The Politics and Consequences of State Secession

Olawale Olumodimu

Gonzaga University

Follow this and additional works at: https://commons.stmarytx.edu/thestmaryslawjournal

Part of the International Humanitarian Law Commons, International Law Commons, Law and Society Commons, and the Military, War, and Peace Commons

Recommended Citation

Olawale Olumodimu, The Politics and Consequences of State Secession, 55 St. Mary's L.J. 771 (2024). Available at: https://commons.stmarytx.edu/thestmaryslawjournal/vol55/iss3/3

This Article is brought to you for free and open access by the St. Mary's Law Journals at Digital Commons at St. Mary's University. It has been accepted for inclusion in St. Mary's Law Journal by an authorized editor of Digital Commons at St. Mary's University. For more information, please contact sfowler@stmarytx.edu, egoode@stmarytx.edu.
ARTICLE

THE POLITICS AND CONSEQUENCES OF STATE SECESSION

OLAWALE K. OGINMODIMU*

ABSTRACT

This Article argues that the non-express prohibition of state secession in the Nigerian Constitution does not automatically allow component states to break away unilaterally. It appears the framers of the Constitution wanted to ensure political continuity and national unity rather than allow for Nigeria's disintegration. Beyond Nigeria, international law only allows unilateral secession in the context of decolonization and the people's right to self-determination.

Nigeria has a responsibility to provide self-determination to its citizens; however, secession is not a legal channel to seek self-determination in the absence of targeted, widespread, or systemic criminal acts committed by or on behalf of a de facto authority, usually by or on behalf of a state that grossly violate the human rights of an oppressed.

* Assistant Professor, Gonzaga University Law School, Spokane Washington. I am grateful to God for this scholarly work to advocate for the political unity of Nigeria instead of its disintegration. I acknowledge the victims of the Nigerian Civil War between 1967–1970 and those who still reel in the pains of a hurtful history. At the onset of this acknowledgment, I would like to extend my sincere and heartfelt gratitude to all the personages who contributed and helped me in this endeavor. To my family, Omolola and Erastus, I appreciate your love and support. Falak Momin, Meghan Rockwell and the entire St. Mary’s Law Journal officials, many thanks for your unalloyed support.

1. See GA Res. 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States 123–24 (Oct. 24, 1970) (emphasizing, aside from the right of people in a colony to assert self-determination, the U.N. does not authorize the disaggregation of sovereign nations who adhere to “the principle[s] of equal rights and self-determination”).
There is no legal way for a component state to secede from the Federal Republic of Nigeria. This constitutional silence conveys an ambiguity on the right of an autonomous state to secede from Nigeria. Letting a state walk away from the Republic means abandoning a series of communities and time-tested institutions that are central to democratic consistency. Further, this ambiguity leaves the hydra-headed question of how to address the threat of Biafran secession unanswered, as it involves the breach of foreign policy, the possibility of Nigerians becoming stateless, the likelihood of forcible displacement, the reoccurrence of civil war, and the readjustment of existing territorial borders. Not only is the Nigerian Constitution silent on secession, but international law also does not recognize secession as an identified right. It does not specifically grant parts of sovereign states the legal right to secede unilaterally from their parent states. Thus, secession succeeds or fails not on what international law says but on the success of the secession move. This Article examines how to interpret the silence in the Nigerian Constitution and how the ambiguity arising from this silence can be used to develop plausible recommendations on how to unite Nigeria rather than disintegrate it.

Part One ............................................................................................................. 774
I. Introduction .......................................................................................... 774
   A. Meaning of Secession ...................................................................... 775
   B. Instances Where Secession May Be Justified ............................... 776
   C. Expectations of Statehood for Successful Secessionists ............ 779
   D. A Case Study of the Defunct Biafran Secession From Nigeria .................................................. 781
II. Principles of Constitutional Interpretation ....................................... 786
III. Historical Interpretation of a Constitution ........................................ 787

2. See id. (stating the territorial integrity of a nation should be respected absent human rights violations).
3. See id. (recognizing the sanctity of territorial integrity and the need to keep sovereign nations intact); see also Afolabi Adekaiyaoja, Does the Nigerian Constitution Allow Secession?, STEARS, https://www.stears.co/article/does-the-nigerian-constitution-allow-secession/ [https://perma.cc/9NH8-N5F7] (noting under the Nigerian Constitution, no part of Nigeria has the power to form an independent government or secede).
5. CONSTITUTION OF NIGERIA (1999). See GA Res. 2625 (XXV), supra note 1 (implying the right to self-determination does not amount to a right to secession).
IV. Textualism and Comparison of the Nigerian 1979 and 1999 Constitutions ................................................................. 790
V. Originalism as a Tool for Constitutional Interpretation .......... 792
VI. Original Intent of Framers of the 1999 Constitution of Nigeria... 793

Part Two: The Effects of Secession ............................................................... 796
I. The Difficulty of Redrawing Existing Territorial Lines and Boundaries ........................................................................... 796
II. Statelessness ........................................................................................... 798
III. Internal Displacement ........................................................................ 802
IV. External Displacement: Refugeehood .............................................. 806
V. A Gateway to Incessant and Frivolous Unilateral Secession Agitations .............................................................................. 806
VI. The Possibility of Fragmenting International Agreements and Treaties .............................................................................. 810
VII. Dissolution of State Property.............................................................. 811
    A. Self-Determination Is Not Only Achieved By Secession....... 812
    B. Possible Alternatives to Secession ............................................. 816
    C. Referencing the Decision in: In re Secession of Quebec ....... 816
VIII. Conclusion .......................................................................................... 818
PART ONE

I. INTRODUCTION

The Movement for the Actualization of the Sovereign State of Biafra (MASSOB) is currently spearheading the resurgence of Biafra, a defunct secessionist state that existed from May 30, 1967 to January 1970. Biafra constituted the former Eastern Region of Nigeria and was inhabited principally by Igbo (Ibo) people—it was named for an Atlantic Bay in southwestern Nigeria, the Bight of Biafra.

The original Biafra secession was precipitated by two main factors: (1) ethnic friction and (2) unequal distribution of national benefits. First, “instability and ethnic friction characterized Nigerian public life.” The inhabitants of the northern part of Nigeria, who were mostly Hausas, resented the visiting Igbos from the east. Then, in September of 1966, a riot in northern Nigeria was used as a pretext to massacre approximately 30,000 Igbo people and forcibly displace another one million, who relocated to eastern Nigeria as outcasts. Second, great tension over who received the benefits of oil revenue was felt between the federal government and those who inhabited the eastern region. The eastern region boasted a high concentration of oil reserves; however, oil profits benefited the nation as a whole with only few benefits being returned to the eastern inhabitants.

In an attempt to avoid war, negotiations between regional representatives were entered into. However, a proposal dividing the Eastern region into three parts, which would have caused the Igbos to lose control over the petroleum-rich areas, was rejected by the secessionists. On May 30, 1967 Lieutenant Colonel Ojukwu, (later General) declared the Eastern Region of Nigeria an independent state. This declaration was followed by a civil war that lasted until 1970.

---

7. See id. (describing the historical development of the Biafra state).
9. Id.
10. Id.; see also NIGERIA: A COUNTRY STUDY 57–61 (Helen Chapin Metz ed., 1991) (ebook) (describing the escalating violence that resulted in the massacre of the Igbo people in September 1966).
12. Id.
14. See The Republic of Biafra, supra note 6 (describing the contention felt over the revenue from oil reserves).
Nigeria sovereign. Fighting between the federal government and Biafra began in July of 1967. By 1968, the Nigerian government seized most of the Biafran fighting infrastructure, including seaports, and Biafra became landlocked so that “supplies could be brought in only by air.” Starvation and disease followed; estimates of mortality during the war generally range from 500,000 to 3,000,000.

A. Meaning of Secession

Secession is a political divorce. It “occurs when persons in a country or state declare their independence from the ruling government. When a dissatisfied group secedes, it creates its own form of government in place of the former ruling government.” When a group claims the right to secede from a state, it simultaneously claims the right to exercise sovereign control over the territories it already occupies. This assertion results in ethical problems pertaining to territorial settlements in secession cases and bear similarities to those associated with property settlements in divorce. This similarity is because such settlements may affect third parties, individuals, and groups who are neither members of the seceding group nor involved in doing or sustaining the harms for which secession is a remedy.

International law recognizes the legitimacy of a successful secessionist group if it meets the requirements of becoming a political state. Excluding the efforts of subjugated groups emancipating from colonialism through decolonization, international law does not acknowledge secession to create new states if human rights or the territorial integrity of the parent state are

15. Id.
16. See NIGERIA: A COUNTRY STUDY, supra note 10 (explaining the rebel troops and the Federal Military Government (FMG) first clashed when the FMG tried to establish police measures in the Eastern Region).
17. Biafra, supra note 8.
18. Id.
19. See Texas v. White, 74 U.S. 700, 727, 731 (1869) (holding the State of Texas remained a part of the United States since it first joined the Union, despite its joining the Confederate States of America and it being under military rule at the time of the decision in the case, as, impliedly, the Constitution did not permit states to unilaterally secede from the United States).
22. See Hersch Lauterpacht, Recognition of States in International Law, 53 YALE L.J. 385, 385 (1944) (recognizing the duty of states to grant recognition).
not violated.\textsuperscript{23} Furthermore, when human rights violations threaten regional and international peace and security, intervention of the Security Council may be required.\textsuperscript{24} Moreover, “international law would regulate the consequences of the creation of this new State” and determines whether other states will recognize it or not.\textsuperscript{25}

A secession move can be peaceful or bloody. If it is violent and unilateral, customary international norms, or \textit{jus cogens}, become applicable to guide the turbulent process; for example, “the principle of non-intervention in other States’ internal affairs, the prohibition of the threat or use of force or respect for human rights.”\textsuperscript{26}

Rationally, there are several reasons for refuting the idea of secession. One such argument is that both national and international laws want to protect global preexisting territorial borders and reaffirm nations’ territorial integrity irrespective of their wealth, population, military force, and landmass.\textsuperscript{27} All states are equal under international law because of the notion of sovereignty.\textsuperscript{28} Another reason is that international law and its community want to preserve the tenets of the rule of law as opposed to the rule of might.\textsuperscript{29} The essence is that the component units of parent states should employ diplomacy and other forms of dialogue to resolve internal agitations rather than seeking an escape route from the existing political marriage. Under international law, any unilateral pro-independence action is inconsistent with friendly relations and cooperation among states.\textsuperscript{30}

\textbf{B. Instances Where Secession May Be Justified}

In certain circumstances, there may be moral and legal grounds to justify the secession of a component unit from a parent state to enable its self-determination. Globally, there are “different groups for whom the right to

\begin{itemize}
\item 23. GA Res. 2625 (XXV), \textit{supra} note 1.
\item 24. Xavier Pons Rafols, \textit{Secession in International Law}, \textsc{Universitat de Barcelona}, http://idpbarcelona.net/docs/blog/secession.pdf [https://perma.cc/8BGN-95UJ].
\item 25. \textit{Id.}
\item 26. \textit{Id.}
\item 27. \textit{See id.} (acknowledging, historically, international law respects territorial integrity during decolonization).
\item 28. \textit{See U.N. Charter art. 2, ¶ 1} (declaring “the principle of the sovereign equality of all of its Members”).
\item 29. \textit{See Rafols, supra note 24} (concluding there exists an inexorable link between political aspirations, the rule of law, and democratic principles).
\item 30. \textit{See id.} (declaring pro-independence movements counter to the democratic principles accepted under international law).
\end{itemize}
secede from the [parent] State cannot be proscribed;” for example, “territorial communities whose ethnic, religious, linguistic, or cultural identity[ies]” are being violated by state and non-state actors may have no choice other than seceding, if they can succeed.31 Furthermore, a group at risk of ethnic cleansing or genocide or “whose members are subject to serious and systematic discrimination in the exercise of their civil and political rights,” leading to the denial of their existential dignity, could be authorized by international law to unilaterally secede as a last resort and a means to an end for self-determination.32 As stated in the abstract, self-determination does not only happen by secession, but secession may become a last resort in which a people at risk of extinction and gross human rights violations unilaterally break away from a parent state without relying on external support that violates the territorial integrity of the parent state.

