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Legality of Secession under International Law

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Abstract--- *This paper discussed the related question of secession as an external manifestation of the right of self-determination. The task of the present paper is to critically analyses the legality of secession and its consequences under international law and the indecisive state of international law on the legality of secession. The international law contains no explicit prohibition on unilateral secession, then on what legal basis could an act of secession be adjudged to be lawful or unlawful? Even if secession is a legally neutral act, could its consequences be regulated internationally? Put differently, on what legal criteria have certain acts of unilateral secession been subsequently legalized or opposed.*

Keywords--- *Secession, Historical Background, Right of Secession, Lawful Secession, Unlawful Secession, Successful Secession, Unsuccessful Secession, International Law.*

I. INTRODUCTION

After some preliminary remarks, the analysis clarifies the distinction between secession and the right of secession before delving into issues such as lawful and unlawful secession. Here, the paper examines whether, despite the absence of substantive international law rules forbidding secession, there exist procedural requirements for it to occur and the consequences of non-compliance. Reference is made to the case law relating to secession with Kosovo as a case study. In light of the indeterminate nature of international law on secession, the paper turns to consider this issue under national law. Subsequent parts of the paper examine cases of secession during different phases of history, from the pre-1815 to the post-1945 era. This examination covers incidents both of successful and unsuccessful secession. The final segment of the paper discusses when the right of unilateral secession is justifiable and exercisable.

II. SECESSION AND LAW

2.1 Secession Under International Law

International law recognises that all peoples have the right of self-determination, which may be seen to provide a basis for secession as remedy. Nevertheless, this right can only be exercised with justification where a people are faced with colonial rule or foreign occupation (Sterio M, 2013). Outside these two situations, there seems to be no explicit right of secession for entities aspiring for independence (Sterio, M 2013).

It cannot be denied that secession poses a threat to the sovereignty and territorial integrity of existing states both of which are principles long professed by international law. Deviation from these principles in the pursuit of secessionist desires would create the challenge of ever shifting territorial borders and undermine global security (I.C.J. 20-26, 1986).

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It seems that the only documented support for the violation of the territorial integrity of an existing independent state is provided in Paragraph 7 of the UN General Assembly Resolution 2625 on the principle of self-determination. According to that provision, "the full right of self-determination takes precedence, if the government does not represent the whole people belonging to the territory without distinction as to race, creed or colour." (A/RES/2625 (XXV) That paragraph, which is among the most salient provisions of that resolution, is "a bold attempt to reconcile the conflict between the principles of self-determination and territorial integrity of states." (Pius L. Okoronkwo, 2002).

Evidently, like state practice, there is divergence in scholarly opinions, which, as the writings of publicists, are also sources of customary international law, based on Article 38(1) (d) of the ICJ Statute. For some scholars, the notion of territorial integrity only guards against the violation of international borders and does not concern a domestic issue like secession. For others, territorial integrity places a bar on secession given its disruptive impact on state territory (Stephane Dion, 2011). As current international law stands, it seems that secession can only be supported as a remedial right in circumstances of grave and continuous acts of injustice.

Altogether, despite the availability of some UN Security Council resolutions proclaiming its illegality (S/RES/169, 1961 and S/RES/216, 1965), the question of secession is not specifically addressed by international law. That does not mean though that such a right exists or that states have an obligation to recognise it. What can be said, at best, is that no compelling principles of law or state practice exist to determine the existence of a right to secede. This issue remains unsettled. According to Crawford, "this is partly due to the dilemma that this would cause indeed, it is difficult to imagine how a seceding entity could manage to act contrary to international law while not being considered an international legal subject." (James R. Crawford, 2007).

Notwithstanding, international law does not expressly bar minorities from seceding from an existing host state, (Tancredi, Antonio, 2006) perhaps based on the rationale that secession is an internal act and, thus, falls under national law. In fact, in recent times, international law has started to recognise the right of people not under colonial rule to secede from their host state, "when the group is collectively denied civil and political rights and subject to egregious abuses." (Tancredi, Antonio, 2006).

The same position is reflected in the 1993 Vienna Declaration of the World Conference on Human Rights, which is endorsed by all UN member states (Vienna Declaration, 1993). Other UN bodies have similarly made references to the right of remedial secession. These include the 1993 Report of the Rapporteur to the UN Sub-Commission Against the Discrimination and the Protection of Minorities (E/CN.4/Sub.2/1993/34) and the 1996 General Recommendation XXI of the Committee on the Elimination of Racial Discrimination (U.N. Doc. A/51/18, annex VIII).

Current international law clearly slants more in favour of the preservation of the territorial integrity of states. The Helsinki Act of the Conference for Security and Cooperation in Europe (CSCE), now the Organisation for Security and Cooperation in Europe (OSCE), also accentuated the principle of territorial integrity by subjecting the right of self-determination to "conformity with relevant norms of international law, including those relating to territorial

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integrity of states." (Helsinki Final Act, 1975) Adherence to territorial integrity is also espoused by the 1993 Charter of the Commonwealth of Independent States (Zbigniew Brzezinski, 1997).

When Kosovo unilaterally declared independence from Serbia in 2010, the ICJ ruled that Kosovo's action did not breach any rule of international law (Stéphane Dion, 2011).

Resolution 2625 is significant in several ways. Apart from recognising the right of self-determination, it reiterates the principle of territorial integrity and prohibits the forceful redrawing of borders. Nevertheless, it restricts the application of the territorial integrity principle to situations where the government of a host state truly represents all the people in its territory, even though it fails to say explicitly what would happen where the government fails to meet this requirement.

