
Right to Self Determination in Globalization Era

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Abstract: *Conflicts are not modern. Through the quandary of first and second world wars, states embraced norms to mitigate reoccurrence of conflict intra and interstate. From the Montevideo convention on rights and duties of states 1933, Westphalia treaty 1648, to the universal declaration of human right 1948. While these global norms grant states legitimacy more so acknowledge its sovereignty, it inter alia grants protection of right and choices of indigenous people in determining how and who governs them "right to self-determination". However, there is a prevalence of human right abuses, reinforced by conflict created by these norms. While the state strives to protect their sovereignty, indigenous people clamor for the protection of their right to self-determination. Through appraising the Catalonian and the Biafran secessionist struggle this paper acknowledges state sovereignty. However, argues that rights to self-determination of indigenous people should take precedence over sovereignty.*

Keywords: Globalisation, Human Rights, Self-determination, Sovereignty.

INTRODUCTION

Globalization is impacting not only on our daily lives but also on relationships between states, non-state actors and redefining boundaries. This has weakened understanding of emerging intricate relationships that exist. Realizable wars and conflicts of new dimensions are widespread globally. While scholars, governments, and organizations implement their views to enhance a sustainable solution, the conflicts still exist and expand with time.

Historically there are global norms on human right (universal declaration of human right 1948) on wars (Hague convention of 1899 and 1902), on recognition of state (Montevideo convention on rights and duties of states 1933 and the Westphalia treaty 1648) remarkably the united nation treaty of 1966 which grants indigenous people right to self-determination is seen to be a trigger to this modern global upheaval.

Decades ago the universal right to self-determination of 1966 was a passport to the creation of new states these new states were guaranteed sovereignty from the offshoot of the Westphalia treaty. Visibly today is the conflict between the right to self-determination of indigenous people and the sovereign right of states to protect their territorial integrity.¹ This conflict is because of no clear roadmap for the enforcement of this global right.

This research will unravel if right to self-determination is a trigger to the contemporary conflict and determine how to create a balance between the right to self-determination and sovereignty. A comparative analysis of the Biafra secessionist movement in Nigeria and the Catalonia call for independence in Spain will be visited to draw a design for implementation of this global right to end the contemporary feud.²

¹ Hoffmann, T. & Chochia, A. (2018). The Institution of Citizenship and Practices of Passportization in Russia's European Neighborhood Policies. In: A. Makarychev, T. Hoffmann (Ed.). *Russia and the EU Spaces of Interaction* (223–237). Routledge, Taylor&Francis Group.

² Ramiro Troitino, D.; Chochia, A.; Kerikmäe, T. (2017). Critics of the Catalan Independence Process and Catalan Political Nationalism. In: W. Strickland (Ed.). *European Union: Political, Economic and Social Issues* (77–98). New York: Nova Science Publishers.

The rising nature of conflict anchored on minorities right to self-determination raises more concern on the path to sustainable peace thus this research will attempt to revisit past researches on the right to self-determination

This research will seek answers to:

Is the Right to self-determination in United Nation Treaty Article 1 Vol 999 International Covenant on Civil and Political Rights a death trap in post-colonial Era?

How will the right to self-determination and sovereignty of states coexist?

OVERVIEW ON THE RIGHT TO SELF DETERMINATION

States since inception, worked towards global peace notably ensuring treaties that guides the action of states in the international system among these treaties are the Montevideo Convention on the Rights and Duties of States,³ Enacted on 26th December 1933 and came to force a year after. The Hague Conventions of 1899 and 1907⁴, the Westphalia treaty of 1648 notable for granting states sovereignty and the International Covenant on Civil and Political Rights.⁵ Whereas these treaties played a key role in regulating the conduct of states across national frontiers, it could be seen that vagueness the International Covenant on Civil and Political Rights on the right to self-determination⁶ has triggered a global human right violation by states anchoring on principle of sovereignty and protection of territorial integrity.⁷

The right to self-determination is an international principle that grants all indigenous people the right and freedom to self-governance. As captured by article 1 of united nation treaty vol 999 “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”⁸ while the right to self determination was instrumental in the colonial era in granting independence to every indigenous people from their colonial masters, in the post-colonial era, the right to self-determination has become a death trap as it gives room for anarchy sprouting from states use of force to suppress the movement which they perceive an internal threat to their sovereignty. Illustrative Evidence is seen in The Nigerian civil war of 1967-1970 between the Nigerian state and secessionist indigenous people of Biafra, the failed Catalonia referendum in Spain, secessionist plight by the Kurdish people in Iraq and the anglophone secessionist crisis in Cameroun.

