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The right to self determination: An analysis of the issues concerning the (non) recognition of Biafra in 1967

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Abstract
In 1967, as a consequence of a long running clash of interests with the Federal Government of Nigeria dating back to independence in 1960, the then Eastern Nigeria led by Lt.Col Emeka Odumegwu Ojukwu seceded and declared its independence as the sovereign state of Biafra . This paper examines the non-recognition of the State of Biafra by the United Nations despite the establishment of the elements of statehood in the new state against the backdrop of the Doctrine of Self-determination. The Paper goes further to juxtapose the Biafra situation with others similar to it e.g Bangladesh, Kosovo, The Katanga Province and determines the unfair applications of the concept of Recognition in International Law. It concludes by stating that the non-recognition of the Sovereign State of Biafra (then) by the United Nations in 1967 was contrary to the principles of International Law.

Keywords: BIAFRA, IGBO, secession, self-determination, recognition

Introduction

The attainment of independence by Nigeria from its colonial master Britain in 1960 and its attendant euphoria at practicing Democracy was truncated by the first military coup of 1966. Led by Major Chukwuma Nzeogwu and nine other Army officers of Igbo extraction, it led to the killing of 11 senior politicians including the then Prime Minister, Sir Abubakar Tafawa Balewa and the emergence of General J.T.Aguiyi-Ironsi as Head of State.

This was followed by another coup which brought in General Yakubu Gowon as the new Head of State. The Coups had however sharply divided Nigeria along ethnic lines; the first coup saw mostly soldiers of Igbo extraction assassinating politicians from Northern and Western Nigeria [1]. The other coup was a vendetta against the emergence of Igbos at the helm of affairs thus was a pogrom against Igbo officers.

The unsettling situation bred a lot of distrust and attendant instability in the country culminating in the peace and reconciliation meeting held at the instance of Lt. General Ankrah of Ghana at Aburi, Ghana [2].

The agreement reached at the meeting went largely disregarded by the Federal Government of Nigeria and discrimination against the Easterners i.e the Igbos became more pronounced. It was against this scenario that Eastern Nigeria seceded and attempted to break away as the sovereign State of Biafra on the 30th May, 1967. The resultant civil war ended on the 12th January, 1970 with the unconditional surrender of the Biafra Forces.

Issues on self-determination

The assessment of the non-recognition of Biafra in this paper in premised on the examination of three key concepts in International Law and the principles of the United Nations to wit: Self-Determination, Statehood, and Recognition of States. The Preamble to the United Nations (UN) Charter [3] highlights the resolve of the Body to prevent suffering in whatever form unto a particular people as human beings, or based on their ethnic peculiarity in any polity. This is the fulcrum of the provisions on Self-Determination which not only guarantees the Right[4] but also places on member states, an obligation to support such a struggle for self-determination.

The UN through the Security Council has shown its readiness to take appropriate steps in putting an end to manifest victimization of an ethnic group bordering on genocidal proportions [5] yet over thirty thousand Igbos were murdered in other parts of the Federation in the events leading to the secession [6]. It is recorded that Northern civilians (i.e the Hausas) joined soldiers of Hausa extraction to hack down, shoot and even burn alive, Igbo children and women[7]. The Kosovo Independence facilitated by NATO (prompted by the US) was as stated *"to end brutal attacks on the Kosovar Albanian population"* [8]. If this was so aptly stated by the International community, why then was the Biafra situation described above different? In fact the resultant war from the declaration of the independence of Biafra claimed over a million lives through military action, disease and starvation9. Not assessing this situation the way it was later done in Kosovo as to warrant human intervention (as the Kosovo case was described) is to say the least, double standard. The non-intervention in Biafra on humanitarian grounds by the international community i.e the United Nations is contrary to the spirit of the *Universal Declaration of Human Rights*, and also the *Convention on Genocide* [10]. The effect of these two is that the large scale destruction of the people or the culture of any racial or cultural group ceased to be essentially a matter within the domestic jurisdiction of a State but fell to some extent within United Nations jurisdiction and is therefore amenable to international action [11]. The killing of the Igbos who were a people with a particular ethnic identity should legally and practically have been curbed by the UN as was done later in the case of Kosovo.