Ethnic cleansing, a legitimate reason for secession, is a forced movement that subjects individuals and groups to actions intended to remove them from their place of permanent residence on grounds including race, color, religion, culture, descent, or national or ethnic region.33 Another word for ethnic cleansing is homogenization or ethnic separation.34 A potential driver for ethnic cleansing is a large concentration of stateless people within a territory—stateless individuals are attacked to force their movement.35

If conflict between Biafra and the Nigerian government erupted, many people may become stateless—trapped outside the bounds of their ethnic homeland and not recognized by the country in which they resided. Arbitrary killings might force Biafran movement.36 This action would

31. Id.
32. Id.
34. See Daniele Conversi, Cultural Homogenization, Ethnic Cleansing, and Genocide, OXFORD RSC, ENCYC. (Nov. 30, 2017), https://doi.org/10.1093/acrefore/9780190846626.013.139 [https://perma.cc/ZYJ4-CRRN] (recognizing homogenization, ethnic cleansing, and genocide may be viewed as interconnected terms).
violate their right to life and their right to exist in places to which Biafrans or Igbo were ethnically connected. Additionally, when a group is forced to co-exist in unknown or unfriendly culture, political system, or area that is hostile to their identity, and are left without the ability to choose or determine their social or cultural environments, then there is a violation of the human person or their integrity. Furthermore, during hostilities, it is in doubt whether displaced Biafrans trapped within areas controlled by the Nigerian military could rely on the protection of the international instruments governing hostilities, the Geneva Conventions of 1949 and the 1979 Additional Protocol, to prevent a disconnection from the Igbo heritage.\[37]\n
Moreover, a successful secession move may be recognized by international law when the seceding state or group claims infringement of basic norms and principles of international law, which are generally known as *jus cogens* or peremptory international principles.\[38]\n
In practice, the international peremptory or *jus cogens* norms have strict “prohibitions against egregious conduct, such as crimes against humanity, genocide, slavery, and human trafficking.”\[39]\n
When a people provide evidence of the violation of these peremptory norms and consequently secede unilaterally and
successfully, they may be accorded recognition as a new state based on the necessity to avoid expulsion from humanity.

C. Expectations of Statehood for Successful Secessionists

A state is recognized under international law when it is acknowledged or accepted “as an international personality by the existing states of the international community.”40 The new state must declare its intention to fulfill certain essential conditions of statehood as required by international law.41 The hallmark of secession is recognition under international law, which falls under either the constructive or declaratory theory.42

International law prescribes certain minimum standards of recognition for a political body to be accorded the status of a state.43 One such expectation is that a state must have de jure recognition to enter into relations with the other existing sovereign states.44 Here, a secessionist state must be recognized by other sovereign states as a member of the international community capable of entering diplomatic relations on behalf of its citizens.45

A lesser form of recognition is de facto recognition, which is often provisional.46 It is a rudimentary step to de jure recognition, which is full international legal recognition.47 For example, when the democratic regime of an existing and already recognized state changes, the state does not need to renew its recognition; it has permanent de jure recognition. Conversely, the mere announcement of a new state is not sufficient to assume the status of statehood; rather, other sovereign states must recognize the newly

41. See id. (explaining a State will not be recognized as sovereign without meeting specific essential conditions).
42. Id. Under the constructive recognition theory, a state only receives international personality status and becomes subject to International Law after that state has been recognized. Conversely, under the declarative recognition theory, the unrecognized state exists and has the international right to defend itself. Id.
43. Id.
44. See id. (stating de jure recognition is permanent and grants states “absolute rights and obligations against other States”).
45. See id. (“A State must get the De Jure . . . recognition for considering a State as a sovereign State.”).
46. See id. (explaining “De Facto recognition is temporary and factual recognition,” whereas “De Jure recognition is permanent and legal recognition”).
47. Id.
formed entity, but not as a new regime of an already existing state. This type of recognition is recognition of government—that is when a state recognizes a regime or government by acknowledging a group of elected or selected representatives as competent persons to act as an organ of the already existing state in question by enforcing its international membership of sovereign states in terms of international law.

While recognition under international law is important, it is not a rule that existing states must recognize emerging ones. Generally, existing states are not under any compulsion by international law to recognize new claimants of statehood. It is usually a matter of intent to recognize a new political unit as sovereign with the implication of the unit possessing sufficient international legal standing to seek redress in international courts and tribunals and make binding international agreements. So, in some circumstances, existing states are entitled to decline recognition of international membership to emerging states.

Another expectation of state recognition includes meeting the requirements of the 1933 Montevideo Convention. Article 1 of that Convention provides that “the state, as a person of international law should possess” qualifications such as “(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter relations with the other states.” Here, when applied to the issue of secession, an emerging state must meet these four requirements to be accorded the status of statehood. At which point, the parent state is forced to recognize the breakaway

49. See id. (conveying states are not obligated to recognize new claimants to statehood).
50. See Mishra, supra note 40 (“The recognition of the State is an essential procedure, so that the State can enjoy the rights and privileges as an independent community under International law.”).
51. See id. (noting for example “India did not recognize Israel till 1999 and also South Africa till 1991 due to racism” and the China-Taiwan dispute).
component unit as an independent and sovereign state. Pertaining to Biafra, it is very doubtful that such recognition would ever occur.

D. A Case Study of the Defunct Biafran Secession from Nigeria

In the beginning, there was no Nigeria. There were Ijaws, Igbos, Urhobos, Itsekiris, Yorubas, Hausas, Fulanis, Nupes, Kanuris, Ogonis, Gwaris, Katafs, Jukars, Edos, Ibibios, Efiks, Idomas, Tivs, Junkuns, Biroms, Agnas, Ogojas and so on. There were kingdoms like, Oyo, Lagos, Calabar, Brass, [Warri], Benin, Tiv, Borno, the Sokoto Caliphate (with loose control over Kano, Ilorin, Zaria[,] etc[.]) Bonny, and Opobo, etc. Prior to the British conquest of the different nations making up the present day Nigeria, these Nations were independent . . . of each other and of Britain.

. . . .

Based on the protection treaties and the Berlin Conferences, the British in 1885 proclaimed the establishment of a protectorate of the Oil Rivers, which later became the Niger Delta Protectorate, [and subsequently engaged in what can be termed a serial conquest of Nigerian independent communities, states, and kingdoms between 1886 and 1923.]

. . . .

As various quarrels and disputes arose between British traders or British officials on the one hand, and the Rulers of the States of the Niger Delta on the other hand, the latter territories were invaded, conquered, and colon[i]zed, individually.

. . . .

*The Royal Niger Company operated in the North until 1899 when their charter was abrogated and a protectorate of Northern Nigeria was proclaimed in 1900 to forestall German and French occupation of those territories.
*The British now engaged in the progressive conquest of the Northern states.

. . . .

*In 1906, the Protectorate of Southern Nigeria was amalgamated with the Colony of Lagos. And in 1914, the Colony and Protectorate of Southern Nigeria, was merged with the Protectorate of Northern Nigeria.54

54. Itse Sagay, Nigeria: Federalism, the Constitution, and Resource Control.
NIGERIADELTACONGRESS,
http://unpub.wpb.tam.us/siteprotect.com/var/m_f/fs/fs/22697/235469-nigeria_federalism_.pdf [https://perma.cc/5A9D-YX8J].
As a consequence of colonization, the Igbos currently claim “they were subjugated under imperialism between 1890–1905.”\textsuperscript{55} Before then, “they claimed [] their identity and independence, and they operated an acephalous government.”\textsuperscript{56} Biafra (Igbos) did not consent to the union called Nigeria.\textsuperscript{57} “They say their will was taken away, and colonialism was implicated as the tool of coercion that forcefully robbed them of their autonomy.”\textsuperscript{58}

The most fundamental document in Nigeria is the current 1999 Constitution. It is sacred and constitutes the parameter of internal and external relationships of the State. “It is the GRUND NORM from which all other laws derive their legitimacy.”\textsuperscript{59}

In his article, Pure Theory of Law, Hans Kelsen describes the grund norm as the highest norm presupposed by other legitimate norms.\textsuperscript{60} A state’s conduct must be controlled “as the Constitution prescribes, rather than being established from the standpoint of a positive legal act, i.e., generated by human behavior.”\textsuperscript{61} Further, the Nigerian 1999 Constitution is iconic and different from mere statutes that gain authority from the lawmakers; but the Constitution’s authority is from the Nigerian people.\textsuperscript{62} It is the organic document which defines the parameters of interaction between the Nigerian government and its people, it analyzes the Nation as a political community, it constructs its biography; it states how other documents and laws are made; it analyzes the Nation’s fundamental issues as a political entity . . . .\textsuperscript{63}


\textsuperscript{56} Id.

\textsuperscript{57} Id.

\textsuperscript{58} Id.

\textsuperscript{59} Id. at 3.

\textsuperscript{60} Mridushi Swarup, Kelsen’s Theory of Grundnorm, MANUPATRA, https://www.manupatra.com/roundup/330/Articles/Article%201.pdf [https://perma.cc/6CZK-33E6].

\textsuperscript{61} Pushpa Sharma, The Rule of Recognition and Basic Norm, 6 JETIR 290, 291 (2019).

\textsuperscript{62} The Preamble of the Nigerian 1999 Constitution states that: “We the people of the Federal Republic of Nigeria[,] having firmly and solemnly resolved, to live in unity and harmony as one indivisible and indissoluble sovereign nation under God . . . [d]o hereby make, enact and give to ourselves the following Constitution: . . . .” CONSTITUTION OF NIGERIA (1999), Preamble.

\textsuperscript{63} Ogunmodimu, supra note 55, at 3.
Textually, secession does not appear in the Nigerian Constitution; “it emphatically says nothing about it.”\textsuperscript{64} The plausible reaction is to attempt to understand what the constitutional silence on secession means in the context of the current agitation for a new nation of Biafra. This constitutional silence is not akin to criminal liability when a suspect keeps silent before an accusation.\textsuperscript{65} It is also not the type of silence that generally does not constitute an acceptance under the law of contract.\textsuperscript{66} Constitutional silence on secession may not connote a positive nod but perhaps a total disregard since the Constitution only recognizes its values in what it provides within its texts.

