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RESEARCH ARTICLE

Biafra Protest and Right of Self-Determination: Determining States' Obligations Upon Succession

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Abstract

Exercise of right to self-determination that ended in State succession had always come with responsibilities or obligations for the successor State. This study, among other objectives, sought to identify the legal basis of self-determination, the legal implications of State succession, and to ascertain the best approach to the Biafra agitation and how her obligations in the event of succession could be determined. It was qualitative research, dependent purely on secondary sources comprising already existing hard and soft documents. The data, being secondary, were content analyzed. Applying the Nationalism Theory, it was found, inter alia, that: self-determination was founded on international law; there were theories that determined States' obligations on succession; State succession implied substitution of sovereignty; the best approaches to Biafra's agitation was negotiation and/or referendum; and that the best theory was the Optional (Nyerere) doctrine of State succession. Our recommendations included good-governance and democracy; adequate enlightenment; peaceful resolution through applicable means under Art. 33(1), UN Charter; amendment to the UN Charter to declare clearly the legal status of right to self-determination; and that the Optional doctrine should be adopted wherein both Nigeria and Biafra should be involved, mutually and reciprocally, in reaching agreements.

Keywords	*Biafra Protest; Right of Self-Determination; State Succession; Rights and Obligations*
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Introduction

There is nothing impossible about realizing the independent State of Biafra. Nonetheless, we do not prognosticate or subscribe to the dismemberment of the Nigerian State, but States are persons and, therefore, are no less involved in the biblical injunction, "Go into the world, increase and multiply" (Genesis 1:28). So new States will continue to emerge in the international system with all the perquisites. Hence, Shaw (2010) observed that "[P]olitical entities are not immutable. They are subject to change. New States appear … precipitating problems of transmission of right and obligations" (2010: 956 – 7). What may reduce the profusion or frequency of this change includes good governance and proper education/enlightenment.

As it were, appearance of new States is, often time, a child of constraint or circumstance. Thus, peoples and States are wary or concerned about how not to mismanage this mutation or its process, with its dire consequences on development, state stability and international peace. The push-pull conflict between the Federal Government of Nigeria and the Biafran agitators, especially those under the aegis of the intrepid and resilient Independent Peoples of Biafra (IPOB), evince the social, political and economic bases of the struggle, namely cultural intolerance, right of self-determination and control of important territorial resources respectively.

The Biafran movement goes beyond mere patriotism. It involves nationalistic political action to address or reverse a feeling of injustice, marginalization, suppression or oppression. The affected peoples of the Southeast, South-south up to the former Bight of Biafra, and recently including Benue State in the middle belt of Nigeria, with that common feeling of injustice and insecurity, are left with no option than to agitate for self-determination. The methodology, propriety and consequences of this resolve is sought to be assessed in this study.

The above investigations were carried out through such questions as: (a) What is the best approach to Biafra agitation for statehood? (b) What are the legal bases and result of self-determination? (c) What are the legal implications of State succession? (d) How can Biafra's obligations on succession be determined? and (e) Which theory best protects Biafra's integrity and national interest? These were tackled in Parts 3 – 6 infra, including conclusion and recommendations.

Theoretical Framework

Biafra protest, founded around a feeling of injustice against a group with cultural identity, would better be addressed by the theory of nationalism. Nationalism, as a sentiment, dates back to the era of William Shakespeare (1564 – 1616) and has continued in the Napoleonic Europe and up to late 20th Century, widely described as the age of nationalism with hundreds of emergent States. Its modern awareness is traceable to Mahatma, K. Gandhi (1869 – 1948), J. Nehru (1889 – 1964), and K. V. Krishna-Menon (1896 – 1974) who used it successfully as an ideological tool or movement to fight for India's independence.

Nationalism underscores "… the primacy of national identity over the claims of class, religion, or humanity in general, … better understood in terms of the linguistic, cultural, and historical factors which bind them to a particular territory than by reference to their general human capacities" (McLean & McMillan, 2003:361). Nationalism, whether international (for freedom from foreign domination) or domestic (against internal oppression), arises from "… the awareness of a separate cultural identity, and the feeling of injustice… whether objective or subjective, that eventually create the agitations for forms and degrees… of socio-economic and political self-determination" (Igwe, 2005: 284).

