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THE RIGHT TO SELF-DETERMINATION AND TERRITORIAL INTEGRITY CONFLICT: A CONUNDRUM FOR SECESSION IN POST-COLONIAL AFRICAN STATES

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ABSTRACT

In the aftermath of colonialism, the quest for secession has been one of the major challenges facing Africa. While secession claims have been resolved in several sovereign states, they linger in several others. The paper explores the application of the two concepts of the right to self-determination and territorial integrity to secession claims in Africa. The paper finds that the right to self-determination exists under the African Charter but it does not prevail over the territorial integrity principle unless the seceding people can establish concrete evidence of grave human rights violations. The paper concludes that the internal arrangement between the seceding group and the sovereign state from which they intend to secede is the most viable route for secession.

1.0 INTRODUCTION

The right to self-determination is not only a human right[1] but also one of the most widely contested human rights in international law. The controversies surround its meaning, nature, scope, and enforceability,[2] especially within a domestic sovereign state.[3] Self-determination means different things to different

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1 NA Iguh and ME Alita, 'Critical Examination of the Concept of Right in Right to Self-Determination Under International Law' (2022) 3(3) *Law and Social Justice Review* 43-49.

2 RM Hanna, 'Right to Self-determination in Re Secession of Quebec' (2009) 23(1) *Maryland Journal of International Law and Trade* 214.

3 J Summers, 'Peoples and International Law' (2nd edn, Nijhoff, 2014) 39.

people.[4] However, one of the most controversial aspects of the right to self-determination that has garnered global attention in the 21st century is its application and enforcement in a post-colonial state.[5] Johan argues that according to the source document on the right to self-determination, the right has no universal endorsement but may only be used for decolonization and nothing more[6]. The concept has birthed several states, especially between the nineteenth and twentieth centuries.[7] Historically, the right to self-determination was first used around the middle of the 19th century as a philosophy or principle rather than a right[8] until the execution of the United Nations Charter of 1945 at the end of World War II.[9] Many academicians have linked the American and French revolutions at the close of the 18th century to the development of the right to self-determination, which was at best seen as a principle that ensures democratic consent inside newly formed political institutions.[10]

Since the end of colonialism, several African States have experienced several calls for secession by different groups within their States though it is a valid claim that a violent free secession in Africa is rarely seen.[11] Several lives have been lost to the failed secession struggles in different parts of Africa such as

4 RS Jaffery & K Tripathy, 'Kosovo's Right to Self-Determination: A Critical Analysis' (2013) 1(1) *Galgotias Journal of Legal Studies* 117.

5 JD Van der Vyer, 'The Right to Self-Determination and Its Enforcement' (2004) 10 *ILSA Journal of International and Comparative Law* 421-434.

6 Ibid.

7 TD Musgrave, 'Self Determination and National Minorities' (New York: Oxford University Press Inc., 1997), p. 1.

8 M Batistich, 'The Right to Self-Determination and International Law' (1995) 7(4) *Auckland University Law Review* 1015; N. Jones, "Self-Determination and the Right of Peoples to Participate in International Law-Making" (2021) British Yearbook of International Law, 1-33, p. 7.

9 C Walter & A von Ungern-Sternberg, and K. Abushov (ed), 'Self-Determination and Secession in International Law' (Oxford: Oxford University Press, 2014), p. 2.

10 TM Franck, 'The Emerging Right to Democratic Governance' (1992) 82(1) *American Journal of International Law,* pp. 46-912.

11 AC Ekeke & N Lubusi, 'Secession in Africa: An African Union Dilemma' (2020) 28(3-4) *African Security Review,* pp. 245-260.

Biafra in Nigeria,[12] Southern Cameroon,[13] Casamance in Senegal,[14] Katanga people in Zaire,[15] and many more. The recent Eritrea secession from Ethiopia occasioned an estimated figure of about 100, 000 lives lost[16] while over 1.5 million people also died in the South-Sudan 39 years struggle for secession from Sudan.[17] The African states have always suffered much from the use of the right to self-determination as a means to secede from a sovereign state

According to Article 20 of the African Charter on Human Peoples' Rights,[18] the right to self-determination is inalienable though its interpretation over the decades has been a subject of serious concern to scholars of international law. It has been as difficult as brushing a crocodile's teeth because the African Union and the African Commission on Human and Peoples' Rights consider that the territorial integrity of African States supersedes the self-determination of people in line with the Cairo resolution of 1964 wherein all Member States affirm their commitment to upholding territorial integrity and the ideals of sovereignty outlined in the Organisation of African Unity (OAU) Charter by pledging to respect the borders that predate their attainment of national independence.[19]

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12 R Akresh, S Bhalotra, M Leone & UO Osili, "War and Stature: Growing Up during the Nigerian Civil War" [2012] 102(3) *American Economic Review: Papers & Proceedings* 273.

13 MO Mhango, 'Governance, Peace and Human Rights Violations in Africa: Addressing the Application of the Right to Self-Determination in Post-Independence Africa' (2012) 5 *African Journal of Legal Studies* 199–214.

14 A Ngom and I Sene. 'The Casamance Conflict and its Displaced Persons: An Overview' (2021) 11(8) *International Journal of Humanities and Social Science* 20-27

15 MO Mbango, 'Recognizing the Right to Autonomy for Ethnic Groups under the African Charter on Human and Peoples' Rights: Katangese People v Zaire' (2007) 14(2) *Human Rights Brief* (2007) 11-15..

16 WF Bezabih, 'Fundamental Consequences of Ethio-Eritrean War [1998-2000]' (2014) 5(20) *Journal of Conflictology* 39-47, 43

17 A Kumsa, 'South Sudan Struggle for Independence and Implications for Africa' (2017) 17(4) *RUDN Journal of Sociology* 513-523; C Sandu, "Was Separatism a Viable Solution for the Sudan-South Sudan Conflict?" [2014] *Conflict Studies Quarterly,* p. 54

18 African Charter on Human and Peoples' Rights, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67 /3/Rev. 5, reprinted in Report of the Secretary-General on the Draft African Charter on Human and Peoples' Rights, O.A.U. Doc. CM/1149 (XXXVII) (Annex II) (1981).

19 Resolution on Border Disputes Among African States, AHG/Res 16(1) 1964, Resolutions Adopted by the First Ordinary Session of the Assembly of Heads of State and Government held in Cairo, UAR, From 17 to 21 July 1964. Available at <https://au.int/sites/default/files/decisions/9514-1964_ahg_res_1-24_i_e.pdf> [accessed 7th August 2023]; Saadia Tauval, 'The Organization of African Unity and African Borders' (Cambridge University Press, 1976), pp. 102-127.

This paper, therefore, examines the twin concepts of territorial integrity of a sovereign state and the right to self-determination to appreciate the extent to which the former is an obstacle to the latter. At what stage does territorial integrity give way to the right to secession? While the right to self-determination has both internal and external categorisation,[20] the external aspect of the right to self-determination otherwise called "secession" is the main focus of this paper.

