the principle of equal rights of peoples. Another UN document, titled "Declaration on the Granting of Independence to Colonial Countries and Peoples", adopted by the UN General Assembly in 1960, mention is made of the right of self-determination and independence of colonial territories and peoples. Peoples, here, admit groups beyond states and includes non-self-governing territories whose people desire to freely determine their political status and pursue their economic, social and cultural development as a right. (Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly *Resolution 1514 (XV)*, 14th December 1960). This was a bold statement regarding the reach of self-determination at a time when decolonization was on the rise and new nation-states that today are members of the United Nations were being conceived upon independence. An important flashpoint of this Declaration is that it recognizes self-determination as a right and brings it within the purview of three important aspects of an organized society, namely social, economic, and political development. While it may be argued that the thrust of this resolution is in regard to the self-determination of colonial territories and their right to self-government making subjugation and any state's title to territory based on colonial status illegal, other aspects of the resolution must not take the backbench. Such aspect is the reference to the right of all peoples to self-determination. It is however uncertain whether peoples could as well be equated with territories in the context of that resolution. The resolution perhaps suggests that there could be self-governing territories in which its peoples could be entitled to of right to self-determination where the need to determine the social, economic, and political development has been undermined.

The International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR) appear very explicit in their expression of the right to self-determination. Article 1 of both covenants provides exactly the same words as follows: "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" (ICCPR & ICESCR, UN GA Res. 220, 1966, Art. 1). By the inclusion of the right of self-determination in these landmark instruments, the right of self-determination has gone beyond a mere political principle and has reached a threshold to be regarded as a legal right in international law that is binding on state parties craving for unequivocal advancement.

Again, international law lends its weight further to the importance of self-determination in the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States. (UNGA Resolution 2625). In its introductory part, the declaration provides as follows: "Every state has the duty to refrain from any forcible action which deprives peoples … of their right to self-determination, freedom, and independence." (Declaration on Principles of International Law

Concerning Friendly Relations and Cooperation among States, Annex to Res. 2625 (XXV) UNGAR. 1970)

While elaborating on this, it maintains that all peoples have the right freely to determine without external interference, their political status and pursues their economic, social and cultural development and every state has a duty to respect this right in accordance with the provisions of the Charter in its promotion of equal rights. Herein, it reaffirms the right of self-determination and equates the violation of the principle with the violation of fundamental human rights (Roya M. Hanna, Right to Self Determination in Re-Secession of Quebec, (1999*) 23 Maryland Journal of International Law* 213, p. 227).

It suggests therefore that self-determination of a people may be advocated where equal rights are not guaranteed in a political setup. This declaration appears to clearly extend the right or the principle of self-determination beyond the colonial context as it seemingly suggests that sovereign and independent states could be established. In addition, it provides for the emergence of the state into any other political status freely determined by a people as a mode of implementing the right of self-determination by that people. Although this declaration was adopted without any negative votes in the General Assembly, its weakness as a binding instrument in international law cannot be overlooked since Declarations of the General Assembly are non-binding. At best, it may constitute opinion juris sufficient for the establishment of a customary rule of international law.

At the regional level, there exists in European Union (EU) a proposal for the European Convention for the Protection of Minorities, code-named Helsinki Final Act of 1975. The Helsinki Final Act seems to broaden the right of self-determination to include a right to secede when it states that, "all states by virtue of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine… their internal and external political status." (Final Act of the Conference on Security and Co-operation in Europe, 14, ILM. 1292 (1975) (Helsinki Final Act) Part VIII).

It is in this context, that international law contemplates two aspects of self-determination, namely: internal and external self-determination. To this end, a noted Encyclopedia defines these terms as follows:

Internal self-determination is the right of the people of a state to govern themselves without outside interference. External self-determination is the right of people to determine their own political status and to be free of alien domination, including the formation of their own independent state (Hurst Hannum, *The Legal Aspects of Self –Determination*, The Princeton Encyclopaedia of Self Determination, <https://pesd.princeton.edu> accessed 10/04/2019).

However, these two aspects of self-determination can be construed as not being inconsistent with the territorial integrity and national unity of states. By implication, under international law, the exercise of the right of self-determination either internally or externally does not necessarily empower or provide an automatic right to "peoples" to unilaterally secede from their parent-sovereign state, especially in a non-colonial context. While admitting that self-determination could be exercised internally within the framework of sovereign states still preserving the territorial integrity of the state, the court in *Re*

*Secession of Quebec (*Reference re Secession of Quebec, [1998] 2 S.C.R 217), observes that the territorial integrity of those states may be infringed upon to give peoples within that state, the right to secede as a mode of exercising their right to self-determination, but not unilaterally that is, without the consent of that state.