Emergent States, and oppressed nationalities, have used nationalism as a hypnotic war cry for maintaining socio-cultural, political and economic autonomy, because shared or common experience, more than birthplace or language, has become the common denominator of the nationalism theory. Hence, we have such multilingual nationalities like the Swiss, Indians, Belgians, and even America and Israel "whose known ancestors transferred from another nationality" but integrated by common encounter or feeling (McLean & McMillan, 2003; 362). Political independence, notwithstanding the straits, is usually the common goal and aspiration of any nationalist movement whose grievances have not been given adequate constitutional treatment. Thus, freedom fighters are often not deterred by the reality that the new State may not correspond to a nation-state, or that it is "… too small for

successful defence or economic management, (or that it might have) regimes which were oppressive or illiberal, and ethnic grievances which have proved persistent" (McLean & McMillan, 2003).

Conceptualizations

I. Self-Determination

The origin of this concept has been ascribed to the Post-World War I Europe. It is based on the principles of nationality and democracy, with the object of minority protection. Although it was given wide recognition by President Woodrow Wilson and the USSR, it was not included in the League of Nations Covenant. However, earlier than its origin from "… the minority treaties of the First World War Peace Settlement and the Mandate System" (Umozurike, 2007: 51), it was long applied through plebiscite in the Savoy (1872) and Nice (1873) cases. It only got to the colonial territories after the 2nd World War (1939 – 1945) during which it was associated with national liberation and, therefore, a grandiose "… battle-cry for anti-colonialism" (Umozurike, 2007). Without doubt, self-determination has been recognized as one of the lawful means of achieving independence, for example, Zimbabwe in 1980 and Bangladesh in 1976. Its lack, among other factors, caused the non-recognition of Southern Rhodesia as a State before 1965, or the Turkish Cypriot (Turkish Republic of Northern Cyprus) in 1983.

Self-determination, therefore, broadly means the right of a people to change, decide or specify their political status, control their natural resources and their socio-eco and cultural development. Like an election, which it actually is, the populace make their choice on strategic national issues, in the exercise of their right of self-determination, usually through referendum or plebiscite. There could be no true democracy, especially for the minorities, without due regard for self-determination. Thus, although, self-determination is argued to be inapplicable "in a non-colonial context" (Harris, 2004:112), a government that lacks democratic base equips the minorities with opportunities to seek political autonomy. Recent examples include Czechoslovakia, Yugoslavia, Ethiopia and Sudan. Such examples show that, even though the UN is vehemently against self-determination that disrupts, either partially or totally, the national unity and territorial integrity of a sovereign State, it could still apply in circumstances of "extreme and unremitting persecution," coupled with the "lack of any reasonable prospect for reasonable challenge" (Shaw, 2010: 522 – 3; Cassese, 1995; Castellino, 2000; Knop, 2002; Kohan, 2006).

Accordingly, the 1966 International Covenants on Human Rights (ICHR) (in force in 1976), in their Common Article 1, provide that "all peoples have the right of self-determination of their political status…" It also provides that State parties thereto, "… including those having responsibility for the administration of Non-Self-Governing and Trust Territories…," **shall** promote the realization of that right. The combined effect of these provisions is that the peoples' right and States' obligation thereunder are mandatory and that not only in colonial territories are these rights and obligations available or enforceable. The International Covenant on Civil and Political Rights 1966 (ICCPR) further avails Nigeria and her peoples, to the effect that discriminatory derogation therefrom "solely on the ground of race, colour, sex, language, religion or social origin" is precluded (Art. 4(1)), and the "Covenant shall extend to all parts of federal States without any limitations or exceptions" (Art. 50).