2.0 **THE MEANING AND CONCEPT OF THE RIGHT TO SELF-DETERMINATION**

The idea of self-determination was conceived originally as a political principle but it metamorphosed into a human right after World War II by its inclusion in several human rights instruments. The United Nations (UN) Charter of 1945 by virtue of Articles 1 and 55 is the first international instrument that recognises the right to self-determination.[21] Though the preamble emphasises tolerance and promotion of economic and social advancement of all peoples,[22] Article 1 Paragraph 2, and Article 55 reaffirm the commitment of the United Nations to the self-determination of all peoples. Article 1 paragraph 2 provides that the purpose of the Charter is:

> "…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."

While Article 55 clearly shows the commitment of the United Nations to international economic and social cooperation as:

> "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations

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20 R McCorquodale, 'Self-Determination: A Human Rights Approach' (1994) 43(4) *International and Comparative Law Quarterly* 857–885

21 M Freeman, "The Right to Self-Determination in International Politics: Six Theories in Search of a Policy" [1999] 25 *Review of International Studies* 355-370.

22 Preamble of United Nations Charter, 1945. Available at <https://www.un.org/en/about-us/un-charter/full-text> [Accessed 27th March 2023)

> based on respect for the principle of equal rights and *self-determination of peoples*, the United Nations shall promote".[23]

Unfortunately, the UN Charter fails to define what "peoples" and 'self-determination" mean in the Charter. This omission has caused an unsettled controversy amongst scholars on the exact status of self-determination in international law today. The concept is therefore plagued with difficulties in meaning, scope, and application.[24] This uncertainty and ambiguity in the meaning, scope, and application of the right to self-determination in the Charter led to the call from some member states to remove self-determination from the UN Charter before the final resolution and adoption of the Charter.

Unfortunately, however, the concept was maintained in the final text of the Charter without clarification on what "peoples' and "self-determination" mean.[25] Furthermore, Article 1 of the International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESCR) both of 1966, the two major international instruments formulated through resolution 220A (XXI) of the United Nations General Assembly on the right to self-determination[26] also recognise the right to self-determination. The instruments are founded on the commitment to the UN Charter. Similar to the United Nations Charter, these two instruments lack clarity on the scope of the right to self-determination.

There have been insinuations and postulations that the UN Charter does not create a legal right to self-determination[27] because of the lack of clarity of the

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23 HA Wilson, "International Law and the Use of Force by National Liberation Movements" (New York: Oxford University Press, 1988) 58-59.

24 P Raj, "Right to Self-Determination as Human Right" [2020] 9 *Rajiv Gandhi National University of Law* 1-11.

25 P Kilian, 'Self-Determination of Peoples in the Charter of United Nations' Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito (RECHTD) (2019) 3, p. 345.

26 United Nations General Assembly Resolution 220A (XXI), availabvle at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> [Accessed 5th February 2023]

27 YZ Blum, 'Reflections on the Changing Concept of Self-Determination' (1975) 10 ls-L-R. pp. 509-511; A Kiss, 'The Peoples' Right to Self-Determination' (1986) 7 *Human Right Law Journal* 165, pp. 173-174.

concept. The proponents of this school of thought postulate that its inclusion in the UN Charter is conceived as a goal to be pursued.[28]

The basis for this conclusion is that not every political statement made in the UN Charter can be said to have created a legal obligation[29] and how the Charter expresses self-determination makes it inconceivable that the UN intended that it create a binding legal obligation on members rather it is an expression of political principle.[30] This assertion is anchored more strongly on the consideration that the proposal of Dumbarton Oaks that formed the original basis for the UN Charter lacks any specific Article on self-determination. Wilson confirmed it when he stated that "it was not until the San Francisco consultations that the Soviet Union proposed an amendment which included in the text of Article 1(2) and Article 55 the words 'based on respect for the principle of equal rights and self- determination of peoples."[31]

Furthermore, there is neither a specific reference to "the right to self-determination" in the UN Charter nor is there any clarification on "who the 'self' is that enjoys this principle which should be respected by nations"[32]. This legal lacuna is the basis upon which Burak Cop and Doan Eymirliolu concluded that the manner the UN Charter positioned and convey the right to self-determination makes it convenient to concluded that it is not a binding legal norm but a political expression.

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28 H Quane 'The United Nations and the Evolving Right to Self-Determination' (1998) 47 *International and Comparative Law Quarterly* p. 547.

29 MN Shaw, 'International Law' (5th ed Cambridge: Cambridge University Press, 2003) 225 cited in B COP & D Eymirlioglu, 'The Right to Self-Determination in International Law Towards the 40th Anniversary of the Adoption of ICCPR and ICESCR' 118. Available at <hthettps://dergipark.org.tr/en/download/article-file/816601> [Accessed 2nd February 2023]

30 Ibid.

31 Heather A. Wilson, International Law and the Use of Force by National Liberation Movements (New York: Oxford University Press, 1988), pp. 58-59.

32 Ibid 59.

Since the inception of self-determination as a political principle[33] and, more recently, as a human right, the meaning, nature, and extent of the right to self-determination have been at the core of significant arguments[34] despite its increasing significance on a worldwide scale.[35] Self-determination has been given several definitions. Unsurprisingly, all definitions offered on self-determination take on the garment of those who want to exercise it.

Therefore, it is a complex term, and 'like a chameleon its colour changes with the profile of those who invoke it.'[36] Crawford posits that the right to self-determination has no generally accepted definition, albeit, there are many views on what the concept should look like.[37] Therefore, self-determination is always changing. He defines it as the right of a community to have a unique identity that is reflected in the institutions by which it is governed.[38] It is also described as peoples' right to choose their political status and voluntarily pursue their economic, social, and cultural development.[39]

According to Lenin, self-determination has both political and cultural perspectives. Political self-determination, which Lenin defined as the right to secede and create an independent state, is what he meant by *"self-*

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33 L Dembiński, 'Self-Determination in the Law and Practice of the United Nations' (Warsaw, 1969) p. 35.

34 T Gadkowski, Nations and Other Entities Authorized Under the Right of Self-Determination, 2016, p. 144 cited in Prithivi Raj, "Right to Self-Determination as Human Right" [2020] 9 *Rajiv Gandhi National University of Law* 1-11.

35 H Hannum, 'Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights' (2nd ed, University of Pennsylvania Press 1990) p. 27.

36 DCJ Dakas, 'The Right to Self-Determination and the Spectre of Balkanization Post-Colonial African States: The Challenges of Nationhood and Imperative of Good Governance in Nigeria' (Paper delivered at the Annual Law Week of the Nigerian Bar Association, Jos Branch, held at Crest Hotel & Garden, Jos, November 25-27, 2009) 2.

37 J Crawford, 'Brownlie's Principles of Public International Law' (8th ed, Oxford University Press 2012) p. 647 cited in SD Ojukwu, 'A Critical Appraisal of The Right of Self Determination Under International Law' (2021) 12 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 131.