The Vienna Declaration records a significant milestone in the development of the right of self-determination. The Declaration categorically considers the denial of the right of self-determination as a violation of human rights and therefore advocates for the effective realization of this right. The Declaration was adopted by the World Conference on Human Rights in 1993 and recognizes the right of a people to take any legitimate action which is in compliance with the United Nations Charter to realize their right of self-determination, especially where states do not conduct themselves with the principles of equal rights and self-determination of peoples within their territory (Vienna Declaration and Programme of Action (Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, <www.ohchr.org/enprofesssionalinterest/pages/vienna.aspx>).

On the African front, "The African Charter on Human and Peoples Rights" (The Banjul Charter) adopted in 1981, recognizes groups as subjects of self-determination beyond the colonial context. Article 20, recognizes two categories of people with a right to self-determination, namely: colonized people and oppressed people. Art 20(1) precisely stipulates that "colonized people or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community." (African Charter of Human and People Rights (ACHPR), <www.achpr.org/intruments/acphr/>) However, one may argue against the backdrop of the practice amongst African states that self-determination does not endorse secession as there is a vehement disavowal to allow ethnic groups in colonial determined territories to break away as part of the exercise of their right of self-determination. This aversion for secession speaks to the intent of the Banjul Charter which is to eradicate all forms of colonization from Africa. In view of the fact that African states adopted the principle of *Uti Possidetis Juris (inviolability of colonial frontiers)*, as an essential part of its regional law in the 1964 Cairo declaration, they invariably consented to respect the colonial frontiers and inadvertently factored that into their interpretation of the principle or right of self-determination of peoples.

Uti Possidetis Juris (UPJ) is a principle of customary international law that serves to preserve the boundaries of colonies emerging as states. Originally applied to establish the boundaries of decolonized territories in Latin America, UPJ has become a rule of wider application, notably in Africa. The policy behind the principle was explained by ICJ in the Frontier Dispute case (Burkina Faso/Mali Case), ICJ explains as follows: UPJ is a general principle which is logically connected with the phenomenon of obtaining independence wherever it occurs. Its obvious purpose is to prevent the independence and stability of new states being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power. Its purpose at the time of achievement of independence by the former Spanish colonies of America was to scotch any designs which

non-American colonising power might have on regions which had been assigned by the former metropolitan state to one division or another, but which were still inhabited or explored. (Burkina Faso/Mali case, ICJ, 22 Dec.1986, par 20)

The acceptance of the *Uti Possidetis Juris* principle by African states as a benchmark for self-determination is unfortunate and ill-advised. The reason is that the circumstances that gave rise to the principle in the first place did not contemplate the African type of formation of colonial territories. The colonial territorial boundaries were fabricated in an arbitrary way; dysfunctional as they were for the people for whom they were meant to identify. Those established borders were hoisted on the African peoples for the benefit of the colonial masters and have remained critical factors for the recurrent conflict, unrest, civil wars, and instability in the many African States. This paper offers that the right of self-determination should be pro-actively reinterpreted in the light of current events and conflicts in Africa so as to reflect the African situation. Again, this study opines also that upon the exhaustion of all peaceful methods for internal/ political self-determination, secession (external self-determination) becomes an inherent fragment for the exercise of that right of self-determination both within and beyond the accepted colonial territorial framework.

In the *East Timor case,* (*East Timor (Portugal v Australia) [*1995] ICJ Rep. 90, para 29), the ICJ recognised that the right of self-determination was one of the essential principles of contemporary international law, generating as it were obligation *erga omnes*, that is obligations that states have towards the international community as a whole. By that recognition, it requires all states to work for the realization of the right not only for the people under their control but also under the control of other states. Notwithstanding this significant milestone in the development of the right of self-determination recognizing both the internal and external forms of self-determination, it still remains difficult for the international body to speak with one voice as to what constitutes self-determination, especially for sovereign independent states in non-colonized situations. The reluctance of the United Nations to legitimize moves for self-determination by way of secession in Europe and parts of Africa except in some selected situations appears to support the position that self-determination and secession rights are mutually exclusive and negate each other.