However, the tail end of Art. 1, para. (3), ICHR, appears to turn the table, or relapse this right and obligation to the 1945 United Nations Charter. The latter, without any authoritative text on self-determination, gave the concept mere political and moral status, as affirmed in the *Aaland Islands* case. This is because, the said para. (3) provides, inter alia, that respect of the right to self-determination "shall" be "in conformity with the provisions of the Charter of the United Nations." And, accordingly, the said Charter addressed the right in general terms. Articles 1(2) and 55, and Chapters XI (on non-self governing/colonial territories) and XII (on trust territories) do not particularly and unequivocally invest the concept with enforceable legal rights. However, the 1960 Colonial Declaration, the 1966 ICHR and the 1970 Declaration on Principles of International Law, including several resolutions by the UN General Assembly and the Security Council, particularly UNGA Resolution 1514 (xv) of 14 December, 1960, and "… application in specific instances…" (Shaw, 2010: 252), irrefutably purport the concept to be a right in international law and binding on States.

For example, it was applied as a legal right in the cases of Southern Rhodesia, Zimbabwe, Bangladesh, Turkish Cypriot, Namibia, Western Sahara, and indeed in East Timor (*Portugal v. Australia*) where it was held a legal right with *erga omnes* character and "one of the essential principles of contemporary international law." The Court noted

its status beyond 'Convention' in the *Reference Re Secession of Quebec* case. However, notwithstanding the UN role in developing the self-determination principle, it appears to limit the concept to decolonization processes in favour of inhabitants of non-independent territories," thereby conferring no right of secession from an already independent State except in proven extreme circumstances (Sahw, 2010; 522 – 3). Even the UN is not allowed to intervene in a matter essentially within the domestic jurisdiction of any State (Art. 2 (7)), nor States allowed to forcibly assist a secession as "… other States are under … duty of non-recognition …" of the new State (Crawford, 2006:99).

Simplicita therefore, oppressed peoples should work out their own political status/ salvation through self-determination which is perceptibly available to all peoples (Common Art. 1, ICHR, 1966), whether in metropolitan or colonial territories. There are several instances of specific applications of self-determination, as noted above, including Iceland, Bangladesh, Czechoslovakia, Yugoslavia, Sudan, Ethiopia/Eritrea, Southern Rhodesia, Zimbabwe, Namibia, Western Sahara, East Timor, Turkish Cypriot, etc. Even though "All" in logic, is selective or not all-embracing, "All peoples" is definitive, pointing to human not every being. Therefore, "All peoples" in Common Article 1, ICHR 1966, and more so "of peoples" in Arts 1(2) and 55, including Chapters XI and XII, of the UN Charter, do not directly, or by necessary implication, restrict the right of self-determination to either colonial, trust or self-governing territory peoples. It is applicable even in independent States which are not "… conducting themselves in compliance with the principle of equal right and self-determination of peoples…" (UN Declaration on Friendly Relations, 1970) .

II. Statehood

An independent country in international law and international relations is called a State. States have become the most dominant actors in the international system, according to which the world is divided and organized. However, states did not exist before feudal Europe (9^{th} – 4^{th} centuries BC) (Sabine & Thorson, 1973). At that time, the world was stateless and more anarchic than as widely alleged today. Plato (428 - 348 BC), with his student, Aristotle (384 – 322 BC), held that *Polis*, as he called State, evolved from the family (Nwoko, 2006). It emerged in order to entrench rule-governed society and protect man from mutual annihilation, or according to Kautilya, "law of the fishes" where, "a large fish swallowing a small one" (Appadorai, 2003:20). State is part of Society. It emerged to become one of the intricate groups and associations composing the society. However, it was empowered to control such other institutions or bodies within its jurisdiction. Yet none, even entities outside its jurisdiction, could control it except treaties it is a party or the customary international law.

Defined variously, State is "… society in its political aspect" (Appadorai, 2003:13), or, according to Machiavelli, "a sovereign political body … having for its ends a perfect and self-sufficing life" (Prakash, 2010:34). The importance of State in human association, perhaps, informed its qualification by Laski as "… the keystone of the social arch" (2007:21), and he defined it as "… a territorial society divided into government and subjects, claiming, within its allotted physical area, supremacy over all other institutions" (*Ibid*). To be as supreme, such entity must have recognition in international law "… as possessing rights and duties enforceable in law" (Shaw, 2010:195). That recognition gives the State the legal personality to enforce those rights, duties and claims.