38 Ibid.

39 FM Cruz, 'The Right to Self-determination of Peoples: Notes on Its Compatibility with Three Models of Global Order' (2018) 11(1*) Mexican Law Review* 85-101, p. 89.

determination," but *"cultural self-determination"* is just the freedom of speech.[40] Lenin proposed in the early 20th century that a sincere conception of the right of countries to self-determination, free from abstract interpretation, must entail the political dissociation of nations from other national groups to establish an independent national state.[41] Johan, however, postulates that the definition of the right to self-determination means the rights of peoples *to "freely determine their political status"* and to *"freely pursue their economic, social, and cultural development"* does not represent a general endorsement of the right, but rather needs to be understood in the context of the original document, or the document from which the right was derived.[42] He contends that the utilisation of the right to self-determination should be limited to decolonisation.[43]

Accordingly, the definitions of the right to self-determination in international agreements are not meant to jeopardise a state's territorial integrity. Johan opposes the right to secession as a means of self-determination.[44] To him, it is important to prevent any political community that supports a plural society from being destroyed.[45]

Archibugi[46] gives three possible definitions of the right to self-determination: (a) the right of a colonial people to become a state; (b) the right of a state's (or more than one state's) minority to become an autonomous state (or join another state); and (c) Ethnic minorities' eligibility to receive certain collective rights. Sterio, on the other hand, defines the right to self-determination as a political and

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40 VI Lenin, 'National Liberalism and The Right of Nations to Self-determination' V.I. Lenin Collected Works, 1913-1914 (Progress Publishers, Moscow) Vol. 20, 56-58. Available at https://www.marxists.org/archive/lenin/works/cw/pdf/lenin-cw-vol-20.pdf [22nd November 2022]

41 VI Lenin, 'The Right to Self-Determination' Journal Prosveshcheniye Nos. 4, 5 and 6 (Progress Publishers, 1914) Vol. 20, 397.

42 JD Van der Vyer, (n 3) 421-434, available at <http://www.core.ac.uk/download/pdf/51096638.pdf>[Accessed 2nd May 2022]

43 Ibid.

44 Ibid.

45 Ibid 429.

46 D Archibugi, 'Critical Analysis of the Self-determination of Peoples: A Cosmopolitan Perspective' (Blackwell Publishing Ltd, 2003) Vol. 10(4) 493.

representative right that belongs to a minority group with a central state or in a very extreme case may result in secession for independence as a remedial option and the last resort in appropriate circumstances[47]. Some scholars posit that the meaning of the right to self-determination should be confined to the source documents on the right, they postulate that self-determination has a post-colonial context to which it applies provided that the beneficiaries of this right can establish an egregious violation of their rights by the sovereign state.[48] This accounts for Robert McCorquodale's observation that;

> *"…perhaps no other question of political philosophy, or international law, pregnant with such unutterable calamities, has ever been so partially and superficially examined as the right of secession."*[49]

The International Court of Justice in Western Sahara's case,[50] while interpreting the source documents on the right to self-determination states that the right to self-determination may not be available for persons who have a link with a sovereign state to protect the territorial integrity of such state. Therefore, the right cannot be expressed in a post-colonial state. Contrarily, the Canadian Supreme Court in *Re: Secession of Quebec Case,*[51] acknowledges that the right to self-determination can be exercised by the people within the sovereign state under carefully defined circumstances but must not prejudice the territorial integrity of such a sovereign state.

The lack of clarity on the scope of the right to self-determination under international law has engineered the massive increase in the agitations for secession by minority groups in various countries across the globe including

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47 M Sterio, 'Self-Determination and Secession under the International Law: The New Framework' (2015) 21(2) *ILSA Journal of International & Comparative Law*, p. 299-303

48 SB Lugard, M Zachariah, & TM Ngufuwan, 'Self-Determination as a Right of the Marginalised in Nigeria: A Mirage or Reality' [2015] 1(1) *Journal of International Human Rights Law* 127-158, p. 131

49 AT Bledsoe, 'Is Davis a Traitor; Or Was Secession a Constitutional Right Prior to the War of 1861?' (New York: Innis & Company, 1866) 1

50 Western Sahara, ICJ Report 1975 P 12 and 33 http://www.icj-cij.org/docket/files/61/6195.pdf [Accessed 28th January 2022]

51 (1998) 161 DLR (4th) 385, 436, 438 cited in MN Shaw, 'International Law' (6th ed Cambridge University Press, 2008) 523

Africa.[52] These agitations[53] have generated a tense atmosphere and violence in most of these countries because the sovereign states harbouring these minority groups often repel the agitations to protect their territorial integrity.[54] This is the standard approach under international law.[55] Though international agreements frequently support a mild kind of self-determination which ostensibly does not acknowledge or permit secession, it asserts that only in situations of colonial occupation, trust, and non-self-governing territory may self-determination be exercised.[56]

Milano Sterio emphasises the neutrality of international law on secession and he notes that:

> *"International law is mostly neutral on the issue of secession. While international law embraces the right to self-determination for all people, and while this right can effectively translate into remedial secession, international law positively allows for this outcome only in the case of decolonization and, perhaps, occupation. Other than these two relatively rare instances, international law does not affirmatively authorize groups to seek secession."*[57]

Thus, the extension of the right to self-determination to people who form part of a sovereign state will automatically birth secession which will impact the territorial integrity of such a sovereign state.[58] Therefore, the right to self-determination has a territorial consideration which means that the exercise of

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52 M Manan, 'The Right of Self-Determination: Its Emergence, Development, and Controversy' (2015) 12(1) *Jurnal Konstitusi*, p. 11.

53 There have been calls for self-determination in different parts of the world. The cases of Eritrea and South Sudan in Africa before secession occasioned the loss of thousands of lives. Also, there are ongoing agitations for self-determination from the Yoruba people and Igbo people in Nigeria for secession which has caused the loss of thousands of lives and the destruction of properties. The case of the Ogoni people of Rivers State in Nigeria also occasioned the death of hundreds of persons.

54 G Kim, 'Irredentism in Disputed Territories and its Influence on the Border Conflicts and Wars' (2016) 3(1) *Journal of Territorial and Maritime Studies* 87-101, p. 89.

55 Ibid.

56 DJ Harris, 'Cases and Materials on International Law' (6th ed., Sweet & Maxwell 2004) p. 362 cited in SB Lugard, M Zachariah, & TM Ngufuwan (n 46) p. 128.

57 Ibid (n 47) 699.

58 HO Agarwal, International Law and Human Rights (17 eds. Central Law Publications 2010), p. 362; DS Kapoor, '*International Law & Human Rights'* (18th ed Central Law Agency, 2011) p. 500.

the right impacts on the territorial integrity of a sovereign state.[59] This justifies the reason why the constitution of most sovereign states excludes the right to self-determination.[60] Therefore, there is an unending debate among scholars concerning which of the concepts of self-determination and territorial integrity is superior. While scholars agree that there is an interrelationship between self-determination and territorial integrity, the area of conflict is that the right to self-determination prevails over territorial integrity.[61] On the other hand, some scholars posit that where the struggle is a decolonization struggle, self-determination outweighs territorial integrity, while in a non-colonial struggle, territorial integrity overrides self-determination[62]. To this day, this controversy persists.