This ambiguity of silence could be interpreted as permission for entities to exercise unilateral secession since potentially what is not proscribed is indirectly allowed. However, silence could mean the framers of the Constitution and the national government did not place primacy on secession because of the horrors of the 1967 Civil War when Biafra unsuccessfully initiated its first secession. From the standpoint of the political branches of the Nigerian government, it is very important to pursue Nigeria’s political unity rather than its disintegration and find a lasting solution to some of Nigeria’s internal problems that fuel ethno-favoritism or violation of human rights.\textsuperscript{67}

Transplanting United States legal constructs to Nigeria, this Article considers Justice Marshall’s principle known as the means-ends or rationally related test.\textsuperscript{68} This test is used as the third and least restrictive level of constitutional scrutiny when challenging a governmental action in a court of law.\textsuperscript{69} The Court always scrutinizes governmental actions and scales

\textsuperscript{64} Id.
\textsuperscript{65} See Salinas v. Texas, 570 U.S. 178, 185 (2013) (noting once a person invokes privilege during a custodial interrogation, the suspect’s silence may not be deemed as an admission).
\textsuperscript{68} See generally McCulloch v. Maryland, 17 U.S. 316 (1819) (“Let the end be legitimate, let it be within the scope of the [C]onstitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the [C]onstitution, are constitutional.”).
\textsuperscript{69} See Rational Basis Test, BLACK’S LAW DICTIONARY (11th ed. 2019) (describing the most deferential judicial standard).
through the constitutional validity tests to judge if laws or governmental actions fulfill legitimate interests and if the means of regulating those interests are reasonable.\textsuperscript{70} When a government has a legitimate interest, it is sufficient for it to show the means of regulating that interest is a reasonable, not perfect, option.

Here, the framers’ omitted the topic of state secession from the Nigerian 1999 Constitution—inferably the framers’ had a legitimate interest to prevent Nigeria from experiencing another civil war and to discourage incessant secession moves by other freedom fighters or ethnic groups. Therefore, constitutional, or governmental silence could be a justified end to prevent civil war and the disintegration of Nigeria. Constitutional silence on secession might not be the only approach to avoiding secession, but it is part of an argument that it is better to remain united and resolve political grievances than split up because of prejudice. And, this constitutional silence might not be the best means to dissuade secession but may be the most reasonably calculated means to avoid discordance and unnecessary wars.

The unclear position of international law on secession is worthy of mention. It has left the decision to entities aspiring to break away from their parent states if they can succeed in their quests.\textsuperscript{71} However, the only caveat is a restriction on third-party involvement.\textsuperscript{72} No external intervention can support the breakaway of a component state from its parent state.\textsuperscript{73} A major concern of the international community might be the need to avoid frivolous secessionist moves by component states because of mere rivalry or political sentiments against their parent states and not the true pursuit of nationhood. These quests do not come within the valid conditions for secession.

\textsuperscript{70} See McCulloch, 17 U.S. at 420 (using the ends-mean form of reason).
\textsuperscript{71} See generally Lawrence S. Eastwood Jr., Secession: State Practice and International Law After the Dissolution of the Soviet Union and Yugoslavia, 3 DUKE J. COMP. & INT’L L. 299 (1993) (stating the right to succession is not “an accepted norm under customary international law”).
\textsuperscript{72} See U.N. Charter art. 2, ¶ 4 (directing state actors to “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state”); see also G.A. Res 61/295, art. 46, Para. 1, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007) (declaring no group may act in contravention to the Charter of the United Nations or engage or encourage actions that would divide the territorial integrity of a sovereign and independent state).
\textsuperscript{73} See GA Res. 2625 (XXV), supra note 1 (prohibiting third-party intervention from breaking up sovereign nations abiding by the U.N. Charter).
A policy assumption made in this Article suggests that the present conundrum surrounding the Biafra secession should be tackled by legal realities rather than mere empathy. Politicking should be done to the advantage of the nation’s survival rather than the disruption of its unity. The framers as well as advocates of Nigerian federalism saw the importance of building a nation that is diverse yet united as an entity under a common political purpose.74

[Nigeria’s 63-year-old federalism is a product of national unity, patriotism, and communal ownership. The idea is that Nigeria was not a fabrication of dispersed motives, but an engineered system that holistically merged all cultural and political entities into a nation, notwithstanding the fact that colonialism was implicated as the coercive tool that formed Nigeria.75

“Accordingly, the Preamble of the present Nigerian [C]onstitution is worthy of note. It practically gives the sovereignty of governance to the people. It recognizes the unity of all concerned entities to give the people this [C]onstitution as the supreme law of the land.” However, this assertion is not without its caveats. “It is true that the popular opening statement of most constitutional preambles, ‘[W]e the people’ is found at the opening of the preamble of Nigeria’s [C]onstitution[,] however, its source is in the Provisional Ruling Council of Gen[eral] Abdulsalami’s military regime, but not without consultation from civilians that aided [in] its drafting.” So, the fact that the 1999 Constitution was a product of an interim military government suggests that it is not a home-made constitution. The significance here is that it is silent on secession but recognizes the creation of states, border protection, local government creation, and territorial integrity.78 The Constitution guarantees the autonomy of the thirty-six states in Nigeria under its federal system of government, but it does not mention the procedure for their exit from the

74. Ogunmodimu, supra note 55, at 1.
75. Id. at 6.
76. Id.; See NIGERIAN CONSTITUTION (1999) § 14(1), (2) (1999) (“[S]overeignty belongs to the people of Nigeria from whom government through this Constitution derives all of its power and authority.”).
77. Ogunmodimu, supra note 55, at 6.
78. Id.; See NIGERIAN CONSTITUTION (1999), § 7(1), (6) (stating the structure of government under the Constitution).
Historically, none of the colonial and post-colonial Nigerian Constitutions mentions separation or secession. Logically, “the silence of this present Constitution amplifies the silence of the previous ones and their amendments on the issue of state secession.”

### II. Principles of Constitutional Interpretation

Constitutional interpretation, or constitutional construction, the term more often used by the American Founders, is the process by which meanings are assigned to words in a constitution, to enable legal decisions to be justified by it. Whether the Constitution can mean anything in and of itself is a matter of considerable disagreement among philosophers, political scientists, legal scholars, and jurists.

“Some scholars distinguish between ‘interpretation,’ [which is] assigning meanings” to terms in the Constitution “based on the meanings in other usages of the terms by those the writers and their readers had probably read, and ‘construction’—inferring the meaning from a broader set of evidence, such as the structure of the complete document from which one can discern the function of various parts.”

Discerning the Constitution’s exact meaning can also involve analyzing “discussion by the drafters or ratifiers during [the] debate leading to [the Constitution’s] adoption (“legislative history”), [and] the background of controversies in which the terms were used that indicate the concerns and expectations of the drafters and ratifiers.” Further, constitutional interpretation could also mean examining:

- alternative wordings and their meanings accepted or rejected at different points in development, and indications of meanings that can be inferred from what is not said, among other methods of analysis.
- There is also a question of whether the meanings should be taken from the public meanings shared among the literate populace, the private meanings

---

79. NIGERIAN CONSTITUTION (1999), § 3(1).
81. Id. (emphasis added) (quoting Principles of Constitutional Construction, CONST. https://www.constitution.org/1-Constitution/cons/prin_cons.htm [https://perma.cc/XW54-ML4B]).
82. Principles of Constitutional Construction, supra note 81.
83. Id.
used among the drafters and ratifiers that might not have been widely shared, or the public legal meanings of terms that were best known by [the] advanced legal scholars of the time.\textsuperscript{84}

Just like the Nigerian Constitution, most “[c]onstitution[s] appear[] to have been written to be understood by ordinary people of that era.”\textsuperscript{85}

III. HISTORICAL INTERPRETATION OF A CONSTITUTION

Generally, “history is a story about the past that is significant and true.”\textsuperscript{86} This assertion “contains two words packed with meaning which must be understood to enhance an accurate comprehension of history.”\textsuperscript{87} “The first word is ‘significance.’”\textsuperscript{88} It seems almost impossible to record everything about a past event.\textsuperscript{89} “History is the process of simplifying; of all that could be said about an event, what is most important or significant? The goal of history is to tell a story about the past which captures the essence of an event while omitting superfluous details.”\textsuperscript{89} Historians determine what is significant or not; they sort through the evidence and present only that which, given their worldview, is significant.\textsuperscript{91} The evolution of the Nigerian State is not complete without the inclusion of significant historical events by which independent kingdoms and ethnic entities were subjugated by the colonial powers to form a single nation. Here, about the Biafran agitation to break away from Nigeria, only some Igbos support this secession move, not all of the Igbos in Nigeria.\textsuperscript{92}

Constitutional interpretation is “based less on the actual words than on the understanding revealed by analysis of the history of the drafting and ratification” of the Constitution.\textsuperscript{93} Before the Nigerian Constitution, Nigeria never had a political divorce or lost any of its component states to
The current Nigerian federal structure is not utopian, but Nigeria has stayed integrated as a political community rather than being divided by ethnic problems. Arguably, the Nigerian people have accepted the existence of this entity as indivisible, meant to exist beyond a few years. Historically, none of the colonial constitutions—the Clifford Constitution of 1922, the Richards Constitution of 1946, the Macpherson Constitution of 1951, and the Lyttleton Constitution of 1954—provide for political secession of any of the component states from Nigeria.\(^94\) Again, it is apt to note that colonialism coerced already existing kingdoms and entities to form a single nation called Nigeria.\(^95\) A potential policy reason is the colonial rulers, though brutal and coercive, recognized the importance of forming a single and formidable government for the most populous multi-ethnic and black nation in the world in an example of the adage, “None of us is better than all of us.”\(^97\) A counter-argument to that reasoning is that the British had no healthy relationship with the coerced ethnic groups and created loosed internal territorial borders not intended to demarcate ethnicity but to benefit the British economic agenda to loot the colonies.\(^98\) The British-drawn territorial lines amongst ethnic groups arbitrarily cut across ethnic and linguistic communities that had no commonalities; hence, ethnic clashes, violence, and needless wars ensued.\(^99\) It is arguable that although the British wanted to form a single Nigeria, they did not place primacy on fostering unity among Nigeria’s disparate peoples. Therefore, colonialism left Nigeria deeply divided.\(^100\)

\(^94\) See Adekaiyaoja, supra note 3 (noting the only attempt at Nigerian state secession occurred during the Nigerian Civil War that lasted from 1967–1970).


\(^96\) See id. (“Prior to colonization, what ultimately became Nigeria was a collection of diverse, mostly centralized states like the Oyo Empire and Hausa city-states.”).

\(^97\) See generally id. (noting the shifting of governance by the colonial powers to increase administrative and economic efficiency, minimize conflicts, and create a hierarchical government).

\(^98\) See id. (explaining how British changes to the governance of Nigerian territory was designed to create economic benefits for the British through taxes and the exploitation of resources).

\(^99\) See generally id. (describing the British role in dividing Nigeria and exploiting regional differences).

“pretense of policing the slave trade” to build the British stronghold on the entities that have now become Nigeria.\(^\text{101}\) The initial intention was to enforce the decision to stop the slave trade, but in what is now modern-day Nigeria, it quickly became a selfish economic plan to enslave those colonies further.\(^\text{102}\) The British created treaties and trade policies throughout the North and South of Nigeria to re-enslave its newly found colonies.\(^\text{103}\) They also “used trade policies to influence African politics, including deposing rulers who stood in the way of the lucrative palm oil trade” and other businesses of the Royal Niger Company.\(^\text{104}\)

In the 1880s, competition with French colonial powers in Africa prompted a policy shift and in 1882 the northern and southern ‘protectorates’ were established. During the Berlin Conference of 1884–1885, European leaders determined who had rights to what ‘spheres of influence.’ The two protectorates were joined in 1914 under British governor-general Frederick Lugard, and the Colony and Protectorate of Nigeria was established.

Lugard instituted a policy of indirect rule through native authorities, who collected taxes and performed other local administrative tasks.\(^\text{105}\)

The British had an obvious agenda to enforce a unified system amongst the coerced ethnic groups, without any opportunity for those ethnic groups to break away from the defective centralized government of the time.\(^\text{106}\)

Using the current Biafran agitation as a proxy for the frustrations felt during colonial rule, we assume that history is good for identity, is a basis for social interaction, and is a reference to certain preexisting structures, but it has its drawbacks. Colonialism did not single out the Igbo Kingdom; it negatively affected all the ethnic groups that formed modern-day Nigeria.