Although with varying capacities according to their resource - man and material, States are equal in international law (Art. 2(1) UN Charter), with same features. Right from the West European Scholars of International Law and International Relations, prior to the 1648 Treaty of Westphalia, up to the Montevideo Convention on the Rights and Duties of States 1933 (Art. 1), and adopted by the American Reinstatement of International Law 1965, a State should have a defined territory, permanent population, a government and sovereign capacity to voluntarily enter into/maintain relations with other like entities (Utobo, 2014; Harris, 2004; Nnoli, 2003). Perhaps, as condition precedent for a State to enjoy the above features, Lauterpacht added that it must attain independence, a status widely held as coterminous with sovereign capacity (Per Judge Huber in *Island of Palma's* case).

As it were, the above qualities have undergone modifications in international law. For e.g.; sovereign capacity as we have it today was called 'monopoly of force.' The former is a more integrative and democratic construct, underscoring a state's freedom to create and sustain international relations without compulsion (*Wimbledon* case. See also Art. 6, Vienna Convention on the Law of Treaties 1969, among others). However, there is, currently, an opening on the exclusivity of relations capacity because, nowadays, components of a State, international organizations and some other bodies, can, with the leave and delimitation of the national government, enter into relations with other states or components thereof (Shaw, 2010).

Similarly, population, as a feature, has no lower limit, because even the Vatican City, with less than 1000 people, is a State, although not a member of the UN. But a population, aside normal motility, must be settled and permanent rather than vagrant or peripatetic homeless vagabonds. Nonetheless, population is an invaluable State resource, the more the quantity and quality, the greater the visibility and audacity of a State, e.g., the U.S; China, India, Russia, Japan, Brazil, Britain, France, etc. So also, there is no lower limit to the size of a State's territory. Example, the Vatican City is about 0.44 sq Klm (less than 100 acres) in area. What is required of territory is for it to be stable, specific and particular, and not necessarily contiguous, defined, certain, or settled, but must be under a State or Government's exclusive control or possession even if contested by another State or government (Shaw, 2010; Utobo, 2019; Crawford, 1999). Hence, Albania, Israel, Pakistan, etc; were recognized as States notwithstanding contestations over their territorial frontiers.

Also, government is inevitable to statehood because, powered under law, according to Durguit (1921: 22), it "… maintains within a community, territorially demarcated, the universal external conditions of social order." Government ensures the realization of the major objects of statehood, namely social justice and welfare. Although effective government is essential for statehood (Shaw, op. cit), its instability or temporary absence and, perhaps, loss of substantial control, due to political disruption, e.g.; civil war, cannot (unlike before the World War II) vitiate the status of the State in international law. Accordingly, Kosovo, Croatia and Bosnia and Herzegovina secured UN membership amidst their civil wars. That was to show that lack of government's sophisticated apparatus (per *Western Sahara* case) or political turbulence should not be suffered to defeat a state's standing in international law (Ratner, 1993; Frank, 1994).

All the above qualities being in place, a new state, except for prematurity, or attained to promote such unlawful purpose(s) as apartheid, etc, should be recognized by other states, albeit discretionally. This is to enable it to lawfully enjoy its "right of legal action," "validity of government acts," "State immunity" and "conduct of inter-state affairs" (Utobo, 2010: 35-6). Nonetheless, recognition is not only discretionary but also a political issue and, therefore, could be withdrawn any time by the recognizing State in line "… with its political interests" or national interest (Shaw, *2010*; 468).

III. State Succession

Changes inhere in States as political entities, and one of such changes is succession. State succession "… is governed by the principles of international law…" (Harris, 2004:123), however inconsistently, as "much will depend upon the circumstances of the particular case…" (Shaw, 2010:959). Although complex, and "… one of the most disputed areas of international law" (per German Federal Supreme Court in the *Espionage Prosecution* case), State succession is lawful and enforceable. It is not like succession of governments in municipal law, by either revolution or rebellion, which may be a criminal act. However, all these acts – revolution, rebellion and succession – involve "… the devolution of rights and obligations on both internal and external changes of sovereignty" (Umozurike, 2007:176).