3.0 CATEGORISATION OF THE RIGHT TO SELF-DETERMINATION

The right to self-determination is categorised into internal and external. The internal self-determination aspect of the right refers to a territory's citizens' ability to select their political status and system of government.[63] Internal self-determination enables the populace to exercise decision-making authority and control over a certain area of the laws that can be implemented in their state.[64] External self-determination on the other hand is most frequently used in colonial contexts, it always has an impact on the territory of a state.[65] On one hand, it

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59 M.E. Ozei, 'Self-determination and Right to Secession' (2004) the International Political Review, available at <www.theinternationalpoliticalreview.com> [Accessed 21st January 2022]; TD Musgrave (n 7) p. 181.

60 A Kreptul, 'The Constitutional Right of Secession in Political Theory and History' (2004) 17(4) *Journal of Liberation Studies* 71 cited in SB Lugard, M Zecharia & TM Ngufwan (n 46) p. 129.

61 V Gudelevicuite, 'Does the Principle of Self-Determination Prevail over the Principle of Territorial Integrity?' *International Journal of Baltic Law*, [2009] 2(2), 28-74, p. 50 available at <http://www.ceeol.com/search/article-detail?id=242745> [Accessed on 27th May, 2022]

62 M Batistich (n 8), p. 1018; Vladyslav Lanovoy, "Self-determination in International Law: A Democratic Phenomenon or an Abuse of Right" [2015] 4(2) *Cambridge Journal of International and Comparative Law* pp. 388-404.

63 R McCorquodale (n 20) pp. 857–885.

64 Ibid 864.

65 Ibid 863.

may result in a state's territory being divided, expanded, or changed, and on the other, it may change how that state interacts with other nations globally.

Furthermore, the establishment of an independent state, integration with an independent state, or free association with an independent state are all possible ways for external self-determination to occur.[66] Particularly in colonial territories, external self-determination does not require the consent of all citizens before changes to the area are undertaken.[67] Manufrizal Manan[68] and Eban Ebai[69] also consider that whereas external self-determination, also known as secession, limits a people's right to independence and freedom from outside intervention, internal self-determination is a collective right of the people that provide the people with security within the state.

A group's right to self-determination can be realised through self-government, autonomy, free association, and in the most severe circumstances, independence, according to Sterio's theory.[70] Internal self-determination occurs when individuals with the right to political autonomy, self-government, and the freedoms of religion, culture, and language coexist within a larger central state[71] provided the mother state is willing to allow such people to exercise such rights internally.[72]

This paper cannot exhaust the works of scholars on the categories of the right to self-determination, however, the observable difference between the two categories of internal and external self-determination is that the former usually does not affect the territory of a state while the latter affects the state territory.[73]

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66 Ibid.
67 Ibid.
68 M Manan, 'The Right of Self-Determination: Its Emergence, Development, and Controversy' (2015) 12 (1) *Jurnal Konstitusi*, p. 14.
69 S. Eban Ebai, 'The Right to Self-Determination and the Anglophone Cameroon Situation' (2009) 13(5) *International Journal of Human Rights,* pp. 635-637.
70 M. Sterio (n 48) pp. 303-305.
71 Ibid.
72 Ibid.
73 SM Weldehaimanot, 'The ACHPR in the Case of Southern Cameroons' (2012) 9(16) *SUR-International Journal on Human Rights,* p. 89.

It is noteworthy that the various postulations of scholars on the categories of self-determination indicate that external self-determination is the same as secession.

3.1 UNDERSTANDING THE MEANING AND CONCEPT OF SECESSION

The right to self-determination is often linked with the concept of secession because of the relationship between the two concepts in international law. Scholars have propounded several definitions and understanding of secession in both its broad and narrowed senses but an honest definition of the concept connotes leaving or withdrawing from a place.[74] Peter Radan, Georg Nolte, and Bruno Coppieters express quite similar understanding of the concept. While Peter Radan's idea of secession has to do with *"the creation of a new State upon territory previously forming part of, or being a colonial entity of, an existing State"*[75], Georg Nolte considers it to mean *"the – not necessarily forceful – breaking away of an integral part of the territory of a State and its subsequent establishment"*[76] which will make the remaining portion of the State to maintain the legal identity of the parent State.[77] Bruno Coppierters, however, defines it as the *"withdrawal from a State or society through the constitution of a new sovereign and independent State".*[78]

There is sentiment against secession in international debates and the problem with the sentiment can be understood by the fact that secession challenges what are possibly the two most important elements of international law; a state's

74 P Radan, 'The Definition of "Secession" (2007) *Macquarie Law Working Paper Series* 2.

75 Ibid. 2.

76 G Nolte, 'Secession and External Intervention' in M.G. Kohen (ed.) *Secession International Law Perspectives* (Cambridge University Press, Cambridge, 2006) 65.

77 P Radan, 'Post-Secession International Borders: A Critical Analysis of the Opinions of the Badinter Arbitration Commission' (2000) 24 *Melbourne University Law Review* 56; David Raič, '*Statehood and the Law of Self-Determination* (Kluwer Law International, The Hague 2002) 359; M Weller, 'The Self-Determination Trap' (2005) 4 *Ethnopolitics* 8.

78 B Coppieters, 'Introduction' in B Coppieters and R Sakwa (eds) '*Contextualizing Secession Normative Studies in Comparative Perspective*' (Oxford University Press, Oxford 2003) 4.

sovereignty; and territorial integrity.[79] The phrase is frequently used in a pejorative sense and is connected to disorder, schism, fragmentation, and instability.[80] The obvious lack of definition of the term in international law has subjected the term to different definitions by scholars. Glen Anderson defines secession from the lens of international law and relations as *"the withdrawal of territory (colonial or non-colonial) from part of an existing state to create a new state."*[81]

Haverland[82] defines secession as the separation of part of the territory of a state carried out by the resident population to create a new independent State or accede to another existing state while Dugard and Raic[83] jointly opine that though not the only way, secession is a method by which external self-determination is achievable. Other ways include: dissolution and merger or union. Clearly, secession is a procedure that results in an outcome, it is not an outcome itself.[84] Marcelo Kohen accurately notes that secession is not a thing that occurs instantly.[85] It always entails a difficult set of claims and choices, discussions, and/or conflicts, which may or may not result in the foundation of a new State.[86] Though conducted domestically, there has been more and more international concerns.[87] This is a crucial conceptual issue.[88]

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79 Glen Anderson, 'Secession in International Law and Relations: What Are We Talking About?" [2013] 35(3) *Loyola of Los Angeles International and Comparative Law Review* 343.

80 Bertus De Villiers, 'Secession: The Last Resort for Minority Protection' [2012] 48(1) *Journal of Asians and African Studies* 81-96.

81 Ibid n(79) 344.

82 C Haverland, 'Secession', in: Encyclopedia of Public International Law, Vol. 10 (Amsterdam: Elsevier Science Publishers B.V., 1987) 384.

83 John Dugard and David Raic, 'The Role of Recognition in the Law and Practice of Secession' in (eds) Marcelo G. Kohen, '*Secession: International Law Perspectives'* (Cambridge University Press, 2006) 101-102.

84 Aleksandar Pavković and Peter Radan, '*Creating New States: Theory and Practice of Secession'* (Hampshire, UK: Ashgate Publishing, 2007) 7.