The premise of this study is the issue of self-determination in the case of Biafra, and as such it is pertinent to discuss the concept. The Covenant on Human Rights[12] states and recognizes the right of all Peoples to Self-Determination. Indeed, the practice of the UN and its organs for over two decades has been to view the territorial integrity of States as sacred but not any more sacred than the right to self-determinationof its Peoples [13]. The Covenant provides for self-determination as *including the right to freely determine their political status, pursue their economic, social and cultural goals, and manage and dispose of their own* resources [14].

Article 1 of The UN Charter restates the purposes of the Body "*to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of Peoples, and to take other appropriate measures to strengthen universal peace".*

It is true that the UN Charter does not expressly create a legal right to self-determination. It is equally true that the secession of Biafra is at variance with the sixth provision of Resolution 1514 of 1960 [15]. However, by virtue of the combined effect of all provisions and pronouncements on the concept of self-determination, it is a morally expedient resolve of a People (not Nations or States) to determine how and where their existence as it were would be best assured and preserved [16]. In drafting all provisions relating to this concept, express mention is made of "Peoples". Milena Sterio [17], whilst justifying the secession and subsequent recognition of the State of Kosovo, said *"it is certainly true that Kosovar Albanians are a 'People'; they share a common ethnicity, culture, language, religion and social values that distinguish them clearly from the Serbs. Moreover, it is clear that their rights to internal self-determination had not been respected by the Milosevic-led Serbia"*. The argument here is that this statement also aptly describes the situation of the Igbos in Biafra vis a vis Nigeria!

The UN Resolution 1541 of 1960 states three modes of exercising the right of self-determination:

- emergence as a sovereign independent state [18];
- free association with an independent state [19]; or
- integration with an independent state [19].

The controversy here has been the question of who qualifies to engage in a struggle for self-determination because the heading of Principle VI (as it is) above says "*a non-self-governing Territory*…". To raise any doubt on this wording would however be a misinterpretation of a clear provision of International Law. The concept of Self-Determination is premised on "Peoples" regardless of where they may be. Therefore,*if a People, determined as a group, desire to break away from an existing state, whether they belong to a colony in the classical sense or otherwise, their aspirations and the rights arising therefrom supersede the respect for the territorial integrity of the ruling State* [20]. The right to secede for self-determination should not have gone unenforced in the case of Biafra for reasons of its not being a colonysince Bangladesh and Kosovo were not Colonies. Neither can the Doctrine of *Uti Possidetis* [21] be applied as the Western Sahara case[22] has clearly shown that the principle is non sequitor because the territory was not reverted to Spain.

The Igbos of the then Eastern Nigeria aptly qualified to engage in secession in order to achieve self-determination and be recognized as a State in International Law. Ironically, just four years after the denial of recognition to Biafra, the Bangalees of East Pakistan were actively supported by the International community in their bid for self-determination through secession which led to the creation of the State of Bangladesh. The Igbos in Eastern Nigeria believed, for cogent and compelling reasons that secession was their way to self-determination which had become inevitable in order to safeguard their existence. They believed quite rightly at the time that the security of their lives and properties could not be assured by the Nigerian Government as constituted; that other avenues of reconciliation with the rest of Nigeria had failed; and that the rest of Nigeria knew, recognized and approved that secession was their only option, and that it was legitimate.

The perceived legitimacy of their right to self-determination lay in a series of documents prepared by the Regional Governments to the Conference of 1966 [23]. The proposal of the Northern Region expressly contained the *"Rights of Self-Determination"* and even the process of achieving it. The Western Region indicated their desire for the continuation of the federal system with a proviso that if it became impracticable, a Commonwealth of Nigeria should be created wherein *"Each State should have a right unilaterally to secede from the Commonwealth at any time of its own choice"* [24]. In fact the idea and the conviction of the troops involved in the mutiny which eventually brought Yakubu Gowon into power was that the North should be free to withdraw from the Federation [25].