Thus, State succession, in international law, specifically refers to the assumption of competence, rights and obligations by a new State over a territory hitherto under the jurisdiction of another subsisting or extinguished State (Utobo, 2019). Such assumption or succession can arise from States merger or unification, dissolution or disintegration due to cession, secession, cessation, annexation, absorption, adjudication, or revolution. Whatever the mode, what is material is that the predecessor state ceases to exist, partly or wholly, while a new, successor, sovereign emerges. For example, the Federal Republic of Germany emerged from the unification of East and West Germany in August 1990; the USSR arose in 1922 from the unification of 15 republics under the 1917 Bolshevik revolution; the dissolution or disintegration of the USSR in 1991, and Yugoslavia to form inter alia, Serbia and Montenegro in 2003 and 2006 respectively; and the secession of Iceland and Bangladesh from Denmark and Pakistan respectively, among others.

Every substitution of legal personality, "… of one State for another…" (Umozurike, *2007*), is governed by the rules of customary international law through the guidance of the 1978 and 1983 Vienna Conventions relevant to State succession. Common Article 2 of both Conventions defined State succession as "the replacement of one state by another state in responsibility or the international relations of that territory." The particular date of that replacement has invariably been accepted as the date of independence of the new state, except the Baltic States (Estonia, Latvia

and Lithuania) whose case was the 1991 restoration of their post-World War I independence, lost in 1941 due to annexation, in 1940, by the Soviet Union.

Howbeit, this replacement or assumption upon succession, of responsibility or relations, is not automatic or peremptory. This is because the new government or new sovereign reserves the right to inherit or disclaim all or some of the obligations of the predecessor state or government. For example, the 1917 Bolshevik Revolution-born USSR disclaimed obligations created by the overthrown Tsarist Government of Russia. Also, Nigeria disclaimed obligations undertaken by the intercepted secessionist Biafra. Nonetheless, a *de jure* government will neither disclaim obligations entered into when it was *de facto*, nor could a new state be legally compelled to inherit obligations incurred by its predecessor *de jure* government towards crushing the rebellion.

IV. Colonialism

Self-determination, or agitation to decide political status and control socio-economic and cultural development, is not limited to colonial territories. As an essentially democratic doctrine, self-determination is no less relevant to independent states where there is still what Michael Hechter (1975) called "internal colonialism" (McLean & McMillan, 2003:92). It is important, therefore, that we understand colonialism, in the broad and attitudinal sense, as a relationship that is not purely external or European, nor a necessary precursor or prelude to territorial independence, or bottled-up to the late 19th to late 20th centuries. Thus, colonialism is not completely about foreign conquest, external domination/rulership and exploitation by the European imperialists or other States, although it is commonly so associated or conceived.

Municipally therefore, colonialism still exists in most regions or independent States so long as such areas are characterized by born-to-rule mentality, human rights denial, suppression, oppression, and "… unwarranted sense of racial superiority and the set of attitudes, beliefs, and practices that sprang from this sense" (McLean & McMillan, *Ibid*). By this sense of superiority, the ruling region(s) occasionally "… resorted to force as the ultimate instrument of bringing unrepentant societies to reason" (Igwe, 2005:74). This whipping into line is purveyed through the collusion and condonation of stooges from the tagged peripheral regions who are on the pay roll of the ruling dominant region(s). Such peripheral regions are described by Michael Hechter, in his book *Internal Colonialism* (1975), as internal colonies. These are those regions of the State regarded as less important or at the social and political outer edge, and under the dominant regions' apron strings.

Therefore, colonialism is still within some independent states, and should be protested against by the victims, or supposedly peripheral regional/groups, of such states for restructuring, even up to secession. Without exception, every colonial territory, internal or external, is characterized by ill-treatment of natives, discrimination, marginalization and oppression. Imposition or loss of adequate participation and control, or such other indicators of bad governance and abuse of human rights, characterize colonialism and occasion nationalistic protests. According to McLean and McMillan (*op. cit*), those independent countries that dehumanize or discriminate against some sections of their population on any ground, or stifle democracy "… are colonialism brought home," and should expect resistance and threats to their corporate existence.