85 Marcelo G Kohen, 'Introduction' in (eds) '*Secession: International Law Perspectives'* (Cambridge University Press, 2006) 14.

86 Ibid.

87 Ibid.

88 Ibid n(79) 349.

The growing trend of secession claims in Nigeria and some parts of Africa such as Cameroon, South Sudan, Eritrea/Ethiopia, and other areas is a serious challenge to global peace. Arguably, there is no definite legal norm in international law to address these secession claims. The various agitations for secession in different parts of the world is not in itself the problem but the lack of specific legal norms within international law to resolve secession claims when it raises its ugly head. This problem is the centre of Sterio's attention in his work. Sterio vehemently canvasses an argument that there is a need to develop a new legal framework in international law on secession to address various secessionist problems across the globe and to adopt true legal norms for the resolution of secessionist struggles instead of exposing secessionist situations to the whims and caprices of the Great Powers to play their politics.[89]

Sterio questions the inadequacy of international law in addressing and resolving issues of secession when he opines that international law as presently constituted cannot competently tackle and resolve secessionist situations, because while international law recognises respect for territorial integrity and the right to self-determination, it fails to pointedly address the question of whether or not a non-colonised group of people is entitled to the exercise of the right to self-determination through secession from its mother state.[90] To address this inadequacy, Sterio suggests that it is either an effort is put forth to create an appropriate standard framework under international law on secession that permits secession, but only upon the fulfilment of specific criteria that would be determined when considering the legitimacy of a quest for secession; or international law stays neutral on secession to be adequately situated for deciding secessionist situations.[91]

89 Milena Sterio, 'Self-Determination and Secession under International Law: The Cases of Kurdistan and Catalonia' [2018] 22(1) *American Society of International Law Insights* 294.
90 Ibid.
91 Ibid 303.

There is the need to create an outlook for the normative framework for secession by stating firstly, that the quest for secession must conform with the domestic constitutional framework of the mother state and presumably be consented to by the mother state before it becomes legal.[92] There must be an absence of oppression from the mother state.[93]

On the contrary, where the mother state is ruled under dictatorship, lacks a democratic constitutional structure, and has been oppressive towards the minority group then, other variables must be considered to determine the legality of the secession.[94] This includes investigating whether the mother state has respected such minority right to autonomy by allowing it to have its own political right to form a government, and respect for its cultural, linguistic, and religious rights which includes the right to freedom of speech and expression through possessing its radio, television and newspaper media and respect for other rights such as linguistic, cultural, ethnic and religious rights[95]. Also, the group must be able to operate schools and conduct its cultural practices.[96]

Accordingly, when there is a quest for secession the issue of territorial claim always comes to bear as both the separationist and the mother state always contest the claim of territory. In determining the territorial claims of both the mother state and secessionist, and whose claim is valid, there is the need to consider the question of when the secessionist came to possession and if they consistently been vocal about their territorial claim.[97] To this end, international law must be fair in addressing the issue of secession while resolving whether it is proper to disallow a group from exercising its right to secession to form its

92 Ibid 303.
93 Ibid 303.
94 Ibid.
95 Ibid.
96 Ibid 304.
97 Lea Brilmayer, 'Secession and Self-determination: A Territorial Interpretation' [1991] 16 *Yale Journal of International Law* 177.

independent state or whether it is fair to allow the secessionist group to secede and alter the territory of the mother state.[98]

Against the background of the above controversies, this paper deciphers three categories of secession: unilateral secession; constitutional secession; and consensual secession, which are discussed below;

3.1.1 UNILATERAL SECESSION

Unilateral secession is the commonest and arguably the most debated form of secession. It is different from other forms of secession because while it is exercised without approval, other forms are either with mutual consent of the people breaking away, and the parent State or through laid down constitutional procedure. Sterio considers unilateral secession to mean the formation or creation of a newly independent nation through the withdrawal of a portion of a current state's territory against the will of the parent state.[99]

The notable distinguishing feature of unilateral secession is that it is not permitted without the approval of the parent state or domestic constitutional authority.[100] However, Adimassu, identified a form of unilateral secession which he described as a remedial secession. According to him, it is a form of unilateral secession that is implemented as a direct response to oppression, violations of human rights, or exclusion from participation in the governance or growth of the parent state.[101] One instance of unilateral secession is Kosovo's secession from Serbia.

According to Buchheit, the reaction of the international community to secession situations across the globe suggests the unilateral secession is recognised as a self-help in situations of extreme oppression.[102] However, in less critical

98 Ibid n(89)304.
99 Ibid.
100 YG Adimassu, 'The Essence of Remedial Secession: From the Perspectives of Human Right and Preservation of Natural Resources' [2021] 12 *Beijing Law Review* 1254.
101 Ibid.
102 LC Buchheit, '*Secession: The Legitimacy of Self-Determination'* (New Haven and London: Yale University Press, 1978) 221-222.

circumstances, the application of mild remedies such as regional and economic autonomy is required.[103] Raic states that if the right to self-determination is significantly violated by the State's authority and there is no viable and practical way to resolve the conflict peacefully, there is going to be little left of the right's justification and aim. A right to unilateral secession in certain circumstances is a last-ditch reaction to grave injustices because international law has failed to provide remedies by which the right to self-determination may be enforced.[104] Dietrich Murswiek, on the other hand, considers that the right to self-determination means nothing unless unilateral secession is allowed in exceptional situations.[105]

3.1.2 CONSENSUAL SECESSION AND CONSTITUTIONAL SECESSION

This form of secession alludes to the division of a portion of the country with the previous approval of the national authority.[106] It also means the process of creating a new independent state through the withdrawal of a portion of an existing state's territory with the consent of both the resident population of that portion of the territory and the parent state.[107] Driest describes it as the *"separation of part of the territory with the prior consent of the central government."*[108] Anderson states that constitutional secession requires the consent of the state without the use of threat or force which he further divided into subcategories of negotiated and explicit.[109] It is negotiated where it takes

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103 Simeon van den Driest, "Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices" (2013) 61 *School of Human Rights Research*, 10.

104 David Raič, "*Statehood and the Law of Self-Determination* (Kluwer Law International, The Hague 2002) 362-369.

105 D Murswiek, 'The Issue of a Right of Secession - Reconsidered' in C Tomuschat (ed.) *Modern Law of Self-Determination* (Martinus Nijhoff Publishers, Dordrecht 1993) 26; Sami M Dudar, 'Speaking of Secession: A Theory of Linguistic Secession' [2012] 40(2) *Georgia Journal of International and Comparative Law* 556-581.

106 Ibid n(103) 87.

107 Ibid (n 100) 1255. The secession of Eritrea from Ethiopia and South Sudan from the Sudan Republic are significant examples of consensual secession. These cases of Eritrea and South Sudan demonstrate that consensual secession often occurs through referendum. However, Adimassu believes it is more of a parliamentary decision or the head of government's decision.