Amidst these views, the reality of the vagueness of this international law on right to self-determination in post-colonial Era and its concomitant effects are visible in the use of brute force to quell every secessionist movement not minding the statutory right of the indigenous people.

The rising nature of conflict anchored on minorities right to self-determination raises more concern on the path to sustainable peace previous research's holds Divergent views on the right to self-determination, sovereignty, secession and human right catastrophes arising therein, more so correlation between these factors are not new to the academic polity, questions on the possibility of emergence of new states on the global principle of self-determination is argued to be left on the desecration of the sovereign entities as the existing laws are not for creation of new state but for

³ U.I.O, The Faculty of Law, Convention on Rights and Duties of States, Dec 26, 1933, Art. 1,

⁴ Médecins Sans Frontières, The Hague Conventions of 1899 and 1907(Médecins Sans Frontières, The Hague Conventions of 1899 and 1907.

⁵ United Nation Treaty Vol 999 No. 14668, International Covenant on Civil and Political Rights. 19 December 1966

⁶ *ibid*

⁷ Chochia, A., & Popjanevski, J. (2016). Change of Power and Its Influence on Country's Europeanization Process. Case Study: Georgia. In *Political and Legal Perspectives of the EU Eastern Partnership Policy* (pp. 197-210). Springer, Cham.

⁸ United Nation Treaty Article 1 vol 999 International Covenant on Civil and Political Rights. 19 December 1966

recognition of sovereign states⁹ more theories posit that international laws pick on the notion of sovereignty and territorial integrity as against the creation of new states¹⁰ For Carsten Stahn sovereignty is a known yardstick for recognition of states and could be earned sovereignty, conditional and constrained sovereignty this concludes that such rights could be granted on the desecration of the leviathan who may perhaps refuse to grant such supposedly gesture as seen in Catalanian and Spain uprising¹¹ Malcolm posited that sovereignty cannot guarantee recognition without stability as evident in the case of Democratic Republic of Congo and a sister secessionist group. In a fight for recognition by the united nation, the former was accepted and the later was rejected for lack of stability in its acclaimed polity¹²

DEFINITION OF RIGHT TO SELF DETERMINATION

Conflict arising from this universal right of self-determination and need for sustainable solutions put the legal statute into many scholarly types of research, Erica-Irene held that right to self-determination could be well understood by distinguishing between the internal and external rights to self-determination she sees external right to be evident in states liberating itself from alien rule. Such liberation from their colonial masters is external self-determination. And the internal right to self-determination as the power of this sovereign to decide their system of government and who governs them¹³, Susanna Mancini, perceives right to self-determination as fundamental freedom of people to make economic, political and religious decisions for their good. In furtherance, she sees self-determination as a principle that combines both nationalist and democratic tenants¹⁴ amidst these views as captured by article 1 of united nation treaty vol 999 “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”¹⁵ the numerous views have a center point which sees the right to self-determination as to the right of colonies and non-colonies to determine their own way of life.

BIAFRA SECESSIONIST MOVEMENT IN NIGERIA

Who are the Biafran people?

The Biafran people are indigenous people from the eastern states of Nigeria, these states include Abia, Imo Ebonyi, Enugu, Anambra, Rivers, Akwa Ibom, And Calabar. Though most of these states are now grouped under south-south, historically it is believed the conflict started after the amalgamation of the northern and southern protectorate which lead to the formation of Nigeria. Historians have blamed the conflict on the amalgamation which had in its consideration the economic benefits from the union and not the diversity in cultural and religious ideology more so variant languages the Biafrans are known for their exceptional trading skills and their egalitarian culture, such as the findings of the colonial masters had failed severally to annex the region unlike

⁹ Tamás Lattmann International Law Reflection 2017/12/EN 29 October 2017

¹⁰ Jure Vidmar, Review of Developments in German, European and International Jurisprudence, Vol. 16 No. 03 P.351

¹¹ Carsten Stahn, The Law and Practice of International Territorial Administration, P.756

¹² Malcolm N. Shaw, International Law, sixth Edition P.205

¹³ Erica-Irene A. Some consideration on the right of indigenous people to self-determination, P.4

¹⁴ Susanna Mancini, Rethinking the boundaries of democratic secession: Liberalism, nationalism, and the right of minorities to self-determination, 11 September 2008, P.3