Biafra Protest: Approach, Bases and Result

Biafra movement is comparatively known for peaceful protest and representations. The few cases of resort to acts of civil disobedience, such as solidarity matches in major cities and towns, declaration of sit-at-home, closing of major markets for one commemoration or the other, or other acts of non-cooperation, are intended to call attention to the cause(s) of their grievance in order to influence changes. This is founded, according to Archibald Cox, on the trite fact that "… sharp changes in the law depend partly upon the stimulus of protest" (Garner, 2004:262). However, the best approaches to self-determination, either on their own or arising from the peaceful protests and representations, are negotiation and referendum. The latter appears more feasible, because the Nigerian Government, for fear/avoidance of breakup, and in defence of its obligation to protect the unity and sovereignty of the country (Section 2(1), 1999 Constitution (as amended)), is already prejudiced against Biafra movement as to allow for negotiation. Besides, the Independent Peoples of Biafra (IPOB), among others, in the Biafra movement, have been proscribed. And negotiation is a two-party exercise.

Where such direct, bilateral talks, or such other options (Art. 33 (1) UN Charter) as enquiry, conciliation, arbitration, mediation or other peaceful means of parties' choice, including good offices, fail, then there should be resort to referendum. The exigency of a referendum on Biafra agitation lies on the need to ascertain the popular pulse of the 'assumed' Biafra public in order to put a democratic seal on the protest. The European Community employed it in the Socialist Federal Republic of Yugoslavia (SFRY), and it peacefully ascertained Bosnia and Herzegovina's preference for sovereignty. The African Union (AU) could do same in the Nigeria-Biafra malignant imbroglio. The UN should come in, as it did in Western Sahara (per Security Council Res. 690 (1991)). Although there is no requirement in international law for parties to first exhaust diplomatic options before resort to judicial treatment, the latter cannot yet avail Biafra since it is not a sovereign state as to be a competent party in a contentious action before the World Court (Art. 34, ICJ Statute). Nonetheless, it may be entitled to the advisory opinion of the Court (Arts. 96, UN Charter; 66, ICJ Statute).

It is instructive to note that, even though the establishment of a new sovereign is often presumed, it is not every act of self-determination that ends up in an independence or break up, as to make states apprehensive of the exercise of that right by its peoples in pursuit of their welfare and justice. In fact, as observed by Umozurike (2007:52), "the fundamental purpose of self-determination is the democratization of government." It allows for peoples' consent, accommodation and participation in the type of political association they choose to adopt – confederalism, federalism, unitarism, etc. Hence, a break up or other restructuring becomes expedient under certain/extreme circumstances. Under such circumstances, the Declaration on Friendly Relations 1970 restated the obvious, that "the establishment of a sovereign and independent state, or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."

As it were, even secession can result from a situation of obstinate or headstrong suppression, oppression, mindless destitution or calculated and flagrant official abuse of human rights. Severance from such state becomes the hard and only option to evade privation, repression or even extermination. For example, Chinua Achebe recounted in his *There was a Country...* (2012) the hardship among the Biafrans, especially during the Nigeria-Biafra War, "... through starvation - eliminating over two million people…", and the post-war scything policies to emasculate the Igbo (*The News*, 12 November, 2012:14,19). Thus, on whether a people could resort to secession, Umozurike (2007, 53) affirmatively answered:

> Yes. If, for instance, majority or minority insist on committing an international crime, such as genocide, or enforces a wholesale denial of human rights as a deliberate policy against the other party, it is submitted that the oppressed party, minority or majority, may have recourse to the right of self-determination up to the point of secession.

Unequivocally, self-determination, as a political (and strongly argued, legal) principle "… applies to all peoples, whether in metropolitan or colonial territories and whether they are minorities or majorities…" (*Ibid*). Like any other protest founded on the liberation theology, it is a "… commitment to oppose social, economic and political repression… exploitation and oppression…" (McLean & McMillan, 2003:312). Several regional, sub-regional and global bodies have made provisions and resolutions pursuant to that commitment. Although a number of these legal bases were identified in Part 3(i) above, we need to redo this with some more others, albeit inexhaustive, because the list falls due in this part. They include:

i) Articles 1(2), 55, and Chapters XI and XII, UN Charter;
ii) Common Article 1, International Covenants on Human Rights 1966 (in force 1976);
iii) International Covenant on Civil and Political Rights 1966, particularly Arts. 4(1) and 50.
iv) UN General Assembly Resolutions 1514 (XV) of 14 December 1960; 1755 (xvii); 2138(xxi); 2151(xxi; 2379(xxiii); 2383(xxiii); etc
v) UN Security Council Resolutions 183(1963); 301(1971); 377(1975); and 384(1975).
vi) African Charter on Human and Peoples Rights 1981 (Art. 20).
vii) The Helsinki Final Act 1975