108 Ibid (n 103) 87.

109 Ibid (79) 350.

place under the confines of the state's current constitution, notwithstanding the absence of any particular constitutional provisions regarding it.[110] According to Anderson, the lack of constitutional provision for secession would call for a negotiated constitutional amendment that would enable the secession of part of the territory.[111]

While Berlin sees consensual secession as requiring the state's consent, he, just like Anderson divides this concept into constitutional secession and politically-negotiated secession. Berlin posits that constitutional secession and politically negotiated secession are two forms of consensual secession.[112] While in the case of constitutional secession, the constitution of a sovereign state contains provisions that allow the separation of part of its territory through a domestic legal mechanism, politically negotiated secession is completed through diplomatic negotiations.[113]

4.0 THE CONCEPT OF TERRITORIAL INTEGRITY OF STATE

Territorial integrity is one of the most vital principles that determine the quality of peace and stability in the world[114] and it is a recognised principle in international law.[115] It is a very sacrosanct principle that is solid in international

110 Ibid.

111 In Reference re Secession of Quebec, [1998] 2 S.C.R. 217 (Can.), the decision of the Supreme Court of Canada allows for any group who desires to secede from Canada to do so once a constitutional amendment is negotiated in this regard. This decision was affirmed by the Clarity Act, 2000, c. 26, Art. 1.

112 Ilya Berlin Unilateral Non-Colonial Secession: An Affirmation of the Right to Self-Determination and a Legal Exception to the Use of Force in International Law" (A Thesis Submitted in Partial Fulfillment of the Requirements for the Master of Studies in Law degree in Studies in Law, University of Western Ontario, 2017) 6.

113 Ibid.

114 V Gudeleviciute, 'Does the Principle of Self-Determination Prevail Over the Principle of Territorial Integrity?' (2005) 2(2) *International Journal of Baltic Law,* pp. 48-50

115 United Nations General Assembly Resolution, 2625 (XXV) on Declaration on the Principles of International Law Concerning Friendly Relations, 1970, International Covenant on Civil and Political Rights of 1966, International Covenant on Economic, Social and Cultural Rights, 1966, General Assembly Resolution 1514 (XV): Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960, The Vienna Declaration and Programme of Action 1993.

law.[116] Article 10 of the UN Covenant of the League of Nations[117] emphasised the need for members to respect the territorial integrity of all members which had existed since political independence. The Covenant secures the territory of members against external aggressions. Also, Article 2(4) of the UN Charter of 1945 provides:

> *'all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations".*

Furthermore, the notion of territorial integrity is advanced in various regional legal and political instruments, including the Helsinki Final Act (Principles I, II, IV, and VIII), the Organization of American States Charter (Articles 1, 12, and 20), the Organization of African Union Charter (Preamble), and the Charter of Paris (Principle III: Friendly Relations among Participating States). Furthermore, it is thought that the territorial integrity principle is a part of the sovereign equality concept because it is mentioned in the Friendly Relations Declaration (Principles I, V, paragraphs 7 and 8, and Principle VI(d)).[118]

The incorporation of the principle of territorial integrity in international law documents is a deliberate effort to ensure the safeguarding of the territorial integrity of all states. Therefore, no matter how strong a state may be, international law protects its territorial integrity[119] though there have been several violations of this legal instrument. Furthermore, the continuous existence of a state in its current borders is dependent on the state's territorial integrity. This is why unilateral intrusion into the territory of another state is a

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116 TD Musgrave (n 7) p. 181.

117 The Treaty of Versailles was signed in the Palace of Versailles Hall of Mirrors on 28 June 1991. The Covenant of the League of Nations was integrated into the Treaty and all other peace settlements signed in Paris after World War I available at <https://www.ungeneva.org/en/about/league-of-nations/covenant> [Accessed 21 April 2023]

118 SF van den Driest, 'Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices?' (Cambridge: Intersentia Ltd, 2013), p. 143.

119 M Christian, 'The Concept of Territorial Integrity in International Law – What are the Implications for Crimea?' (2015) *Heidelberg Journal of International Law,* p. 2. Available at <https://ssrn.co,/abstract=2515911> [Accessed on 26th January 2024]

violation of international law.[120] One of the essential tenets of the statehood system upon which international law is based is the fundamental tenet of reverence for the territorial integrity of States.[121] This is why Thomas Musgrave suggested that secession is the antithesis of the principle of territorial integrity.[122] It occurs when a vital component of an independent state or a non-self-governing region uses its right to secede from the entire to establish an independent state.[123]

Scholars like Gudeleviciute argue that under international law, the word "*members",* which refers to states was used repeatedly in the United Nations Charter. Therefore, the principle of territorial integrity only applies to states and not within a state.[124] Accordingly, respecting a state's territorial unity or integrity by its citizens is a domestic matter and is outside the purview of international law.[125] This view finds support in the *Kosovo advisory opinion of the International Court of Justice (ICJ)* that territorial integrity is limited to the relations between states.[126] Contrarily, some scholars have argued that the scope of territorial integrity goes beyond a state's relation with other states. It has been included that it can occur through the exercise of self-determination within a sovereign state.[127] The Canadian Supreme Court in *Re: Secession of Quebec* confirmed this position.[128] The exercise of the right to self-determination by ethnic groups within a state is an unpardonable attack on the territorial integrity of a sovereign state.[129] This accounts for the attempts from various states to curtail the

120 Ibid 3.
121 AP Arifin, 'Rethinking the History: Does the Principle of Self-Determination Entail a Positive Entitlement to Secession?' (2022) 4(2) *Awang Long Law Review* 474-481, p. 479.
122 Ibid (n7) 15.
123 Ibid 181.
124 Ibid (n 115) 50.
125 Ibid.
126 I.C.J. Reports 2010, 437, para. 80.
127 A Cassese, 'International Law' (2nd ed, Oxford University Press 2005) 63.
128 Malcom Shaw, 'International Law' (6th ed, Cambridge University Press 2008) 523.
129 OD Ojukwu, 'A Critical Appraisal of the Right to Self-Determination Under International Law' (2021) 12(1) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence.* pp. 127-138.

secessionist movements within their state to forestall the dismemberment of their territories[130]. Sterio equally states that:

> "Secession inherently undermines the territorial integrity of the mother state, and international law has for centuries espoused the principles of state sovereignty and territorial integrity. Embracing the right of secession would jeopardize the above-mentioned principles and could, as critics assert, potentially lead to global chaos caused by an incessant redrawing of boundaries."[131]

5.0 **RESOLVING THE CONFLICT BETWEEN THE RIGHT TO SELF-DETERMINATION AND TERRITORIAL INTEGRITY IN POST-COLONIAL AFRICAN STATES**

International fora, the secession attempts of Kosovo, South Ossetia, and Abkhazia in 2008 instigated debates on the issue of self-determination and territorial integrity. Though these cases are symbolic of the clash between self-determination and territorial integrity,[132] it is believed that the right of states to territorial integrity is not absolute since *"the development of international human rights law has in many respects limited the concept of state sovereignty."*[133]

The exercise of the right to self-determination and the principle of territorial integrity has been a major area of controversy amongst scholars since the inception of the right to self-determination as a legal right in international law.[134] External self-determination which means secession cannot be invoked without tampering with the territorial borders of a sovereign state. This is why arguments abound that the post-colonial construct of the right to self-determination is harmful to a sovereign state because of the unavoidable distortion of its territorial integrity. The proponents of this school of thought argue that the right