\(^{102}\) See id. (explaining how the British goal of policing the slave trade in Nigeria was a pretense to establishing beneficial economic markets through the building of infrastructure and relationships that enabled them influence economic policy).

\(^{103}\) See id. (“[T]he British then had treaties and trade policies in place throughout the North and the South.”).

\(^{104}\) Id.

\(^{105}\) Id.

Generally, Africa was subservient to colonial rule, and no kingdoms were spared from its reach. If one were to use colonial abuses as a justification for Biafra’s unilateral secession from Nigeria, it would open the door to countless secession moves. Potentially, other ethnic groups may embark on their secession moves based on the coerced joining of ethnic groups by colonial rulers in forming Nigeria.

IV. TEXTUALISM AND COMPARISON OF THE NIGERIAN 1979 AND 1999 CONSTITUTIONS

Textualism is “based on the actual words of the written law, if the meaning of the words is unambiguous.” A statute is ambiguous when more than one meaning is possible from its interpretation. When interpreting an ambiguous statute, a lawyer must be mindful of the legislative intent when employing statutory interpretation tools or canons of constructions to understand the statute. For example, one may use the “plain meaning” by following the letter of the statute, if the statute is unambiguous. There is also a “purpose meaning” analysis, which follows the statute's legislative intent. Further, there is the “golden rule” analysis, which requires one to not follow the plain meaning rule when it produces absurd or unreasonable results.

A just law must mean what was meant by the lawgiver. If the meaning of the words used in a statute has changed since it was promulgated, then a reasonable option is to employ textual analysis of the words “as understood by the lawgiver, which for a constitution would be the understanding of the ratifying convention or, if that is unclear, of the drafters.” Therefore, one can depart from the text and look to the founder’s intent if a text is unclear or silent about a principle like secession. The Nigerian 1979 and

108. See id. (stating, “Since a law is a command, then it must mean what it meant to the lawgiver”).
110. See Statutory Construction, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/statutory_construction [https://perma.cc/XTW4-BWJ5] (explaining when the plain meaning of a statute is unascertainable, one should look to the legislative history for understanding).
112. See Principles of Constitutional Construction, supra note 81 (explaining the need to look at the “soul of an instrument” given that the meanings of words change with time).
1999 Constitutions do not mention secession, and thus, it cannot be reasonably inferred that the framers intended any of Nigeria’s parts to secede from the republic.113

A rational argument is that the framers of the Nigerian 1979 Constitution witnessed the horrors of war and death and had the opportunity to engineer a new state for the people by stressing Nigeria’s political survival rather than allowing its disintegration. The present Nigerian 1999 Constitution outlines the system of state creation and local government administration but says nothing about secession.114 Constitutional silence is never for a singular advantage. Here, constitutional silence could mean that if a principle is not listed in the text of a constitution, and there are no reasonable grounds to infer its existence, it is probably not allowed. The arguments of Justices Iredell and Chase of the Supreme Court of the United States in the case of Calder v. Bull115 can be transplanted into this discussion. There, the Justices debated the principle of “Natural Law.”116 Justice Chase posited that there are such things as “first principles” which, although not expressly written in the United States Constitution, should still be respected by a court.117 The drawback to that reasoning is that it is difficult to assume there are constitutional principles not explicitly stated, yet recognized as inherent rights for the judiciary to interpret. It is also hard to recognize those principles as a part of the Constitution if the supreme law of the land does not recognize them. Such is the absence of the notion of political secession from the Nigerian 1999 Constitution.

Justice Iredell rebutted Chase’s position and argued there are no such things as first principles if a constitution does not recognize them.118 Extrapolating this reasoning, if a constitution does not provide for a

113. See NIGERIAN CONSTITUTION (1979), § 8(1) (stipulating the constitutional procedure for state creation and revealing that the 1979 Constitution, which brought in the Second Republic, abandoned the Westminster system in favor of an American-style presidential system with a directly elected executive).

114. See NIGERIAN CONSTITUTION (1999), §§ 7–8 (establishing the mechanisms and rules for governmental function).


116. See id. at 399 (Iredell, J., dissenting) (stating courts cannot void legislative acts because they are contrary to ideals of natural justice).

117. See id. at 388 (Chase, J.) (stating “An ACT of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority.”).

118. See id. at 398–99 (Iredell, J., dissenting) (arguing the Court lacked the authority to void legislative acts simply because they fail to align with the Court’s notion of justice).
principle, the government simply does not have to recognize it, and it may be unenforceable in a court. Reasonably, one must prove the existence of a right that flows from a constitutional principle before seeking protection from or a remedy for violating such a principle or right. Hence, what does not exist cannot be violated. Further, Justice Iredell urges it is not the Supreme Court’s function to find things that the Constitution does not recognize. \(^{119}\) Comparatively, under Nigerian constitutional law, when the Constitution does not provide for certain principles, they simply do not exist, even if they are legitimate principles in another jurisdiction. The supremacy clause of the Constitution shall prevail.\(^{120}\)

Nigeria’s 1979 and 1999 Constitutions contain layout procedures for creating new states and local government councils.\(^{121}\) Nothing suggests that there are procedures to diminish already-created component states. Both the 1979 and the 1999 Constitutions contain the word “referendum.”\(^{122}\) A referendum is a democratic principle that allows a general vote by the electorate on a single political question referred to them for a direct decision.\(^{123}\) The referendum mentioned under the Constitutions was and is only good for creating additional Nigerian states and not for secession.

V. ORIGINALISM AS A TOOL FOR CONSTITUTIONAL INTERPRETATION

An originalist interpretation could be approached from two sides: the original public meaning and the original intent of the framers of a constitution.\(^{124}\) Justice Scalia suggested the United States’ Constitution was written with ordinary language for the understanding of the people by looking at the legal meaning of the constitutional provisions.\(^{125}\) He

\(^{119}\) See id. at 399 (Iredell, J., dissenting) (“I cannot think that, under such a government, that any Court of Justice would possess a power to declare [a legislative act against natural justice in and of itself void].”).

\(^{120}\) See generally NIGERIAN CONSTITUTION (1999), § 1(3) (stating “There shall be 36 states in Nigeria” and implying the courts do not have the authority to allow for the succession and independence of one of these states).

\(^{121}\) NIGERIAN CONSTITUTION (1979), § 8(1); NIGERIAN CONSTITUTION (1999), §§ 7–8.

\(^{122}\) NIGERIAN CONSTITUTION (1979), § 8(1)(b); NIGERIAN CONSTITUTION (1999), § 8(1)(b).

\(^{123}\) Referendum, BLACK’S LAW DICTIONARY (11th ed. 2019).


\(^{125}\) See, e.g., District of Columbia v. Heller, 554 U.S. 570, 576–77 (2008) (“In interpreting this text, we are guided by the principle that ‘[t]he Constitution was written to be understood by the voters;
explained in order to amplify the meaning of the U.S. Constitution, one should look at the text as it was understood at the time of its adoption and how it is currently used to reinforce the public’s understanding of the meaning of a constitutional provision.126 “There is a problem with the ‘original public meaning’ formulation, because while the meanings of constitutional terms were ‘public’ in the sense that they were not ‘private’ or ‘secret’, they were not necessarily familiar to ordinary people of the era.”127 Moreover, people can be legally educated but still learning the public meaning of a word as used under U.S. constitutional law.128 Therefore, the courts must discern the meaning the Founders ascribed to the Constitution.129 In looking at the public meaning of what secession means to both educated and uneducated Nigerians, it suggests an attempt to subvert the unity of the Republic with the repercussions of a second civil war, as opposed to self-determination. Presumably, those who witnessed the first civil war clearly understood that a second secession move by Biafra would be a chaotic exercise that may destroy lives and property.130 Therefore, the drafters of the Nigerian Constitution purposefully excluded the word from the 1999 Constitution.

VI. ORIGINAL INTENT OF FRAMERS OF THE 1999 CONSTITUTION OF NIGERIA

The constitutional norm of “original intent” is the idea that a judiciary may interpret a constitution and its provisos according to the understanding of its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” (quoting United States v. Sprague, 282 U.S. 716, 731 (1931)).

126. See generally, id. at 576–77, 581 (stating “The term [keep and bear arms] was applied, then as now . . . .”).


128. See id. (indicating “the public legal meanings of terms [] were best known by more advanced legal scholars of the time”).

129. See Gary Lawson, Stare Decisis and Constitutional Meaning: Panel II—The Constitutional Case Against Precedent, 17 HARV. J. L. & PUB. POL’Y 23, 27 (1994) (stating “The court’s job is to figure out the true meaning of the Constitution, not the meaning ascribed to the Constitution by the legislative or executive departments”).

of its framers. The ambiguity behind the framers’ intentions creates a challenge for courts to unswervingly judge in accordance with them. For example, James Madison, a drafter of the United States Constitution, advocated that courts interpret the Constitution based on the “intentions of the people who . . . ratified the Constitution” and “not rest primarily on the intentions of the [F]ramers.” Generally, it is difficult to determine one’s intent when there are no agreed upon measures to plausibly determine what a person meant. For example, in New York Times v. Sullivan, the United States Supreme Court created a measurable standard by holding at least a reckless disregard for the truth is required to find one liable for defamation of a public official. The framers’ intent is important because it helps courts to understand the context of words embedded in a constitution. Strict constructionists argue that a constitution ought to be strictly interpreted as the framers would interpret it. Arguably, this constitutional interpretation would permit more flexible judicial interpretation if unforeseen problems arise. Moreover, constructionists posit that to understand a constitution, one should look to a constitution itself, because its text should control its interpretation. A constitution is an organic document of a nation that speaks for itself, and it is needless to ascertain the framers’ intent. This position fails because there are instances where the text of a constitution is insufficient or ambiguous, hence the need to understand the framers’ original intent.


132. See Derek H. Davis, Original Intent, FREE SPEECH CTR. (July 30, 2023), https://firstamendment.mtsu.edu/article/original-intent/ [https://perma.cc/D269-CZY5] (explaining how the ‘framers’ intentions are not always easy to identify”).

133. Id.


135. See id. at 279–80 (“The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made . . . with reckless disregard of whether it was false or not.”).

136. See Strict Construction, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/strict_construction [https://perma.cc/T23E-3N5W] (“Strict construction is a form of judicial interpretation of a statute. The fundamental principle behind this construction is that the text of a provision in a statute should be applied as it is written.”).

137. See id. (suggesting strict constructionists look at the text of a work and interpret the words’ precise meanings).
Another way to know the framers’ intent is by looking at the contents of the preamble to a constitution. The preamble helps one to understand the framers’ original intent in establishing a new system of government, shaped by the lessons of history and founded on the principles of constitutionalism. For example, United States Justices debated the Founders’ intent regarding topics such as Calhoun’s Nullification Doctrine and the South’s justification for secession on the eve of the Civil War. Inferably, some believed under Calhoun’s Nullification Doctrine, each sovereign state had the power to declare a congressional act unconstitutional and therefore inapplicable to that state, while others disagreed.

Here, the framers’ intent of the Constitution of the Federal Republic of Nigeria 1999 appears unambiguous because the text is silent on the issue of secession. If the Constitution mentioned that a component state was allowed to secede from the Federal Republic of Nigeria, but there was ambiguity in a matter relating to that secession, then the framers’ intent would be relevant. Here, there is no factual dispute that the Nigerian Constitution’s silence on this matter does not allow debate on whether the framers contemplated the break-away of component states from Nigeria. One may also look at the historical intent of the colonial amalgamation of the northern and southern protectorates to form current-day Nigeria in 1914 as an attempt to make Nigeria a unified body with one political identity.