Recognition in International Law

International Law is about States per se and not Nations. It views Recognition along the lines of Statehood therefore this analysis of the Biafra situation must delve into the concept. Fundamentally in International Law and practice there are four criteria which must be satisfied before qualifying to be a State. As Professor Jessup [26] stated

> *"we are all aware that under the traditional definition of a State in international law, all the great writers have pointed to four qualifications: first there must be a People; second, there must be a territory; third, there must be a government; and fourth, there must be capacity to enter into relations with other States in the world"*[27].

Biafra satisfied these four criteria. It had a People; in fact the Igbos are the only ethnic group in Nigeria who do not exist or can be found as an ethnic group in any other country in West Africa [28]; it had its territory (the then Eastern Region which formed the area Biafra is still the Eastern part of Nigeria); it had a functioning and functional government in place with its own Army (manufacturing most of its weapons during the blockade) and its own currency which still exists today albeit illegal tender [29]; and lastly Biafra had, within its short life, relations with countries like Tanzania, Gabon, Cote D'Ivoire and Mali. On the other hand Milena Sterio, writing on Kosovo observed

> *"the near future of the new Kosovar State is precarious at best. Even if Kosovo has been recognized as a new State by most of the world community its long term viability remains questionable. If international administrators were to withdraw from Kosovo now, it would most likely crumble as a State. It would be unable*

to defend its borders militarily, sustain its government politically, protect its population, maintain a sound economic and commercial policy…." [30].

Yet the status of Statehood was conferred on it and it was accorded Recognition! The acknowledgement of Statehood in International Law is the recognition given to such a State to enter into relations with other States. Therefore the fulfilment of the criteria would not automatically confer on a seceding State like Biafra, Statehood. This is the premise on which Ijalaye [31] argues that Biafra never existed as a State in International Law. That is a wrong assertion. Biafra was a State and should have been granted Recognition as such. Recognition has been granted by the international community to States who did not satisfy as substantially the elements of Statehood as Biafra. The State of Israel in 1949 had no permanent boundaries and by extension no settled populationbut was recognized and admitted into the UN. In the case of Deutsche Continental Gas-Gesselschaft V The Polish State [32], the German Polish Mixed Arbitral Tribunal stated inter alia

> *"in order to say that a State exists and can be recognized as such….it is enough that this territory has a sufficient consistency, even though its boundarieshave not yet been accurately delimited, and that the State actually exercises independent public authority over that territory…."*

It must be reiterated that the importance of the fourth element cannot be overemphasized. A State does not acquire the capacity to enter into relations with other States on its own. It is a power derived from the Will and affirmative action of other States in favor of the nascent State. To the world, France had indirectly expressed its willingness to recognize the State of Biafra in 1968 from the spirit of the statement of its Secretary for Information [33]. That it refrained from actually doing so is a matter of politics and not due to the illegality of the Biafra secession.

The International Court of Justice has also been culpable in confounding the lack of a defined standard for Recognition of States and the question of Secession. The Court, on the question of the declaration of independence by Kosovo pronounced that Kosovo was right to declare independence but that States could not be compelled to recognize it [34]. It was the singular opportunity for the Court to address the issue of Recognition in view of a Secession to further or attain self-determination. The assertion of Simon[35] as a suggestion of what the ICJ should have done in the case is very instructive. In the determination of a question of a valid claim of secession, the Court should focus on three questions:

-*"Is the claimant a State-like territory that represents its people, and seeks independence from a parent state which itself has a lawful claim on the claimant entity?*

-Has the claimant attempted to exercise internal self-determination, and has the parent state thwarted those efforts?

*-Has the claimant suffered or been threatened with harms that rise to the level of peremptory prohibition?*36

If the above model had been adopted to determine secessionist claims, Biafra today would exist as a State recognized by the comity of nations.