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130 Ibid.
131 Ibid (n47) pp. 293-306
132 L. Laurinavicuite and L. Bieksa, "The Relevance of Remedial Secession in the Post-Soviet "Frozen Conflicts' (2015) 1 *International Comparative Jurisprudence*, pp. 66-75
133 J Vidmar, 'Remedial Secession in International Law: Theory and (Lack) of Practice' (2010) 6(1) *St. Anthony's International Review*, pp. 37-56
134 Ibid (n 8) p. 1026.

to self-determination should be confined to decolonisation and since there are no more colonised territories, the right has outlived its purpose. To this school of thought, the territorial integrity of a sovereign state supersedes the right to self-determination in international law.[135]

On the contrary, other scholars hold the view that the right to self-determination has assumed the status of a human right, hence, it is inalienable, undeniable, and must not be violated.[136] To them, the right to self-determination supersedes the territorial integrity of a state. While self-determination divides the territorial limits of existing states to create a new state by the desire of the people, territorial integrity maintains the territorial boundaries of existing states by calling for the observance of such boundaries.[137]

Article 20 (1) of the African Charter states that the right to self-determination is an unquestionable and inalienable right by which people can freely determine their political status and economic and social development. However, Article 20(2) indicates that the right to self-determination is only available to "*colonized or oppressed*" peoples and they are entitled to free themselves from the bonds of domination through whatever means recognized by the international community. Scholars have argued that the provision of Article 20 of the African Charter encompasses both those under colonialism and oppression and those who want to exercise their right to self-determination within the boundaries of

135 V Lanovoy, 'Self-determination in International Law: A Democratic Phenomenon or an Abuse of Right' (2015) 4(2) *Cambridge Journal of International and Comparative Law*, pp. 388-404.

136 PA Aidonojie, OP Agbale, OA Odojor & OO Ikubanni, 'Human Rights: Between Universalism and Cultural Relativism' (2021) 5(1) *African Journal of Law and Human Rights,* pp. 97-101; PA Aidonojie, OO Ikubanni, & AA Oyebade, 'Legality of EndSars Protest: A Quest for Democracy in Nigeria' (2022) 2(3) *Journal of Human Rights, Culture and Legal System*, pp. 209-224.

137 Ibid.

their state[138]. The African Charter is no doubt a reflection of African colonial history.[139]

According to Mitchel Hill[140] and Lee C Bucheit,[141] Article 20(2) of the African Charter expands the scope of the right to self-determination from its decolonisation construct to the post-colonial construct since the right is available to colonised and oppressed peoples. The erudite scholars state that a government that oppresses its people is a colonial government, therefore, such oppressed people have the right to secede from such an independent state. Obinna buttresses this position when he says that under the African Charter, people who are undergoing oppression and domination in their state can exercise their right to secession.[142] Ekeke and Lubisi also buttress this position using the findings of the African Commission on Human and Peoples Rights in *Katanga Peoples' Congress v Zaire.*[143]

The African Commission on Human and Peoples' Rights, which is in charge of determining whether any rights under the African Charter have been violated, has examined the ongoing struggle between Africa's territorial integrity and the right to self-determination on multiple times. *The Katanga Peoples' Congress v. Zaire case,*[144] the Commission rejected the application for secession made when it noted that it is obligated to protect the territorial integrity and sovereignty of

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138 D Shelton, 'Self-Determination in Regional Human Rights Law: From Kosovo to Cameroon' (2011) 105(1) *American Journal of International Law,* p. 64.

139 BO Obinna, 'Social and Economic Perspective of Human Rights in Africa' A paper Presented at the National Human Rights Commission Conference held at Sheraton Hotel, Abuja on the 10th December 1997, pp. 1-2.

140 LC Buchheit, "Secession: The Legitimacy of Self-Determination" (New Haven and London: Yale University Press, 1978), p. 84. The nature of the oppression indicates gross violation of human rights targeted towards a people or minority group such that the only viable option is to secede.

141 MA Hill, 'What the Principle of Self-Determination Means Today' (1995) 1 *ILSA Journal of International and Comparative Law,* p. 126.

142 BO Obinna (n 97) 15

143 AC Ekeke & N Lubisi. 'Secession in Africa: An African Union Dilemma' (2020) *African Security Review,* p. 4

144 Katangese Peoples' Congress v. Zaire Comm. No. 75/92 (African Commission for Human and Peoples' Rights 1995) in Eighth Annual Activity Report of the African Commission on Human and Peoples' Rights (1994–1995), ACHPR/RPT/8th, Annex VI (1995).

Zaire being a member of the Organization of African Unity (OAU) and a party to the African Charter.[145] However, the Commission states further that the Katanga People were unable to establish concrete evidence of violations of human rights to the point that the territorial integrity of the State Party should be called to question, coupled with the denial of the people, their right to participate in the government as guaranteed by Article 13 (1).[146]

Similarly, in *Kevin Mgwanga Gunme v Cameroon,*[147] the Commission in its decision maintains that the support for the secession of Southern Cameroon will violate or put in endanger the territorial integrity of the Republic of Cameroon.[148] However, if the people of Southern Cameroon can establish a severe violation of human rights, they should be entitled to the exercise of their right to self-determination. The Commission states:

> *"The Commission has so far found that the Respondent has violated Articles 2, 4, 5, 6, 7, 11, and 19 of the Charter. It is the view of the Commission, however that, in order for such violations to constitute the basis for the exercise of the right to self-determination under the African Charter, they must meet the test set out in the Katanga case, that is, there must be: "concrete evidence of violations of human rights to the point that the territorial integrity of the State Party should be called to question, coupled with the denial of the people, their right to participate in the government as guaranteed by Article 13 (1)."*[149]

The Commission held further that the respondent must satisfy the court that the two conditions of oppression and domination under Article 20(2) have been met,[150] before Article 20 on self-determination can be invoked in their favour. The two decisions above indicate that under the African Charter, the right to self-determination applies outside its decolonisation construct. While the territorial

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145 MO Mhango, 'Recognizing a Right to Autonomy for Ethnic Groups under the African Charter on Human and Peoples' Rights: Katangese Peoples' Congress v. Zaire' (2007) 14(2) *Human Right Brief*, pp. 11-15.

146 Mgwanga Gunme v. Cameroon (76) para. 194.

147 Comm. 266/2003, 26th ACHPR AAR Annex (Dec 2008 –May 2009). Available at <https://africanlii.org/afu/judgment/african-commission-human-and-peoples-rights/2009/99> [Accessed 7th April 2023]

148 Ibid 189.

149 Ibid 194.

150 Ibid 197.

integrity of a sovereign state is sacrosanct, it can be called to question under Article 20(2) where there is concrete evidence of *"oppression and domination"* of a people by the sovereign state from which it is seeking to secede. However, to show the commitment of the Commission to safeguarding the territorial integrity of a sovereign state, it confirmed that even in the case of internal self-determination, a people cannot foist it on a state party neither can the Commission, it must be a desire expressed by the people through a referendum.[151]

The right to self-determination applies outside decolonisation through secession.[152] Scholars like Buchanan argue that people undergoing injustices have the right to secession as a remedial option[153]. The right to self-determination is a non-negotiable right that applies outside decolonisation[154].