Further, the intentional silence of the framers of the current Nigerian constitution may be fueled by the impact of the Nigerian Civil War.

The Nigerian Civil War, also known as the Nigerian-Biafran War, was a three-year bloody conflict with a death toll of more than one million people.

Less than two months after Biafra declared its independence, diplomatic efforts to resolve the crisis fell apart. On July 6, 1967, the federal government in Lagos launched a full-scale invasion into Biafra. Expecting a quick victory, the Nigerian army surrounded and buffeted

---


140. See id. n.1 (explaining the Calhoun’s Nullification Doctrine gave “each sovereign state . . . the power to declare a congressional act unconstitutional and therefore inapplicable to that state”).
Biafra with aerial and artillery bombardment that led to large scale losses among Biafran civilians. The Nigerian Navy also established a sea blockade that denied food, medical supplies[,] and weapons, again impacting Biafran soldiers and civilians alike.¹⁴¹

The civil war played a damaging role in the life of the nation. Nigerians killed each other, “the Eastern part of the country became a target of war, the horror of war loomed greatly for three years[,] and the economy of the nation was disrupted.”¹⁴² The war hurt “the foreign policy of the nation and her environment.”¹⁴³ “[A] civil war is the deadliest kind of war because a nation is fighting itself. This war lasted for three years after which the 1979 Constitution came into being. The framers vividly addressed national unity and development[,] but did not mention anything about secession.”¹⁴⁴

PART TWO: THE EFFECTS OF SECESSION

I. THE DIFFICULTY OF REDRAWING EXISTING TERRITORIAL LINES AND BOUNDARIES

Sovereign nations’ territories are arranged with the idea of permanence. A nation’s territory is presumed to be the prescriptive jurisdiction in which a state exercises its political powers, irrespective of a change of regime or administration; those territories and lines are presumed permanent.¹⁴⁵ Secession is an exception to the presumed permanence of territorial borders. When a state splits or secedes, there is a possibility of rearranging territorial borderlines and annexations, a principle prohibited by international law.¹⁴⁶

The principle of “Uti Possidetis” (Latin for “as you possess”) is a principle in international law that territory and other property remains with its possessor

¹⁴² Olawale Ogunmodimu, supra note 55, at 17.
¹⁴³ Id.
¹⁴⁴ Id.
¹⁴⁶ See MALCOLM SHAW, TITLE TO TERRITORY IN AFRICA: INTERNATIONAL LEGAL ISSUES 214–16 (1986) (surmising international law applies to states and not individuals; therefore, there is a presumption against secession and outright prohibition of annexation).
at the end of a conflict, unless otherwise provided for by treaty; if such a treaty
does not include conditions regarding the possession of property and territory
taken during the war, then the principle of \textit{uti possidetis} will prevail.\footnote{Ogunmodimu, supra note 55, at 18.}

If the Biafran secession had been successful, Nigeria and Biafra would
have had to redraw Nigeria’s territories to exclude the eastern region of the
country. No sovereign nation wants to cede its territories to a former
component unit. Nigeria might not have been able to afford the redrawing
of its territorial lines under these circumstances. Furthermore, it may
embark on redrawing its territorial lines to correct those arbitrarily drawn
during the colonial administration, but not because of the Biafran secession.
The principle of \textit{uti possidetis} explains Nigeria had acquired territorial
borderlines, so it will continue to acquire them under its sovereignty.

The International Court of Justice, ruling on the maintenance of colonial-
drawn lines in the Burkina Faso-Mali Frontier Dispute,\footnote{Frontier Dispute (Burkina Faso/Mali), Judgment, 1986 I.C.J. 554 (Dec. 22).} held that an
obligation exists to respect preexisting international frontiers in the event of
a state’s secession, whether or not the rule is expressed in the form of \textit{uti
possidetis}.\footnote{See id. para. 24 (declaring territorial boundaries must be respected).} Thus, its numerous declarations of the intangibility of frontiers
upon African states’ declaration of independence are declaratory.\footnote{Id.}

Here, even if Biafra succeeded in its unilateral secession from Nigeria, it
has a regional responsibility to respect the frontiers of the Federal Republic
of Nigeria by not disrupting the existing borderlines. It thus becomes
difficult for Biafra to establish a unilateral claim on all the states of the
eastern region. Upon a successful unilateral secession, international law may
allow Biafra to maintain the new territory formerly held by Nigeria under
another doctrine of \textit{uti possidetis juris}. This doctrine allows colonies emerging
as independent states to retain their preexisting boundaries.\footnote{\textit{Uti Possidetis Juris}, CORNELL L. SCH. LEGAL INFO. INST,
https://www.law.cornell.edu/wex/uti_possidetis_juris [https://perma.cc/R9JS-E87K].} The
challenge is whether Nigeria would give up the Biafra-occupied territories if
it succeeded in the bid for unilateral secession.
II. STATELESSNESS

Another negative effect of secession is the possibility of people becoming stateless. Hanna Arendt, commenting on the vulnerability of stateless persons, said, “Once they had left their homeland they remained homeless, once they had left their state they became stateless; once they had been deprived of their human rights they were rightless, the scum of the earth.”¹⁵² Secession can lead to statelessness because one of the triggers of statelessness is when political territories or borders become readjusted such that those who used to be members of a state lose their membership.¹⁵³ After all, a new state can refuse to recognize and accept them as members, or a state may amend its citizenship laws so that specific groups lose their citizenship.¹⁵⁴ This is the experience of the Rohingya Muslims in Myanmar.¹⁵⁵ Stateless persons are a vulnerable group; they are without a country, do not have any nationality status, and practically belong nowhere.¹⁵⁶ Either in stasis or movement, nationality ties can be broken and give rise to statelessness.¹⁵⁷ A stateless person is rendered vulnerable by movement or migration and has no citizenship ties to any state.¹⁵⁸ In some instances, stateless persons have not moved physically from where they call home, but state boundaries have shifted, and the protection that citizenship was meant to provide has evaporated.¹⁵⁹

Historically, the First World War unsettled the basic concepts of the political reality of a group of persons defined by geographical exclusions.¹⁶⁰ During that time, certain territories were redefined with demographical

¹⁵². HANNA ARENDT, THE ORIGINS OF TOTALITARIANISM 267 (1958). Arendt elaborates that stateless person had the description of “legal freaks” without the protection of the law. Id. at 278.
¹⁵⁴. Id.
¹⁵⁵. Id. at [12].
¹⁵⁶. See id. at [11] (explaining stateless individuals are analogous to outlaws who lack a community, residence, or right to work).
¹⁵⁷. Id. at [3].
¹⁵⁸. See id. (explaining statelessness may result from governments altering citizenship statutes, governments redrawing territorial boundaries, or from people being expelled from one nation and not being granted citizenship by another).
¹⁵⁹. See id. (“The formation of new states, resulting from the decolonization or the disintegration of a federal polity, may leave thousands or even millions stateless or with a disputed claim to citizenship.”).
¹⁶⁰. See ARENDT, supra note 152, at 270 (acknowledging the ludicrous action of creating nation-states where there was a lack of “homogeneity of population and rootedness in the soil”).
adjustments that led to forced displacements.\textsuperscript{161} It seemed important to remake the map of the world to admit or account for new territories or cater to displaced persons who no longer had any connections to political territories and sovereignty. Thus, masses of people defined by their exclusion from any political community became the object of international debate about the foundations of political order.\textsuperscript{162} Therefore, the idea of organizing humanity into discrete sovereignties with full control over membership meant that anyone without political status had no rights because such persons do not belong to a political community. In the wake of the Second World War, there was an exodus of humanity not only because of mass homelessness resulting from the war but also because a huge number of people practically belonged nowhere and could not assert any nationality connections to a sovereign territory willing to recognize them as citizens; thus, they were labeled stateless.\textsuperscript{163}

Regarding Biafra’s secession, the prospect of numerous persons becoming stateless is huge because the unilateral secession move may not be successful. An unrecognized Biafran state would be unable to provide citizenship to its new members, while Nigeria may refuse to recognize them as its citizens. Consequently, the supposed “Biafran citizens” would be unable to assert their citizenship without a sovereign Biafran state, and Biafra would be unable to exercise its sovereignty because it does not have a territory of its own according to international law. As already stated above, territorial adjustment and geographical exclusions are some of the many reasons for statelessness.\textsuperscript{164}

Further, being stateless could deny Biafrans the recognition of nationality and the privilege to enjoy basic human rights. In simple terms, a stateless person does not have the nationality of any country.\textsuperscript{165} Under international law, Article 15 of the Universal Declaration of Human Rights provides, “[e]veryone has the right to a nationality” and “[n]o one shall be arbitrarily


\textsuperscript{162} See ARENDT, supra note 152, at 267 (discussing the disaggregation of the nation state and the plight of the Jewish people in Europe).

\textsuperscript{163} Mira L. SIEGELBERG, STATELESSNESS: A MODERN HISTORY 127, 152–54 (2020) (explaining the historical perspective of the rise of global statelessness after the interwar period that exacerbated population displacement).

\textsuperscript{164} THE STATE OF THE WORLDS REFUGEES: A HUMANITARIAN AGENDA, supra, note 153.

\textsuperscript{165} Id.
deprived of his[her] nationality.”166 The Declaration does not condemn the notion of deprivation of nationality; what it condemns or prohibits is the arbitrary deprivation of nationality.167 Here, arbitrary means “acts that are based on random choice or personal whims rather than on any reason or system.”168 Arbitrary deprivation could also mean when a state actor violates human rights without recourse to international or domestic laws.169 Arbitrariness is interpreted as considerations such as appropriateness, justice, predictability, reasonableness, necessity, and proportionality.170 It seems problematic that if Nigeria deprived the breakaway Biafrans of the recognition and status of nationality, it might not be considered an arbitrary deprivation as proscribed by the Universal Declaration of Human Rights. A counterargument to that view is that the African Charter on Human and People’s Rights does not allow any exceptions to arbitrariness but it only mentions and guarantees the right to nationality as an absolute right.171 To rebut that position, Nigeria could defend actions of deprivation of nationality that may be deemed arbitrary as a safeguard to protecting its territory and resources, and that a unilateral secession infers renunciation of nationality of the parent state.

Beyond the African Charter, the 1961 Convention on the Elimination and Reduction of Statelessness in its Article 7(1), (2) does not allow nationality or citizenship to be lost because a person changes the legal status or nationality of another country.172 Here, Nigeria could argue that a unilateral secession does not fall within the exceptions that the Convention allows. It is also arguable that the notion of unilateral secession may not be considered a legal change of status that may allow breakaway Biafrans to retain their Nigerian nationality. Furthermore, Article 8(3) of the

167. Id.
170. Id.
171. See African Charter on Human Rights and People’s Rights Art. 3, June 27, 1981, 1520 U.N.T.S. 217 (declaring “every individual shall be equal before the law;” therefore, implying people have a right of nationality where the law may be accessed).
Convention permits deprivation of nationality when a national does not uphold the allegiance and loyalty to the state. This may include “rendering services to or receiving emoluments from another state in disregard of an express prohibition by the country of nationality . . . and conduct which is seriously prejudicial to the vital interests of the state.” It is plausible that Nigeria may see the unilateral secession of Biafra as prejudicial to its vital interest of fostering national unity as a sovereign country.