Again, the use of the term “people” as against “state” in connection with the right of exercise of self-determination has been subjected to conflicting interpretations. However, in many documents relating to the right of self-determination, the juxtaposition of these terms at various times is indicative that the reference to people does not necessarily mean the entirety of the population. It is wrong to restrict the meaning of the term people to just the indivisible population of the sovereign state. The term ‘people’ in the context of the quest for self-determination demands a proper and unequivocal construction. While it may be flawless to maintain that people referring to a particular group along borders of former colonies are eligible subjects for the exercise of right self-determination, the claim of other rather homogenous populations or groups within a sovereign state may not go unchallenged. The problem with extending this designation of people to ethnic groups and minorities within a sovereign state in the context of

self-determination is that it may give rise to unintended consequences for several sovereign states with multi-ethnic constituencies. The principle of sovereignty of state along *Uti possidetis* lines appears to be the greatest setback for the construction of the term people' to include ethnic groups and minorities as subjects for the exercise of the right of self-determination. In negotiating the tension between this principle and the recognized right of self-determination, the preferred approach of the international community and indeed of African states has been to give precedence to preserving colonial borders even in the face of challenging human security threats.

Be that as it may, it is not in doubt that a people may also include only a portion of the population within a sovereign state. In this connection, a number of traits have been listed by United Nations Educational, Scientific and Cultural Organisation (UNESCO) to define the concept of people namely: a common historical tradition, a common racial and ethnic identity, cultural homogeneity, linguistic unity, common religion or ideological affinity, territorial connectedness, and common economic life (UNESCO, "Final Report and Recommendation of an International Meeting of Experts on the Further Study of the Concept of Rights of People," SNS-89/CONF.602/7 (1990).

A people's right to the exercise of their right to self-determination to the point of secession was expressed in the case **Re- Secession of Québec (Reference** re Secession of Quebec (1998) 2 SCR 217 at 54) where the Court held that "the international law right of self-determination only generates at best, a right to external self-determination in situations of former colonies where a people is oppressed… or where a definable group is denied meaningful access to government to pursue their political, economic and social and cultural development...the people in question are entitled to external self-determination because they have been denied the ability to exert internally their right of self-determination."

4. Recent Precedents of the Exercise of Right to Self-Determination of Peoples

1) East Pakistan or Bangladesh: Before Bangladesh got her severance from Pakistan in 1971, the only recognizable right of self-determination by the international community was against the colonial powers. The overarching thinking was that when a defined group of people within an already existing sovereign state makes any claim to their right of self-determination against that State, it would run against the concept of "sate-integrity" and may unlikely gain support from the international community. The demand for the right of self-determination of the people of East Pakistan grew steady through various oppressions, discriminatory practices, and tortures between 1947 to 1971. However, the genocide of the 25th March 1971 was the last straw that cemented the right of self-determination of the people. After the failure of various kinds of peaceful protest, deliberation, and compromise, the people of East Pakistan were forced to declare independence. There is no vestige of doubt that the sympathetic attitude, associated with the assurance of some powerful members of the international community created a congenial atmosphere in favor of the right of self-determination of the people of East Pakistan.

2) Ethnic Albanians of Kosovo: The dissolution of the Socialist Republic of Yugoslavia (SFRY) in 1992 following the Yugoslav wars gave birth to six republics viz: Bosnia and Herzegovina, Croatia,

Macedonia, Montenegro, Slovenia, Serbia with two autonomous provinces within Serbia namely Kosovo and Vojvodina. Kosovo was an autonomous province within the Republic of Serbia made up of ethnic Albanians with a Serb minority. Kosovo's special autonomy was ended by President Slobodan Milosovic in 1989. In the 1990s, the Kosovo Albanians sought restored autonomy or independence for Kosovo which was met with military actions resulting in widespread atrocities. After failed negotiations to resolve the status of Kosovo, NATO intervened bringing the UN security council through resolution 1244 to authorize the UN's administration of Kosovo. Upon failure of efforts at peaceful resolution of the crisis, the Parliament of Kosovo declared Kosovo to be an independent and sovereign state in 2008 which has become the status quo to date with the support and eventual recognition from the international community and major states like France, Germany, UK, and other EU members. Given the international law bias against secession as well as the fact that secession is not absolutely prohibited by international law, the case of Kosovo presents a set of facts that meets the threshold for external self-determination by way of secession namely: an ethnic group with the historically defined territory; suffered human rights abuse and atrocities of its people that was only stopped by UN humanitarian intervention; exhausted all negotiations; leading to a deadlock before the declaration of the severance from the parent state. Kosovo's case is a pointer to the fact that international law admits of and subscribes to the legality of secession as a form of self-determination of peoples within sovereign states under certain circumstances.