These instruments, among others, underscore all peoples rights to self-determination and States' obligations to promote same and protect it from abuse. In fact, self-determination has become a general principle of international law, well above covenants, and placed legal obligations on States, with or without their consent, thus, *erga omnes* (*East Timor, Supra*). Accordingly, Umozurike (*2007,* 53-4) put that right above territorial integrity and sovereignty as these "… cannot be excuse for the commission of international crime… gross abuse or denial of human rights by an intolerant government." Much as self-determination is not allowed to "be utilized as a legal tool for the dismantling of sovereign States" (Shaw, 2010: 289-93), it is a right to all peoples beyond colonial context, whose practice since 1945 has "… ultimately established the legal standing of the right in international law" (*Ibid*: p. 251-2). Where prudently exercised, especially avoiding threat or use of force, self-determination, as partly noted earlier, "may result in independence, integration with a neighbouring state, free association with an independent State, or any other political status freely decided upon by the people concerned" (*Ibid*: p.257).

State Succession: Implications and Obligations

State succession as noted in Part 3 (iii) above, in short, implicates the substitution or replacement of one State by another in terms of the former's responsibility or international relations over its territory (Common Art. 2, 1978 and 1983 Vienna Conventions). It also implies the independence of the new state(s) with effect from the date of that replacement, unless the replacement is in restoration of lost independence, as signified in the Baltic States of Estonia, Latvia and Lithuania. It follows that State succession is monumental to statehood, because, whereas it disrupts or interferes with the territorial integrity of one state, either partially or wholly, it can create another brand new sovereign state(s). This creation depends on whether a succession is due to a merger/unification or dissolution/disintegration. Prior to that substitution, there are rights and obligations appertaining to the predecessor state which now inure to the successor state.

As it were, what determines the nature and quantum of responsibility or obligation undertaken on succession is the underlying theory of that assumption of title or sovereignty. There are three basic theories which govern this exchange, viz the *Continuity*, the *Clean-slate*, and the *Optional* doctrines (Umozurike, 2007:177-181). The theory of continuity presupposes devolution, whereby all the sub-theories, viz the theory of universal succession, the organic substitution theory and the popular continuity theory, allowed the colonial powers to hand down all their rights, benefits, obligations and responsibilities over the material territory to the emergent decolonized State. However, under the popular continuity theory, only the social, not the political, personality is inherited by the successor. States have often resisted the continuity theory, especially the universal succession form, in protection of their sovereignty and equality in international law.

Conversely, under the Clean-slate, or *Tabula rasa*, theory, the succession empties the predecessor's obligations, so that nothing passes to the successor. Thus, the successor starts on a clean-slate, without inherited obligations or liabilities. This dutiless inheritance made the colonial powers to employ this theory in colonial acquisitions, thereby paying no compensations or respecting no arrangements hitherto entered into by the indigenous rulers. But the optional doctrine emerged in resistance to the continuity and clean slate theories because they are pro-West. Otherwise called the Nyerere Doctrine of State Succession, the optional theory reveres state sovereignty and self-determination, thereby preserves the successor state's right to choose "… whether to adopt, modify through negotiation, or reject…" any right or obligation, based on its national interest (Umozurike, 2007: 179).

As a result, new states can, under the 'opting-in formular' of optional doctrine, retain a treaty obligation for a fixed time. These qualities made the Nyerere doctrine so fashionable that, not only did the African Conference on International Law and African Problems (held in Lagos in 1967) adopt it for African States, but the colonial powers and the Vienna Conventions of 1978 and 1983 endorsed it. For example, Arts. 16 and 17 of both Conventions give States right of option to become a party to a treaty, except a customary law treaty. Further, the Arbitration Commission on Yugoslavia held that parties could "… together settle all aspects of the succession by agreement" (Opinion No. 19).