Another effect of statelessness because of secession is that there might be some protracted problems where former Nigerian parents who are now Biafrans may be unable to pass their nationality to their children. For example, Nigeria may amend its nationality laws to restrict Biafrans from passing nationality to unregistered or undocumented children born at the time of the unilateral secession. These children may potentially be unable to establish _jus sanguinis_ because their former Nigerian parents who are now Biafrans may not pass their nationality to them, and _jus soli_, because at the time of birth in Nigeria, they were not registered or documented. These children risk becoming stateless if Biafra fails to develop as a sovereign state. In addition to the indignity of being without a nationality, stateless persons are persons denied basic rights. For example, access to education or health care can be challenging for stateless people.

---

173. Id. art. (8)(3).
175. See About Statelessness, supra note 35 (describing how children of stateless people are stateless because they were unable to inherit Nationality from their parents or from their place of birth).
176. _Jus sanguinis_ is defined as “a rule of law that a child’s citizenship is determined by that of his or her parents.” _Jus Sanguinis_, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/jus%20sanguinis#:~:text=Legal%20Definition%20of%20jus%20sanguinis,of%20his%20or%20her%20parents [https://perma.cc/2M39-J5GP].
177. _Jus soli_ is defined as “a rule that the citizenship of a child is determined by the place of its birth.” _Jus Soli_, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/jus%20soli#:~:text=Jus%20soli%20%2D%20Latin%2C%20right%20of%20the%20soil [https://perma.cc/PW5Q-PKG3].
III. INTERNAL DISPLACEMENT

Another effect of secession is the tendency to render countless persons internally displaced, or IDPs.

IDPs are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result . . . of armed conflict, situations of generalized violence, violations of human rights[,] or natural or human-made disasters, and who have not crossed an internationally recognized state border.\(^{180}\)

Conflict is one of the displacement drivers that can uproot people.\(^{181}\) The Civil War was a displacement driver during the first Biafran secession in 1967 even though Nigeria had not declared a hostility (war) against any external states. However internal insurrections, terrorism, and communal conflicts exacerbate the possibility of forced movement of people from one place to another. For example, the continuous attacks of Boko Haram and herders on villages like the Baga, Chibok, and Benue communities have caused people to move and seek shelter elsewhere, in settlements that may or may not welcome the new arrivals.\(^{182}\) Reconnecting with their former ancestral communities is no longer feasible for these displaced individuals, as most communities are razed after the dwellers have fled.

There is the likelihood that more people will be displaced if Biafra undertakes another secession attempt because there would not be any internal protection for the Eastern Nigerians who may be displaced due to war. The primary responsibility for protecting internally displaced persons rests upon their state, not the international community.\(^{183}\) In the event of Biafran secession, no state would be obligated to protect displaced persons.

---


\(^{183}\) Olawale Ogunmodimu, Internally Displaced Persons: Ordeals and Analyses of the Possible Regimes of Legal Protection Frameworks, 54 ST. MARY’S L.J. 407, 439 (2023) [hereinafter Internally Displaced Persons].
This is because Nigeria may be unwilling to protect the displaced Biafran members, and Biafra may be unable to protect its members because of the possibility of a failed secession and the fact that not all the Igbos support secession.

Internal displacement resulting from a failed state secession could lead to cultural displacement of the Igbo people or the minority Biafra supporters. Cultural features of the Igbo people like language, lifestyle, property, and sites could become diminished. The effect is that the idea of the Igbo as a complete group of people could become fractured and unconvincing.\textsuperscript{184} Culture usually helps people to identify their unique subset as part of the broader human community.\textsuperscript{185} A unilateral secession of Biafra from Nigeria threatens the permanent link between the Igbo people and their specific geographical terrain within the territory of the Federal Republic of Nigeria. As has previously been espoused:

the displacement of a people disconnects them from cultural preserves that enable them to establish a sense of ‘home.’ Interestingly, beyond social settings and physical structures, the idea of home to some IDPs is a combination of values that inherently connect them to specific interests. Internal displacement disrupts the importance of home and does not acknowledge the long-term benefits cultures contribute to the stability of a state. These cultural values have become part of the human rights framework and influence the relationship between a people, their distinctiveness, and the state.\textsuperscript{186}

Arguably, the first Nigerian Civil War (also known as the Biafra War) was a result of a unilateral state secession move by Biafra.\textsuperscript{187} During this Biafra War between 1967 and 1970, an estimated two million people were killed, and ten million people became internally displaced.\textsuperscript{188} The Civil War led to

---

\textsuperscript{184} See DISPLACEMENT, DIASPORA, AND GEOGRAPHY OF IDENTITY 1–3 (Smadar Lavie & Ted Swedenburg eds., 1996) (describing the postmodernist trend of distinguishing groups based on characteristics).

\textsuperscript{185} See id. at 2 (explaining the modernist idea of cultural connection to place).

\textsuperscript{186} Internally Displaced Persons, supra note 183, at 414.

\textsuperscript{187} See The Republic of Biafra, supra note 6 (noting the start of the first Nigerian Civil War was caused by the Biafra secession).

\textsuperscript{188} Okechukwu Ibeanu, Exiles in their own Home: Internal Population Displacement in Nigeria, 3 AFR. J. POL. SCI. 80, 80 (1998).
a major internal displacement crisis in Nigeria as far back as 1966.189 The war displaced many communities in the eastern part of the country.190 Furthermore, statelessness during a civil war could lead to enforced disappearance of Biafrans or Nigerians. Since the Nigerian Civil War ended over fifty years ago, countless persons could not be found and consequently inferred as the disappeared people.191 Another agitation to revisit the Biafra secession from Nigeria could lead to mass scale or enforced disappearance of people. It is challenging when people are displaced and killed, but perhaps even more disturbing is when they disappear leaving no clues as to their whereabouts. No funeral arrangements can be made, the family members cannot pay their last respects, and the survivors are psychologically traumatized by wondering what might have happened to their loved ones.

Disappearance is a violation of a person’s right to life.192 The Nigerian Supreme Court, in Dilly v. Inspector General of Police and Others,193 held that a relative of a person arrested by the police and whose whereabouts cannot be established or who has been declared missing has the locus standi to seek the enforcement of the disappeared person’s fundamental human right to life of the missing, as stipulated in Section 46(1) of the Nigerian 1999 Constitution.194 A crucial international law term similar to disappearance is “enforced disappearance.”195 This term connotes the act of making someone disappear suddenly, against his or her will.196 Enforced disappearance, therefore, refers to “the arrest, detention, or abduction of a person, followed by a refusal to acknowledge the fate of that person.”197

189. See The Republic of Biafra, supra note 6 (responding to the 1966 attacks on the Igbo in northern Nigeria, millions of refugees fled east).
190. See Ibeau, supra note 188, at 81 (estimating approximately 300,000 internally displaced people lived in the southeastern region of Nigeria in the late 1980s).
194. Id. (allowing the defendant to challenge the violation of her son’s fundamental right).
195. See Enforced Disappearance, supra note 192 (defining enforced disappearance as “the act of making someone disappear against their will”).
196. Id.
197. Id.
“The agents of a repressive State often perpetrate this crime . . . with complete impunity,” abducting people considered a threat or an opposition without allowing those individuals legal recourse.\textsuperscript{198} Arrests are made without a warrant, criminal charges, or evidence, and there are no court proceedings to determine guilt.\textsuperscript{199} As stated by Amnesty International, hundreds to thousands of citizens in Nigeria are victims of enforced and involuntary disappearances.\textsuperscript{200}

According to International Criminal Court, the following elements constitute an enforced disappearance: deprivation of liberty by government agents or without the victims’ consent; silence followed by an absence of information or refusal to acknowledge the deprivation of liberty; and, refusal to disclose the fate or whereabouts of the person, thereby placing such people outside the protection of the law.\textsuperscript{201} Moreover, the international community and some regional human rights courts, like the European Court of Human Rights (EHRC), hold that there is an obligation on the part of the state to guard against third-party attacks and disappearances.\textsuperscript{202} Here, it is not quite clear who would have the obligation to guard against the disappearance of people if Biafra unilaterally secedes from Nigeria.

In \textit{Opuz v. Turkey},\textsuperscript{203} the EHRC held that a state is obligated to provide protection against the loss of life or attacks on its citizens.\textsuperscript{204} Moreover, in \textit{Kurt v. Turkey},\textsuperscript{205} the EHRC considered reports produced by the U.N. Working Group on Enforced and Involuntary Disappearances, including a 1994 report indicating Turkey had the highest number of alleged enforced disappearance cases of any country in the world.\textsuperscript{206} Applying that court’s reasoning to Nigeria and Biafra, it is not clear who has the obligation to prevent third-party disappearance of citizens because Nigeria may no longer

\begin{thebibliography}{99}
\bibitem{198} Id.
\bibitem{199} \textit{See id.} (arresting persons with no warrant or charge and failing to prosecute those persons).
\bibitem{202} \textit{Internally Displaced Persons}, supra note 183.
\bibitem{203} Opuz v. Turkey, App. no. 33401/02, Eur. Ct. HR (2009).
\bibitem{204} \textit{See id.} para. 153 (“[T]he Court concludes that the criminal-law system, as applied in the instant case, did not have an adequate deterrent effect capable of ensuring the effective prevention of unlawful acts committed by H.O. . . .”).
\bibitem{206} \textit{Id.} para. 166.
\end{thebibliography}
recognize Biafrans as its nationals if Biafra fails to get a successful unilateral secession. Presently, there are no established mechanisms to monitor the disappearances of persons in Nigeria. But Nigeria is obligated to ensure that human beings do not disappear because of state and non-state actions.

IV. EXTERNAL DISPLACEMENT: REFUGEEOOD

Another effect of secession is the possibility of external displacement or refugeehood. Here, displaced Biafrans who cannot procure assistance from Biafra may seek help extraterritorially in the form of asylum protection as refugees in another country. Sometimes, internally displaced persons cannot resettle in another part of the country because the state is the perpetrator of their displacement.207 Here, Nigeria may not admit the displaced Biafrans if a unilateral secession took place; thus, resettlement within Nigeria could pose a severe threat to the displaced Biafrans.

In most cases, victims of displacement opt to cross an internationally drawn line into another state to seek asylum as refugees.208 Most displaced persons prefer this option because states are generally advised not to reject or return asylum seekers under the principle of non-refoulement.209 However, admitting new asylum seekers causes an additional burden on the receiving state’s resources, which may already be insufficient for its citizens.210 Arguably, whatever happens in the African region tends to affect other nations on the continent or the proximate regions.

V. A GATEWAY TO INCESSANT AND FRIVOLOUS UNILATERAL SECESSION

207. Internally Displaced Persons, supra note 183, at 428.
208. Id.
Another effect of Biafran secession may open the door to further unjustified secession moves by other freedom fighters and entities. Apart from Biafra, there is the Yoruba nation agitation that is reaching its crescendo in a move seeking separation from Nigeria, just like its Biafra counterpart. The agitations for a separate nation for the Yoruba people have increased because of reported killings in the south-west region where the Yorubas occupy in Nigeria. Some of those killings were masterminded by conflicts between agrarian communities and cattle nomadic herders from northern Nigeria seeking pasture for their animals in southern Nigeria. Those killings brought to the fore, the agitation for a separate nation in the quest for self-determination of the Yoruba people.

Arguably, the resurgence of separatism in Nigeria is because the government fails to ensure the security of lives and property in the face of multiple threats that stir memories of the country’s deadly 1967 Civil War.