¹⁵ *ibid*

their counterparts who had a central authority through which the areas were easily acquired. The eastern Nigerians are predominantly Christians, with a little over 10 percent atheist and Muslims

Chronicles Of 1967-1970

The Ibo as one of the minority group before the independence of the Nigerian state in 1960 detest the union of the northern and southern protectorate by Sir Lord Lugard, after the Nigerian independence in 1960 the ethnic politics of governance and the marginalization of this minority groups ensued leading to the first Nigerian civil war with alarming casualties described as genocide. Three million Ibos were massacred by the Nigerian elite forces and foreign soldiers who were invited by the government. The thoughts of what led to the civil war have met varying view. Greene was of the view that the marginalization took many dimensions there laws meant only for the poor, censuses that were not census, elections that were not elections, recounting the speech made by the secessionist leader that Biafra people did not secede from Nigeria, rather were pushed out from it as a result of organizational and legal standings which enhance and reinforced marginalization of the Biafran populace¹⁶

The Secession Movement Post 1970

The massacre of 1967 to 1970 did nothing to the determination of this indigenous person who convincingly referred to the united nation right to self-determination as a base for their call for independence. From the top of the genocide in 1970 to date there has been countless demonstrations by this people which at all times meets the brute force of the government resulting to alarming casualties and no liability by the side of the government who stands on the right of protecting its sovereignty and territorial integrity the aba and Onitsha massacre stands out in the analogy of the use of force against unarmed civilians in the grounds of protecting territorial integrity. After the death of the Biafran leader, 2015 saw the reemergence of the call for self-determination. A new leader trained in the United Kingdom preached the nonviolent method of demonstration as pathway to secession, such peaceful unarmed protesters were not only arrested and charged for treason, many were killed during the protest reacting to this further raises questions as to the legality of secession on the legal ground of the universal right to self determination and the methodology for its pursuance. Till date the struggle for the right of self-determination of the indigenous people of Biafra persists so is the government brutal response to the movement on the grounds of sovereignty and right to protect such.

THE CATALONIANS IN SPAIN

Historically Catalonia was adjudged autonomous prior to the early eighteenth century, having its territorial integrity, rulers, Institutions, and laws this was captured in its union agreement with Aragon in 1137.¹⁷ The death of Martí l'Humà in 1410 saw the emergence of Fernando de Antequera to the throne as there was no heir from Martí l'Humà. Not long after Fernando took the throne there was a pact leading to the joint administration of Castile governed by queen Isabel and Fernando of Aragon in 1479 though these nations were governed by a single sovereign entity, there were no major institutional changes arising from this pact.

Shortly ensued an occurrence that changed the status of the Catalonian nation. by 1621 Philip IV appoints duke of Olivares as chief minister in a bid to create a strong absolute state this was

¹⁶ Kirk- Geene, *The Genesis of The Nigerian Civil War And The Theory Of Fear*, Uppsala 1975, P.4

¹⁷ Montserrat Guibernau, *Prospects for an Independent Catalonia*, Volume 27, Issue 1, pp 5–9.

recorded in history as the revolt of the reapers and the first nationalist revolution in Europe.¹⁸ Not long after ensued a war of succession where the Catalonians choose the Austrian against Philip V. the treaty of Utrecht was in favors of Philip IV and lead to his emergence as the king of Spain. the emergence of Philip V brought changes to the governance structure of Catalonia. Barcelona surrender after its defeat by the Franco Spanish people and by the order of Philip V the Catalan political institutions was dissolved, and their language changed to Spanish.

Post 2000.2004 Era and Catalonia Struggle

The Catalonian nationalism grew from strength to strength as many models of nationalist movements and struggle ideologies emerged. movements like the conservative nationalism by Jaume Balmes, the Catholic nationalist movement by Josep Torees, the Catalan Marxist struggle by Anreu Nin. Thought the Catalonian struggle for independence has been a life it took the trajectory of seeking for more autonomy, Montserrat highlighted several factors that triggered and re-energized the contemporary call for not just more autonomy but independence these factors ranges from Jose Maria neglect for the Catalonian call for more autonomy, the questions on the statue of autonomy and the limitations set by the Spanish state that leads to accumulation of 8% deficit to the Catalonian GDP¹⁹ opinion poll held on 11th September 2013 shows 52% of Catalonians would vote for a sovereign Catalonian state as against 24.1% who will vote against the referendum, the Spanish state stopped the referendum on the ground that the Spanish constitution does not and will not recognize the Catalonian as a sovereign state, but a single Spanish nation within Spain. it states that the 2006 statue aims to eliminate certain constitutional grounds which made Catalonia an integral part of Spain. Such acts that confer the Catalonia state the authority to create its own taxes are unconstitutional as it is repugnant to the Spanish laws which are adjudged supreme.