Besides that this theory upholds the sovereignty and equality of States, it enhances diplomatic relations and good neighbourliness, as it requires both States (predecessor and successor) to consult with each other and agree on any question relating to the succession. Also, this doctrine had been adopted in Kenya, Burundi, Malawi, Uganda, Zambia, DR Congo, Central African Republic, Malagasy, Guyana, Barbados, Mauritius, and Mozambique, among

others. Without more, the optional/Nyerere doctrine is not only preferable, as most protective of Biafra's integrity and national interest upon succession, but also best guarantees friendly relations between her and Nigeria, and development in the region.

Conclusion and Recommendations

We need to reiterate that this study does not advocate secession or the dismemberment of the Nigerian State. It merely observes that self-determination is politically based on democratic right of all peoples to choose their political status. Besides, it is legally based on a number of conventions and international regulations, including the UN Charter, African Charter on Human and Peoples Rights, the 1978 and 1983 Conventions on Succession, UN General Assembly and Security Council resolutions, among others. Although available to all peoples, colonial or non-colonial, and without discrimination on any grounds, self-determination, whether by protest/agitation, referendum, or other civil means, requires peaceful approach, because threat or use of force could vitiate the right thereunder.

Accordingly, the best approach to Biafra agitation for self-determination is negotiation and/or referendum, with requisite international assistance, subject to the UN principle of non-intervention (Art. 2(7) UN Charter). Where the exercise of right to self-determination leads to state succession, the implication usually include substitution or replacement of sovereignty, independence, integration or association with independent state or other lawful political status voluntarily chosen. Nonetheless, such obligations depend on, or are determined by, the theoretical basis of the succession. There are three of such theories, viz the continuity theory, the clean-slate theory, and the optional theory, otherwise called Nyerere Doctrine of State Succession.

As it were, the Optional theory would best protect Biafra's national interest in the event of succession. This is besides ensuring continued friendly relations with Nigeria, because both entities would "… together settle all aspects of the succession by agreement."

The following recommendations, among others, accordingly become germane:

i) *Good governance*: The primary source of affection or disaffection with the state among its peoples is its leadership. A responsible government should provide the prerequisites of good life and public welfare – healthcare, employment, security, equality, education, etc. As interest is the only permanent socio-political factor, there might be no need for agitation for self-determination, including secession, where the peoples' welfare is adequately guaranteed.
ii) *Peaceful Resolution*: Article 33(1) UN Charter, does not limit pacific settlement of disputes to either independent States or international disputes. It clearly says "[T]he parties to any dispute…" Such peaceful resolution mechanisms include negotiation, arbitration, mediation, conciliation, etc, thereunder, except judicial means which cannot yet avail Biafra, because it is not a sovereign State. However, advisory opinion of the ICJ could assist in realizing peaceful resolution.
iii) *Adequate enlightenment*: Besides recommending self-determination, referendum and plebiscite as democratic processes, there is need for proper education that they should be respected and that they do not involve force or intimidation. They are only mechanisms for the people to choose their political status, or how they want to associate with the state or its government. Nigeria stands to lose nothing, but everything to gain, by allowing referendum/plebiscite on Biafra. The status quo needs to know, too, that an intolerant government, undemocratic and abusive of human rights, pokes the fire of dissent, political instability and even secession.
iv) *Mutual agreement*: In addition to recommending the Optional or Nyerere doctrine in determining states' obligations in the event of succession, in deference to their sovereignty, equality and national interest, it is also important for the parties to jointly and reciprocally agree, according to the Arbitration Commission on Yugoslavia, on all aspects of the succession. This would boost diplomatic relations between them and general development.
v) *Clarity on the legal status of right to self-determination*: Unequivocally, the right to self-determination, under Arts. 1(2), 55 and Chapters XI and XII of the UN Charter, inter alia, lacks enforceable authority. There is need, therefore, for relevant UN resolutions or amendment to its Charter removing this right from presumption or moral/political suasion to clearly stated legally binding and consistently enforceable right available to all peoples without distinction howsoever. Thus, this legal status should be declared rather than inferred from

specific applications which might leave it inconsistent and merely persuasive, however preponderant the instances of its application.

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