3) Southern Sudan: 9th July 2011, would forever be a historic day for South Sudan and indeed for the African subregion when you put in perspective that on that day, South Sudan declared her independence amid the importance that is accorded to the inviolability of colonial borders in African international relations. South Sudan's assertion of its right to self-determination has shaped African regional law vis-à-vis self-determination and the principle of *UTIPossidentis*, the principle under which African states have committed themselves to respect and upholding the colonial borders inherited at independence notwithstanding the problems created internally by such borders. Southern Sudan with its indigenous and Christian-dominated culture has been embroiled in a lot of unrest with the Arab/Islam-dominated northern Sudan since their independence in 1956. The people of southern Sudan even in the year leading to independence made demands for safeguards against northern domination that resulted in the politically marginalized and underdeveloped south. The end of the first Sudanese civil war in 1972 gave birth to the signing of the Addis Ababa agreement which guaranteed southern Sudan regional self-government status within the Republic of Sudan and this got included in their 1973 constitution. In 1983, the Addis Ababa agreement was abrogated by the regime at the time and there ensued 'systematic discrimination practices, denial of equal rights, and the imposition of sharia law on all Sudan. (SA Dersso "International law and the self-determination of South Sudan" Institute for Security Studies paper, Feb 2012, No. 231). Another civil war began which saw millions of southern Sudanese dead, coupled with the millions who were rendered refugees as a result of the wanton destruction of the region's physical infrastructure. In the light of these repeated violations of democratic values together with unrelenting political and cultural oppression, Africa's Inter-Governmental Authority for Development (IGAD) realized that a declaration

accepting the south's claim to self-determination must be negotiated. This Declaration of the principle was signed in 1994. Furthering such development, a Comprehensive Peace Agreement (CPA) was negotiated and accepted in 2005 and this brought to an end the Sudanese two decades of civil war. The CPA was meant to address the root cause of the conflict, create a democratic basis for sustainable peace with timelines for self-determination of the South, the foundation upon which the CPA was built.

Further repeated violations of the agreement fuelled armed struggle against establishments in Sudan leading to the referendum in which entire Southern Sudan voted overwhelmingly to separate from the rest of the country in January 2011 and the eventual declaration of independence in July 2011 with wide recognition from African Union (AU) countries and the rest of world. In all, the history of the evolution of South Sudan as an independent state opines Dersso, "represents a case of self-determination through independence that came about as a result of serious human rights violation and denial of the right to participate in the public affairs and running of the country on an equal basis." (Dersso, 2012).

5. Conclusion

This study has established that the quest for self-determination is a right ostensibly underscored in any social contract. Such right maybe pursued by a people for the purposes of determining what sort of political alliances best advance their well-being and integral development. In the past, this right has been interpreted to mean exclusively the right of colonized peoples to seek their independence. In contemporary times, its import has been expanded in practice and expediency to include the right of a people or homogenous groups within a state for political inclusion and participation in matters that impact their wellbeing within that state, in the absence of which a referendum will be sought to determine their political future as an independent entity.

The international legal framework and scholarship reviewed in this essay have shown that self-determination in contemporary international law should not be understood only with respect to the colonial territorial framework which respects only colonial borders as they existed at the moment of decolonization. It does extend to peoples within sovereign independent states seeking to exercise their right of self-determination internally (political self-determination) or externally (secession). In the case of external self-determination, in spite of the efforts of the opposition to any extension of that framework by the United Nations for reasons of causing partial or total damage to the national unity or territorial integrity of a member state, scholars and courts have given vent to the view that self-determination of people within established territories in the form of secession is neither overtly permitted nor prohibited under international law. Rightly then:

Although, United Nations and its members' states do not support a claim for unilateral secession, in the light of the development which took place after the examples of Kosovo and East Timor, and the decision of the Canadian Supreme Court regarding the claim for Quebec's secession; it is possible to indicate that some exceptional conditions may allow the acceptance of a claim to secede. These exceptional circumstances are; the materialization of secession within the post-colonial context and the realization of

secession against undemocratic, authoritarian regimes violating human rights. (P Nanda, "Self-Determination and Secession under International Law", (2000-2001) *Denver Journal of International Law and Polity*, p. 305)

Allen Buchanan argues similarly that the right to secede should be utilized and consequently legitimized as a last resort for serious injustices and under a limited set of special conditions which includes persistent and serious violations of individual human rights and past unrepressed unjust seizure of territory. (SeeA Buchanan, "Self-Determination, Revolution, and Intervention," (2016) *University of Chicago Journals, Vol. 126, Issue 2,* 447, p. 473).