Conclusion

This paper is an attempt to prove through an analysis of the foregoing, that Biafra should have been recognized as a State in International Law. This paper acknowledges that writers on this issue have raised a number of points ranging from population of the seceding territory [37] its economy and relevance, or that any recognition would have been unjustifiable since the struggle was still ongoing [38], or the fact that the contiguous nature of both Katanga and Biafra made it almost impossible to secede successfully [39], all in a bid to negate the validity of the claim that the non-recognition of the secessionist state of Biafra was a misnomer. The concept of Statehood comes before Recognition, therefore once a seceding state fulfills the four conditions of the Montevideo Convention, the practice of customary international law should dictate that Recognition be accorded the emergent state. It is true that no state can be forced to recognize the other and Recognition does not bring into legal existence a previously non-existent state[40]. Recognition is however the tool for sustenance of a new State since no State can survive in isolation.

It is unfortunate in international law that issues as compelling as Secession and Self-Determination are withoutany fixed legal framework thereby leaving the outcome of an arduous struggle for freedom from discrimination at the doorsteps of international politics. The triumph of the cause of Bangladesh is due not only to the physical struggle of the people and India, but also to the overwhelming support of the world press and public sympathy[41], which benefit Katanga nor Biafra enjoyed. Recognition is granted without any parameters laid down for its exercise by International Law. The ease and speed of the United States recognition of Israel was definitive of political interests and not legalese. The criticism of the Syrian representative to the dispatch with which the provisional government of Israel was recognized was met by a haughty but highly incisive reply

> *"I should regard it as highly improper for me to admit that any country on earth can question the sovereignty of The United States of America in the exercise of that highly political act of recognition of the de facto status of a State"* [42].

Could it then have been a lack of interest in post-colonial Africa that led to the discrepancies between Bangladesh, Katanga and Biafra? Indeed E.H Carr, arguing much earlier had opined that it is easier for world dominant nations to align with non-splinterization in order to exercise control over a unified world[43] than to support every break-away of territories. Or was it the fear in Africa itself, as represented by the posturing of The Organization for African Unity that the Biafra case could lead to a chain reaction if supported? This is against the backdrop that decolonization had largely taken place in the period 1945-1960. One of the most enduring articles of faith of the OAU has been Article III of its Charter which in part emphasizes non-interference, sovereignty, and the inviolability of the inherited colonial boundaries[44]. Perhaps, barring this provision, other leaders might have summoned the courage of President Julius Nyerere of Tanzania who promptly recognized the new state and was heavily criticized by the OAU.

In view of the underlying political manouverings that strongly affect International Law, it may just be appropriate

in the final analysis to fall back on Higgins' [45] advice; that the struggle for self-determination should focus on the right of a People to their language, culture, right to education etc rather than the exercise of the right to self-determination and its attendant factors like Secession and Recognition, which in International Law has proved to be an unstable path to tread.

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4. Article 1(2) The United Nations Charter
5. (Secretary of State Condoleeza Rice explaining the circumstances of Kosovo's recognition) United States Recognizes Kosovo as an Independent State. The American Journal of International Law. 2008; 102(3):638-640 at 639.
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7. Proclamation of the Republic of Biafra (supra)…..at, 667
8. The United States Recognizes Kosovo (supra)……at p 639. See also UN Resolution 1244 of 10th June 1999(especially paras 1, 4, and 5)
9. Charles R. Nixon, Self-Determination: The Nigeria/Biafra Case. (supra)…at, 473
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11. MS Rajan, Bangladesh and After. Pacific Affairs. 1972;.45(2):191-205 at 194, 195
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13. M.S Rajan, Bangladesh And After(supra)….p 194
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25. This is essentially based on the provisions of The Montevideo Convention on the Rights and Duties of States. Article 1, Dec. 26,1933
26. There are Republique du Benin Yorubas and the Republic of Togo Yorubas,the Beninoise Hausas and Togolese Hausas also existbut the Igbos exist only in Nigeria as citizens belonging to an ethnic group. See Stephen Vincent, "Should Nigeria Survive?"…at, 53
27. Between 2007/2009, Ralph Uwazuruike, self-acclaimed leader of The Movement for the Actualization of The Sovereign State of Biafra(MASSOB) before his arrest announced that the Biafra currency should be accepted in the East as legal tender. It was then indeed used by a few as a means of exchange in Igbo towns like Owerri and Onitsha.
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