---


The Yoruba (Yorùbá in Yoruba orthography) are one of the largest ethno-linguistic groups in sub-Saharan Africa. Yoruba constitute about 21% of the population of modern day Nigeria, and they are commonly the majority population in their communities. Many of the Yoruba in West Africa live in the states of Ekiti, Lagos, Ogun, Ondo, Osun, and Oyo, making these political areas decidedly in the control of the numerically superior Yoruba.

Yoruba People, NEW WORLD ENCYC., https://www.newworldencyclopedia.org/entry/Yoruba_People [https://perma.cc/Y5U5-4J2U].

The Yoruba are one of the largest African ethnic groups south of the Sahara Desert. They are, in fact, not a single group, but rather a collection of diverse people bound together by a common language, history, and culture. Within Nigeria, the Yoruba dominate the western part of the country. Yoruba mythology holds that all Yoruba people descended from a hero called Odua or Oduduwa.

Yoruba, EVERY CULTURE,https://www.everyculture.com/wc/Mauritania-to-Nigeria/Yoruba.html#txzz8HkZITJ [https://perma.cc/6TFD-NGGJ].

212. See Igboho, supra note 211 (stating the conflict between herders and other groups that resulted in the death of a politician precipitated calls for a Yoruba nation).

213. See id. (explaining “one of the country’s deadliest conflicts—clashes between Fulani herders and other groups, over access to land and grazing rights”).

214. See id. (“After the killing of a politician in January, Mr[.] Adeyemo felt he had seen enough and . . . demand[ed] that the Fulani herders, from northern Nigeria, leave the south-west, seen as the home of the Yoruba ethnic group . . . .”).
Today, many ethnic groups are threatening to secede from the parent Nigerian state, such as the MASSOB and the Yoruba nation separationists. While it is doubtful the Yoruba nation would gain traction like Biafra, there are indications that a minority of the agitators already drafted a constitution “in principle” for the country, if actualized.

When several groups are bound under a social contract theory, they commit themselves to stand by their agreement and remain loyal to the social entity in return for the benefits of governance in the larger association. For example, there is a communal and social contract bond between Nigerian citizens and Nigeria where the citizenry can assert fundamental rights that flow from citizenship, and the state can prescribe its authority or jurisdiction over the citizenry. The communal bond holding all the ethnic groups in Nigeria together would lose its strength if some ethnic groups left because of the imperfect nature of the social pact. No republic is utopian, and democracy will destabilize if certain ethnic groups pulled out of their commitment to building one nation. In particular, ethnic groups should not quickly exit the national bond because of a state’s imperfection, but only if there is ample evidence of denial of internal self-determination because of political subjugation.

The maxim of international law, “pacta sunt servanda,” states that all things being equal, state actors should keep or uphold their contractual agreements. When applied to Nigeria, this maxim is necessary for the nation to stay together as one people by honoring the pledge to be one.


217. See Rupert Emerson, Self-Determination Revisited in an Era of Decolonization, in OCCASIONAL PAPERS IN INTERNATIONAL AFFAIRS 28–30 (1964) (explaining it is incompatible with the U.N. Charter “to appeal to self-determination in such a fashion as to disrupt the national unity and territorial integrity” of a nation who has achieved independence from its colonial ruler).

indivisible and indissoluble nation.\textsuperscript{219} If Biafra unilaterally secedes, a long-term effect is the possibility of endless secession incidents by other ethnic groups in Nigeria. Biafran secession might open a floodgate of secession since the Nigerian Constitution’s silence about the issue may be interpreted as permission to do it. Furthermore, international law does not proscribe secession if accomplished without violating the territorial integrity of the parent state.\textsuperscript{220} Once the right to secession is admitted, there are no clear limits to this process. The sudden quest for homogenous groups may topple the desire to form a heterogeneous society, which may eradicate the diverse social values and practices that a nation rich in culture like Nigeria stands for. Secession is a systematic depletion of a democratic system that creates political instability and a pretext for human rights violations. Secession will undermine the pivotal role of democracy, and as it allows sentiments to override national patriotism, other minorities could threaten the dismemberment of the nation.\textsuperscript{221}

Additionally, there is the problem of the effectivity and continuity of Biafra if it achieved a successful unilateral secession from Nigeria. While international law would confer recognition on such a political entity after a successful secession move, it is doubtful how effective or sustainable the move would be. Arguably, it may be hard for Biafra to establish its control over the various ethnocultural factions in the context of the wide dispersal of Igbos in Nigeria because not all Igbos in Nigeria and abroad subscribe to secession as the answer to Nigeria’s nepotism problem.\textsuperscript{222} Moreover, there are cracks within the Biafran leadership, similar to those that disrupted the social decorum of Sudan and South Sudan barely three years after secession.

\textsuperscript{219} See LEE C. BUCHHEIT, SECESSION, THE LEGITIMACY OF SELF-DETERMINATION 21 (1978) ("Once it has been exercised, the theorist would contend, these groups do not retain any residual right of self-determination in the form of an option unilaterally to secede . . . .").

\textsuperscript{220} See id. at 22–23 (explaining the U.N. has affirmed the right of colonial subjects to compel their government to allow self-determination).

\textsuperscript{221} See Succession: Why Lincoln Feared It Was the End of Democracy, NAT’L PARK SERV., https://www.nps.gov/articles/secession-why-lincoln-feared-it-was-the-end-of-democracy.htm [https://perma.cc/Z7WL-CXZ2] (stating President Lincoln’s belief that succession would weaken government and end the Nation’s democratic rule).

\textsuperscript{222} See Bad Governance: Most Nigerians Want Secession, Says Former Anambra Governor Ezeife, SAHARA REP’S (Sept. 28, 2020), https://saharareporters.com/2020/09/28/bad-governance-most-nigerians-want-secession-says-former-anambra-governor-ezeife [https://perma.cc/6FW3-JSEZ] (acknowledging Nigeria’s nepotism problem, but believing Nigeria should stay unified due to its natural and human resources, as well as the fact that God unified it).
VI. The Possibility of Fragmenting International Agreements and Treaties

If Biafra secedes from Nigeria, it is reasonable to predict that it might not be bound by Nigeria’s signed and ratified treaties, from which the six eastern Nigerian states comprising the Igbos had benefited. Agreements may address the status of treaty obligations when new states emerge because of secession. This is not always the norm; for example, there were no agreements concerning preexisting treaties before the break-up of Yugoslavia.223 Under international law, a state may avoid some non-human rights treaty obligations under the doctrine of “rebus sic stantibus,” by which it claims a fundamental change of circumstances to exempt it from the performance of those treaty obligations.224 It is not clear whether secession could trigger the rebus sic stantibus doctrine to justify breaching international agreements signed and ratified before the Biafran secession.

In 1997, the International Court of Justice held the claim to change in circumstances in a treaty is applied only in very exceptional cases.225 These circumstances must have “radically transformed the extent of the obligations still to be performed in order to accomplish the project.”226 The Nigerian Constitution provides for the domestication of treaties as part of the laws of the land.227 Biafra has benefited from those treaties, and if it left Nigeria by unilateral secession, those domesticated treaties could be

223. See generally Agreement on Succession Issues Between the Five Successor States of Former Yugoslavia, June 29, 2001, 41 I.L.M. 3 [hereinafter Agreement on Succession Issues] (formulating various agreements including those relating to various treaties).


226. See id. at 6 (concluding the changed circumstances proffered by Hunger did not constitute ones that would “radically transform the extent of the obligation still to be performed”).

227. See NIGERIA CONSTITUTION (1999), § 12(1) (“No treaty between the Federation and another country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.”). What this section means is that any treaty to which Nigeria has chosen to bind itself internationally (the powers of the President under the Treaties (Making Procedure, etc.) Act and under which it has rights must be subjected to a process of domestication as ensnirned in the constitutional provision above to attain local enforceability status. Treaties (Making Procedure, etc.) Act (1993) (Nigeria).
frustrated. Objectively, the Biafra secession may not have a huge effect on Nigeria’s mandate for enforcing international agreements because international law’s general rule is the continuity of treaties, especially human rights treaties. The peculiarity of human rights treaties is that they are not about the states in the tussle of secession but for the benefit of individuals. It is possible that if Biafra left Nigeria, it would discontinue any human rights treaties that Nigeria had signed and ratified in the past. Therefore, Nigeria potentially would become stranded and opt for the renegotiation of treaties and other international agreements. The treaty-making process is cumbersome, and the terms of negotiation may have changed since the time of adoption; thus, altering the objectives and purpose of a treaty.

VII. DISSOLUTION OF STATE PROPERTY

Another effect of the Biafran secession is the possible disputes regarding how to share state property equitably with the Nigerian government. Under international law, when property is dissolved, its distribution must be done under international agreements and the principle of equity; otherwise, a state expropriates someone’s property. However, the meaning of equity in this context is ambiguous.

Considering the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), international law mandated distribution of the National Bank’s account among the successor states under their agreement. Applying this principle to Nigeria, the secession prospects of Biafra look bleak because of the difficulties regarding property ownership claims between Nigeria and Biafra. As Biafra is a federal state, the issue the distribution of jointly owned property is critical. The Nigerian government owns all lands in the country, and the federal government has allocated national resources to the six eastern states comprising Biafra under the federal government’s fiscal policy and monthly allocation remunerations. Although equity is not explicitly mentioned as a principle of international

228. BUCHHEIT, supra note 219, at 23.
229. See Anthony Aust, Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, AUDIOVISUAL LIB. OF INT’L L., https://legal.un.org/avl/ha/vcssrspad/vcssrspad.html [https://perma.cc/RP3D-AJ7R] (discussing the purpose of the treaty was to have states divide up their property equitably).
230. Id.
231. See Agreement on Succession Issues, supra note 223 (“Confirming the decision reached on 10 April 2001 concerning the distribution of SFRY’s assets held at the Bank of International Settlements . . . “).
law in Article 38(2) of the Statute of the International Court of Justice, international practitioners, tribunals, and the International Court of Justice do apply equity.\textsuperscript{232} Looking at Quebec’s attempt to secede from Canada, they reasoned that a “per capita basis approach” is the most efficient means to settle public debt and asset claims during secession.\textsuperscript{233} This reasoning is not part of the customary practices under international law for apportioning debt and assets during secession.\textsuperscript{234} The challenge is whether this reasoning should become a precedent for Biafra if it unilaterally left Nigeria. The answer is that it depends on the particular situations of the parties involved. Generally, all questions about state entitlement to property are determined by domestic courts and not international tribunals.\textsuperscript{235} The problems of selecting a forum, serving court processes, and finding unbiased umpires to adjudicate this civil process are very complicated and financially demanding.