In the light of these developments, it is now a welcome state practice though not universally accepted that under certain criteria that a "people" could obtain international support for its claim to self-determination in a non-colonial context.

Self-determination of a people, therefore, means the right to have a voice in the political and economic development of people or at best political freedom from the sovereign entity in order to forge a new political and economic future for the emergent state. This played out in the emergence of South Sudan, Kosovo, and Bangladesh and many more are in the pipeline waiting for actualization among which is the self-determination of the south-eastern region of Nigeria predominantly of people of the Igbo ethnic group of Nigeria. The agitation for self-determination by Igbo activists and groups in Nigeria notably IPOB/MASSOB both at home and in the diaspora has reached crescendo points and unless stakeholders engage constructively for a new Nigeria, it may be another Kosovo or Southern Sudan waiting to happen.

Finally, we cannot negate the fact that till today, the ground details of the exercise of the right of self-determination are not free from unresolved conundrum. There is no unanimity among states as to the standard criteria for evoking this doctrine, especially in a non-colonial context. Nevertheless, the concrete application of this doctrine is complicated on account of the impact of the "Great Powers Rule" ingrained in the global community's governance structure. Public international law in most cases is driven by the political posture and shift of powerful countries; hence it gets partisan and propelled in the interest of those countries. Unless the approval of big powers is explicit, oppressed people's dreams and exercise of such rights as self-determination may not be achieved.

References

Aristotle: Politics. (2019). *Internet Encyclopaedia of Philosophy*. Retrieved from https://iep.utm.edu/aris-pol/

Buchanan, A. (2016). Self-Determination, Revolution, and Intervention. *University of Chicago Journals*, *126*(2), 447. ttps://doi.org/10.1086/683639

Cop, B., & Eymirlioglu, D. (2005). The Right of Self Determination in International Law: Towards the 40th Anniversary of the adoption of ICCPR and ICESCR. *Perceptions*. *Winter*, 116.

Desso, S. A. (Feb. 2012). International law and the self-determination of South Sudan (2012). *Institute*

for Security Studies paper, (231).

Frost, S. E. (1989). *Basic Teachings of the Great Philosophers* (Revised Ed, Anchor Books, New York).

Locke, J. (1960). *Two Treatise of Government* (1960) (ed. Peter Laslett), (Cambridge University Press. Hurst, Hannum, *The Legal Aspects of Self-Determination*, The Princeton Encyclopaedia of Self Determination. Retrieved from https://pesd.princeton.edu

Kirgis, F. Jr, (1994). The Degrees of Self-Determination in the United Nations Era, 88 *American Journal of International Law* (AJIL), p. 304. https://doi.org/10.2307/2204101

Nanda, P. (2001). Self-Determination and Secession under International Law. *Denver Journal of International Law and Polity*, p. 305.

Rawls, J. (2001). *Justice as Fairness*. A Restatement (ed. Erin Kelly), (2001), The Belknap Press of Harvard University Press.

Roya, M. H. (1999). Right to Self Determination in Re-Secession of Quebec, (1999). 23 *Maryland Journal of International Law*, 213-227.

Rousseau Jean Jacques. (2019). *Stanford Encyclopaedia of Philosophy*. Retrieved from https://plato.stanford.edu/entries/rousseau

African Charter of Human and People Rights (ACHPR). (n.d.). Retrieved from http://www.achpr.org/intruments/acphr/

Final Act of the Conference on Security and Co-operation in Europe. (1975). 14, ILM. 1292 (1975) (Helsinki Final Act) Part VIII. https://doi.org/10.1017/S0020782900042546

UN General Assembly Resolution 1514 (XV), 14th December 1960

UNESCO, '*Final Report and Recommendation of an International Meeting of Experts on the Further Study of the Concept of Rights of People,*' SNS-89/CONF.602/7 (1990).

Vienna Declaration and Programme of Action. (1993). Adopted by the World Conference on Human Rights in Vienna on 25 June 1993. Retrieved from http://www.ohchr.org/enprofesssionalinterest/pages/vienna.aspx

Cases:

Burkina Faso/Mali case, ICJ, 22 Dec.1986, par 20

East Timor (Portugal v Australia) [1995] ICJ Rep.90, para 29

Reference re Secession of Quebec (1998) 2 SCR 217 at 54