The cases of Eritrea and South Sudan puts an end to the controversy surrounding the application of the right to self-determination in post-colonial African States. Before the secession of South Sudan from Sudan there was evidence of bloody wars that lasted 39 years and claimed the lives of over 3 million people.[155] The case of Eritrea was no different. In the two instances, there were strong and concrete evidence of accumulated cases of abuse, human rights violations, oppression, marginalisation, several instances of protests, and aggravated conflict.[156] In July 1991, a meeting on democracy and peace was held in Addis Ababa organised by the Ethiopian People Republic Democratic Front

151 SM Weldehaimanot (n 74) pp. 84-107

152 AP Arifin (n 79) 477

153 A Buchanan, 'Theories of Secession' (1997) 26(1) *Philosophy and Public Affairs*, pp. 31-61; YG Adimassu, 'The Essence of Remedial Secession: From the Perspectives of Human Right and Preservation of Natural Resources' (2021) 12 *Beijing Law Review*, p. 1254

154 M Manan (n 50) p. 11.

155 C Okeke, 'The Right to Self-Determination and Secession in Africa: The Case of South Sudan and Lessons for the Region' (2020) 6(5) *Journal of Legal Studies and Research,* p. 197-231; M Sterio, The Right to Self-Determination Under International Law' (Routledge, 2013) p. 161; M Silvio, 'After Partition: The Perils of South Sudan' (2015) 3(1) *University of Baltimore Journal of International Law,* p. 63.

156 AA Troco, 'Between Domestic and Global Politics: The Determinants of Eritrea's Successful Secession' (2019) 4(8) *Brazilian Journal of African Studies* 9-31, p. 13

(EPRDF) where Eritrea's secession and autonomy were declared alongside the legal recognition of the right of the Eritrean people to decide their political future through an internationally supervised referendum.[157] Finally, on May 24, 1993, in a United Nations supervised referendum, 99.8 percent of Eritreans voted for the independence of Eritrea, and Eritrea, with the support of the United States of America and other major powers, was officially welcomed into the international community of states. Consequently, the Organisation of African Unity (OAU) accords it the recognition as the 53rd African State,[158] just as Coggins observes that *"when a Great Power confers legitimacy upon a secessionist movement/ state, its decision initiates a cascade of legitimacy throughout the* system's remaining members[159]

The secession of South Sudan took place in 2011 after an internationally monitored referendum was conducted which saw almost the whole of South Sudan voting in favour of secession. The referendum is lauded by many scholars because of its uniqueness in the history of Africa. It is noted as the first time the territorial integrity of an African state gave way for self-determination under the auspices of the United Nations with the support of the African Union.[160] There is no doubt that the secession of South Sudan from Sudan is the typical situation of secession outside decolonisation which the African Union and international community had previously stood against.

Carley[161] observes that the successful secession of South Sudan under the auspices of the AU and the international community seems to be an acceptance

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157 AO Osunkoya & AS Basiru, 'Secession Outside Colonial Context: The Birth of Eritrea in Retrospect' (2018) 14 *Journal of International Studies*, p. 29; EJ Keller, 'Secessionism in Africa' (2007) 13(1) *Journal of African Policy Studies* pp. 1-26

158 J Paquin, 'A Stability-Seeking Power: U.S. Foreign Policy and Secessionist Conflicts' (Quebec: McGill-Queens University Press, 2010), p. 141

159 B Coggins, 'Friends in High Places: International Politics and the Emergence of States from Secessionism' (2011) 65(3*) International Organization* 50

160 DH Johnson, 'New Sudan or South Sudan? The Multiple Meanings of Self-Determination in Sudan's Comprehensive Peace Agreement' (2013)14(2) *Civil Wars* p. 141

161 P Carley, 'Self-Determination: Sovereignty, Territorial Integrity, and the Right to Secession" (Washington, DC 20005-1708: United States Institute of Peace, 1996) p. 1 cited in A Mohammed & YT Baba, 'Secession and Border Disputes in Africa: The Case of Sudan and

of secession in a post-colonial African state which has begun a new chapter in the history of self-determination and secession in Africa. Bereketeab thinks that the South Sudan secession is a violation of the OAU/AU charter and the destruction of colonial borders and the principles about its sanctity which may not be mendable.[162] It must be stated that the Eritrean and South Sudan secession showed that the territorial integrity of a sovereign state may be questioned under Article 20(2) of the African Charter where there is concrete evidence of oppression, domination, and gross human rights abuses against a people.

6.0 CONCLUSION

The right to self-determination and the territorial integrity of a sovereign state are both fundamental principles in international law. Unfortunately, the enforcement of either of these principles automatically affects the other. The right to self-determination has grown to be a central tenet of nationalist political discourse, but as a legal right, it is of limited use and always at odds with the concepts of sovereignty and territorial integrity that make up the foundation of the international system of states.[163]

The decisions of the Commission on the interpretation of the provision of Article 20 on self-determination represent the status of both principles under the African Charter to today. The Commission recognises that a people have the right to self-determination, however, state territorial integrity must only give way to the right to self-determination when a people can prove with concrete evidence the persistent violation of human rights. The territorial integrity of a sovereign

South Sudan Border' (2021) 15(4) *African Journal of Political Science and International Relations* p. 134

162 R Bereketeab, 'Self-Determination and Secession" In R. Bereketeab, 'Self-Determination and Secession in Africa: The Post-Colonial State' (New York: Routledge, 2015) p. 4.

163 CK 'Connolly, 'Independence in Europe: Secession, Sovereignty, and the European Union' (2013) 24(51) *Duke Journal of Comparative & International Law*, p. 53 cited in SB. Lugard, M Zechariah & TM Ngufwan (n 46) 157.

state is anchored on the doctrine of *uti possidentis* which means "*as you possess, so you will continue to possess*." It emerged basically to preserve the boundaries of colonies emerging as a State and has been adopted by the Organization of African Unity (predecessor of AU) to preserve the territories of African States.[164] The territory of the former colony becomes frozen, as it were, on independence, and any legislation on the boundary, either by the former colonial power or by a party to the dispute becomes a matter of evidence.[165]

Thus, the internal arrangement between the seceding group and the sovereign state from which they intend to secede from is the most viable route for secession as in the cases of Scotland/United Kingdom and South Sudan/Sudan or where the municipal law, especially if the constitution of the sovereign state provides for the right to secession with it laid down procedures. [166]

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164 UO Umozurike, 'Introduction to International Law' (Spectrum Books Limited, 2005) p. 75; OO Ikubanni and MOA Alabi, "The Yoruba People's Quest for Self-Determination within the Nigerian Constitution" (2024) 1(1) *Fountain Law Journal* 37-53.

165 Burkina Faso v Republic of Mali, ICJ Rep. (1986) 554, 565, 661-662 cited in UO Umoruzike (n 132) p.76

166 Ibid (n 46) p. 158.

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