A. \textit{Self-Determination Is Not Only Achieved by Secession}

Self-determination denotes the legal right of people to decide their destiny in the international order.\textsuperscript{236} Self-determination has both an internal aspect (promotion of democratic institutions to respect the consent of the governed) and an external aspect (freedom from alien rule).\textsuperscript{237} It is apt to note that there is a difference between self-determination from colonial subjugation and because of a mere ambition to secede from a parent state.\textsuperscript{238}

\begin{itemize}
  \item \textsuperscript{232} See generally North Sea Continental Shelf Cases (Fed. Repub. Ger. vs. Den. & Neth.), Judgment, 1969 I.C.J. 3 (Feb. 28) (explaining equity connotes more than the verbal maxim, \textit{ex aequo et bono}, pursuant to Article 38(2) of the I.C.J. Statute).
  \item \textsuperscript{233} See Daniel S. Blum, \textit{The Apportionment of Public Debt and Assets During State Secession}, 29 Case W. RES. J. INT’L L. 263, 263 (1997) (concluding “the per capita basis approach is the most efficient and equitable”).
  \item \textsuperscript{234} Id. at 264 (acknowledging the manner of asset apportionment during state secession is not an established, uniform practice under international law).
  \item \textsuperscript{235} See generally Norman L. Hill, International Jurisdiction and Domestic Questions, 10 S. Pol. & Soc. Sci. Q. 22 (1929) (grappling with the fine line between what should be governed by domestic law and what should be governed by international law).
  \item \textsuperscript{236} See Legal Aspects of Self-Determination, \textsc{Encyc. Princetonensis}, https://pesd.princeton.edu/node/511 [https://perma.cc/AP97-3WSE] (defining “[i]nternal self-determination [as] the right of the people of a state to govern themselves without outside interference”).
  \item \textsuperscript{237} Id.
International law contains neither a right to unilateral secession nor the explicit denial of such a right, although such a denial is, to some extent, implicit in the exceptional circumstances required for secession to be permitted under the right to self-determination.\textsuperscript{239} For example, “the right of secession that arises in the exceptional situation of an oppressed colony.”\textsuperscript{240} Nigeria is no longer under colonial rule, and none of its component states are under political subjugation. A major factor that pushes for self-determination even after a parent state is no longer under colonial rule is if such an entity was denied internal self-determination.\textsuperscript{241} Outside a colonial context, international law allows a people or group to exercise a right to external self-determination when they are subject to alien subjugation, domination, or exploitation.\textsuperscript{242}

International law places great importance on the territorial integrity of nation-states.\textsuperscript{243} It leaves the creation of a new state to be determined by the municipal law of the existing state of which the seceding entity presently forms a part.\textsuperscript{244} The recognized sources of international law establish that a people’s right to self-determination is normally fulfilled through internal self-determination, that is a people’s pursuit of its political, economic, social, and cultural development within the framework of an existing state.\textsuperscript{245} Internal self-determination requires a government that represents all people belonging to the territory without distinction of any kind; the absence of this may potentially justify secession.\textsuperscript{246}
Arguably, the six component states that comprise Biafra are well represented, and Biafrans are recognized as a people in Nigeria, just as other ethnic groups are recognized. However, not all of their ambitions should be given consideration. The decision of a few Biafra leaders should not overrule the spirit of nationalism and the political interests of Nigerians. For “a people” to qualify for self-determination, they must have common interests that they wish to protect or preserve. Consequently, any group can qualify as a people and attain the right of self-determination if the group experiences external or internal domination, oppression, grave human rights violations, foreign or alien subjugation, great repression, threat of physical extermination, and denial of representation and participation in the government of the state. Here, Biafrans seeking unilateral secession from Nigeria would need to prove that Nigeria has not provided the right to internal self-determination and show evidence of the elements that legitimize unilateral secession to achieve self-determination under international law.

Moreover, self-determination has grown beyond a conventional right. It has become a general principle of international law. If not carefully handled, the claim to self-determination becomes a sort of communal exacerbation, giving rise to tension in a federal state such as Nigeria, because groups will compete and proselytize their respective indigenous distinctiveness based on unrealistic historical myths. Nigeria is very

example, the notion of remedial secession as a political and moral motive rather than a legal decision has been used to justify unilateral secession in places like—Kosovo, Palestine, and Somaliland. Yonas Girmi Admassu, The Essence of Remedial Succession: From the Perspective of Human Right and Preservation of Natural Resources, 12 BEIJING L. REV. 1252, 1256, 1259 (2021).

247 Madison believed that man was inherently evil and would attempt to lead the government in a way to fulfill his own desires. Therefore, the U.S. Constitution put limitations on the activities of the government to prevent political decisions from being based on the selfish ambitions of the leaders in the government. On the other hand, those limitations actually rely on ambition in the sense that the leader’s interests must be connected with constitutional principles. The Federalist No. 51 (James Madison).


249 See generally Yonas, supra note 246 (describing who make up a people within a group and when those people have the right to seek self-determination through secession).


251 See generally Joane Nagel, Constructing Ethnicity: Creating and Recreating Ethnic Identity and Culture, 41 SOC. PROBS. 152 (1994) (discussing the creation of ethnic identity and its transformation, as well as the importance of a pan-ethnic community); Anthony D. Smith, The Ethnic Origin of Nations
ethnically complex.\textsuperscript{252} This complexity leads to political leaders being chosen for their ethnic ties—political parties nominate their flag-bearers for national elections overwhelmingly based on those ethnic ties.\textsuperscript{253} If ethnic exclusivity was the basis for self-determination, then every ethnic group or distinctive group of people could claim the right to secede and stand-alone for self-rule.\textsuperscript{254}

For an entity to qualify as “peoples,” it must possess both objective and subjective characteristics. Some of the objective elements the group may possess are: (1) common history; (2) common territory or geographical location; (3) cultural, linguistic, racial[,] or ethnic ties; or (4) religious or ideological ties. Collectively, these elements only satisfy the objective element of “self” and cannot qualify a group as “peoples,” unless group members are subjectively conscious of their distinctiveness.\textsuperscript{255}

All people have the right to determine the system of governance by democratic means of a majority decision.\textsuperscript{256} However, the mutual understanding of states appears to be that minorities’ problems do not mean they lack the right to self-determination or the implementation of that right.\textsuperscript{257} Therefore, secession or separatism should not be seen as equal to self-determination.


\textsuperscript{254} Okoronkwo, supra note 252, at 115 (noting self-determination is a vehicle to ensure the respect of human rights).

\textsuperscript{255} Id. at 104.

\textsuperscript{256} See id. at 80 (stating colonial territories have the right to self-determination through the democratic process); Gnanapala Welhengama, MINORITIES’ CLAIMS: FROM AUTONOMY TO SECEDION 126–27 (2000) (equating self-determination with human rights and democracy with the governance that extends human rights).

\textsuperscript{257} See WELHENGAMA, supra note 256 (implying self-determination is achieved when a people’s human rights are respected).
B. Possible Alternatives to Secession

Firstly, Biafra could exist as an independent sovereign state within the Federal Republic of Nigeria. A good example of an independent state within the territory of another state is Puerto Rico’s relationship to the United States.258

Secondly, both Nigeria and Biafra should allow dialogue to reach a reasonable compromise. The Nigerian government should engage Biafra in dialogue and find a lasting solution to its endless agitation. Grievance-based solutions such as secession should not be arbitrarily pursued or seen as a means of politicking. In the case of Burkina Faso v. Republic of Mali,259 the International Court of Justice held that the frontiers of existing parent states can only be changed by peaceful means and by common agreement.260

Thirdly, Biafra should advocate for greater internal self-determination by seeking appropriate channels of adjudication and using national complaint mechanisms and the judiciary for a fair hearing. It may also present any human rights violations or similar persistent oppressive actions of the government (if any exist) to regional and international tribunals. Following the Paris Peace Conference at the end of World War I, the U.S. President, Woodrow Wilson, stated that national self-determination was important in maintaining a peaceful international society.261

C. Referencing the Decision in: In re Secession of Quebec262

Quebec attempted to secede from Canada unilaterally.263 The Governor in Council brought the case to the Canadian Supreme Court, asking for its opinion regarding the legality of unilateral secession if Quebec passed a referendum in favor.264 The Governor in Council presented three questions to the court:

258. See Clarification of Status Options, PR51ST (Nov. 15, 2023), https://www.pr51st.com/clarification-of-status-options/ [https://perma.cc/UBK6-W9AR] (describing Puerto Rico as a United States territory and listing options it has should it desire not to continue as a territory).
260. Id. para 112 (determining frontier lines based on common agreement between the parties).
263. See generally id. (determining whether international law gives Quebec the right to secede).
264. Id. para. 2.
Question 1: Under the Constitution of Canada, can the National Assembly, legislature or the government of Quebec effect the secession of Quebec from Canada unilaterally?

Question 2: Does international law give the National Assembly, legislature or the government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?

Question 3: In the event of a conflict between domestic and international law on the right of the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?

After much discussion, the Supreme Court concluded that the Canadian Constitution does not give Quebec the right to secede unilaterally. This decision is pivotal to the Nigeria/Biafra secession saga. The Nigerian Constitution does not provide for the unilateral secession of any of its component states; therefore, it is difficult for secessionists to claim any legal purview other than mere moral sentiments for self-rule. Furthermore, the Canadian Supreme Court determined that international law and the principle of self-determination do not confer the right to secession on Quebec. Since the court determined that there was no conflict between Canadian and international law, it did not answer the third question. Moreover, the court held:

Unilateral secession would involve the separation of Quebec from Canada without any negotiation or consultation with the federal government and provinces. In a unanimous decision, the [Canadian Supreme Court] ruled that a literal reading of the [Canadian Constitution] leads to the conclusion that unilateral secession would be unconstitutional, and thus not permitted.

265. Id.
266. Id. para. 104.
267. Id. paras. 111–54
Moreover, residents of Quebec are not oppressed, colonized people nor are they denied meaningful access to government to pursue their political, economic, social, or cultural development. 269

The Canadian court’s ruling is a good precedent for Nigeria if the Biafra secession move continues. As stated above, the Nigerian 1999 Constitution does not support unilateral secession, and Biafra’s claim of political subjugation does not align with the present factual disposition of governance in Nigeria. It is very difficult to prove that the Biafrans are being deprived of the dividends of democracy or that their access to full participation in governance is restricted.

VIII. CONCLUSION

A cursory look at Article 73 of the United Nations Charter shows that it provides for the pronouncement of self-determination but not secession. 270 It is Nigeria’s obligation to provide the avenue for self-determination to all ethnic groups, but self-determination does not mean secession. For example, secession is not a part of the U.N. General Assembly’s Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States of October 24, 1970. 271 Paragraph 7 of that declaration recognizes the rights of minority groups, but stresses the exercise of self-determination shall not undermine the infrastructure of the nation-state system. 272 Also, secession is not mentioned under Article 27 of the International Covenant on Civil and Political Rights (ICCPR). 273 This convention places an obligation on Nigeria not to act arbitrarily by violating the rights of Nigerians. Here, the onus is on Biafra to prove that Nigeria has violated the ICCPR in a way that deprives Biafrans of their political or human rights, creating a breach of self-determination. Dividing Nigeria does not answer the questions of her deficiencies.

269. Id. at 3–4.
270. See generally U.N. Charter art. 73 ¶ 1 (describing the responsibilities of United Nation members who have influence over territories that are still developing self-governance).
271. See generally GA Res. 2625 (XXV), supra note 1 (avoiding secession as a part of the Declaration).
272. See id. (conferring a duty to respect the right of self-determination in accordance with the provisions of the Charter).
Pivotaly, apart from the gross human rights abuse during the Nigerian Civil War, the secessionist move of Biafra, if at all, should be logically done as a political remedial measure rather than a unilateral decision under the pretext of self-determination. Although there is no international enforcement of remedial secession as a cognizable right, remedial secession could be a political justification for a successful unilateral secession of an oppressed group of people. For example, a group of people at the risk of becoming victims of crimes against humanity may seek remedial secession where the parent state has denied them access to self-determination or perpetuated gross violation of their human rights. Here, such an oppressed group of people may seek unilateral secession as remedial response because they have already but unsuccessfully sought internal measures for self-determination from the parent state. By analogy, an Igbo remedial secession from Nigeria would operate as a type of unilateral secession done in response to the tyranny, human rights abuse they face, or their segregation from participating in governance systems of the Federal Republic of Nigeria, the parent state. This suggestion could illustrate the secession of Kosovo from Serbia as a remedial move that necessitated Kosovo to secede from Serbia. Therefore, a remedial secession might justify Biafra’s unilateral secession from Nigeria rather than domestic or international legal basis.