CONFLICTS OF NORMS

The right to self-determination as a universal principle that guarantees indigenous people the right to determine who governs them is widely seen as a trigger to abuse and death from the Catalonian of Spain to the Biafran in Nigeria, states are obligated to protect their territorial integrity as such uses state mechanism to quash secessionist movements. One could question the rights and wrongs of the parties to this conflict, could be state be held liable for protecting the territorial integrity using the state machine which they are obligated to do? Or could the indigenous people who pray to secede from their original state on the ground of the right to self-determination? These norms have been reinterpreted to suit states hegemony ignoring the indigenous peoples' rights such interpretations that support states hegemony was portrayed in the response of the united states in the wakes of the use of force on the Catalonians quest for secession. Though the methodology of implementing the right to self-determination is still left vague, the Montevideo convention enumerated criteria which are essential for state recognition Catalonian posses these characteristics, yet the United States response contradicts the Montevideo convention²⁰ having refused to recognize Catalonian independence on the right to self-determination but see it as an integral part of the sovereign Spanish territory.

Harmonizing Right to Self-Determination and State Sovereignty

¹⁸ Chochia, A. & Ramiro Troitino, D. (2012). Future Enlargements of the EU and limits of the organization. L'Europe unie/United Europe, 6, 2–26.

¹⁹ Ibid P.9

²⁰ ibid

Many states suffer the pains of these conflicting norms, the two cases explored in this article stand out and represent others. They share similar patterns and anchored on the universal right of Self-determination. A path to peace could be far from practicable without analyzing the conflict of norms to ensure a path through which this right be exercised. It is pertinent that answers to certain questions are required. Do these questions include what is a democracy? And does democracy play any role in the conflict of these norms, lastly what should be prioritized over the other, right to self-determination or the sovereignty of states? The definition of democracy is synonymous to that of the right to self-determination. Democracy is seen as a system of government characterized by periodic elections, right to franchise, life freedom of speech, etc. Thus democracy guarantees the freedom of speech as such to a large extent forms a legal ground for the expression of the right to self-determination. Sadly, as evident in these countries where these fundamental rights are denied are all democratic nations. The defense of states on the anchor to the sovereignty clause is to be analyzed in cautiousness to the meaning of sovereignty a state is adjudged sovereign when it possesses three essential elements, which are people, location (geographical area) and a government. It is pertinent to note that among all the components of a state the people are the most important as there could be no state or sovereignty without the people. The people also in this context forms the government and the laws, in a question on the what should be the priority of the state, it should be remembered that among the attribute of a state the people are the most important and should enjoy such rights associated with their importance. The right to self-determination could be a threat to the existence of states without a certain clause to regulate the creation of new states. However, the states should not be protected on the altar of sacrificing the peoples right as it goes against the pact in the foundation of the states. Amidst these conflicts a sustainable peace could be realized by redefining the contextual meaning of indigenous people, could indigenous people mean a group of people? all marginalized people in a state? Indigenous people should be defined on the ground of certain shared value system. As seen ailing democracy aids the contemporary hikes on the call for secessions, globally there is ailing political system characterized by corruption and incapacity of the mechanism of the state, such inefficiency breed marginalization and the call for secession.

CONCLUSION

Right to Self-determination from the Catalonian and the Biafran secessionist struggle is seen as an anchor for the pursuance of such rights. However, the states on its own have maintained their obligation for the protection of the territorial integrity as such used the state mechanism at “all cost” in response to such secessionist struggle. Amidst the theories that explain these intricate relationships between the right to self-determination and sovereignty, these theories align with the state on its obligation to protect its territory and others see the right to self-determination as a political statement left for states to interpret. This research recognizes both rights as two democratic principles, which should be followed in a systematic way as both could coexist without being a threat to the existence of each other. This could be realized by redefining the term indigenous people or people as it is captured in the right to self-determination, giving priority to people as it forms the most essential element in the state. Institutional reforms that guarantee the absence of marginalization and corruption should be encouraged. Right to self-determination should not be addressed as a political statement without a clear interpretation in the post-colonial era. A state without the people cannot be called a state and democracy without the people is no democracy suffix to say respecting the will of the people is true democracy without which a state is stateless.

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