In 1990, the reference to "distinction as to race, creed and colour" in Resolution 2625 was broadened in the Declaration of the UN World Conference on Human Rights and the UN General Assembly Declaration on the Occasion of the Fiftieth Anniversary of the UN through its replacement with the phrase, "distinction of any kind." (Vienna Declaration, 1993) This amendment introduced the implied right of remedial secession.

Relatedly, in the *Quebec Secession Case*, the Supreme Court of Canada stated that even though "there is no right, under the constitution or at international law, to unilateral secession, this does not rule out the possibility of an unconstitutional Declaration of Independence leading to a de facto secession. This ultimate success of such secession would be dependent on [Recognition] by the international community, which is likely to consider the legality and legitimacy of secession." (P.C. 1996-1497)

In reality, there is nothing in the international instruments or any other rule of international law forbidding states from granting recognition to an entity that has staged a successful secession. On this point, the Permanent Court of International Justice (PCIJ), precursor to the ICJ, ruled in the *Lotus Case* that, "an entity may exercise its right to independence, on any matter, even if there is no specific rule of international law permitting it to do so. In these instances, an entity has a wide measure of discretion, which is only limited by the prohibitive rules of international law." (PCIJ 1927)

2.2 Secession and National Law

The national law of many states, particularly their constitution, proclaims their inseparability (Stéphane Dion, 2011). Some examples of such states include the U.S., France, Spain, Italy, Australia and Sweden, all of which declare that they are indivisible. Nonetheless, secession from an existing host state is not governed solely by the national law of that state (Julie Dahlitz, 2003). The question whether or not to accept the secession of a part of its territory cannot be decided exclusively by a state.

Writing in respect of the secession crisis in the former Yugoslavia, which the UN Security Council considered as an internal matter, Dahlitz maintains that it was the absence of legal clarity in international law that led to that crisis being characterised as an internal issue. The constitutions of some states have, however, provided for the right of secession, without any need to show justification for such a course of action. Under the law of the erstwhile USSR, for example, secession was permitted even in the absence of any justifiable basis, insofar as there was conformity

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with specified procedural requirements (Julie Dahlitz, 2003). Often though, provisions permitting unqualified secession have been eliminated from state law through constitutional amendment.

III. SECESSION AND THE RIGHT OF SECESSION

Perhaps, there is a mix up in legal scholarship between secession and the right of secession. Correctly put, secession is the separation of part of an existing host state from that state to form a new independent state or join another existing state, with the original host state still in existence. In this sense, secession is primarily a factual, rather than a legal matter. (K. William Watson, 2008)

If secession, as an internal conflict that touches on state survival, is a factual matter, then it is unnecessary to ask whether it is governed by international law. This is because international law could not be seen to take a partisan position in such a domestic affair (Christian Tomuschat, 1993). At best, it can be said that international law is neutral on the issue of secession.

However, as distinct from secession, the right of secession is a legal question. If international law is neutral on secession as a factual matter, the right of secession, being a legal issue, could form the subject matter of international law. Therefore, international law could entertain the issue of the legality of secession.

As the Supreme Court of Canada ruled in the *Quebec Secession Case*, it is "clear that international law does not specifically grant component parts of sovereign states the legal right to secede unilaterally from their "parent" state." (P.C. 1996-1497) Nevertheless, the Court acknowledged that, in some situations, secession by a group is impliedly permissible based on the right of self-determination. (P.C. 1996-1497)

Those, who advocate the right of unilateral secession base their argument on two grounds. First, is that international law does not explicitly forbid secession. Therefore, this right can be inferred. Second, there is an obligation on other states to recognise the legality of secession arising from the exercise of the right of self-determination.

Arguably, international law cannot impose a universal ban on secession. To be sure, such a prohibition would help in preventing internal conflicts that challenge state sovereignty and territorial integrity, which already enjoy protection against external conflicts through the international law principles of non-intervention, non-aggression and respect for territorial integrity. However, even if international law did impose a ban on secession, it would have to be directed not to host states, but secessionist groups.

IV. LAWFUL AND UNLAWFUL SECESSION

A close study of UN tradition would show that, in certain cases, unilateral secession has been considered unlawful (S/RES/216, 1965 and S/RES/217, 1965 and S/RES/541, 1983 and S/RES/787, 1992). This poses the question whether, in international law, unilateral secession could be lawful or unlawful under certain circumstances. Jia contends that, "if international law does not provide for rules of secession, instances of secession are legal, as long as they do not contravene any basic tenets of international law." (Bing Bing JIA, 2009) The rider to Jia's argument could be related to the *Kosovo Case*, where the ICJ implicitly suggested that secession could be unlawful,

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but this unlawfulness is not because secession is intrinsically illegal. Rather, it is because the unilateral act breaches established international law norms (Bing Bing JIA, 2019).

In the above connection, the Southern Rhodesia (Zimbabwe) secession arguably did not fit with the right of self-determination in the sense that the secessionist government was not representative of a majority of the population and was not considered to express their will for external self-determination. With regard to the case of Northern Cyprus, although the Cypriot Turkish population had the right to external self-determination, the secession was undermined by illegality because of forceful external intervention by Turkey.

The above argument applies to the Republika Srpska secession, which was rendered illegal not because the Bosnian Serbs lacked the right of external self-determination, but because of the use of force by a third state namely, Serbia, in violation of the international law principles of non-intervention, non-aggression and respect for the territorial integrity of other states. In such cases of unlawful secession, the repercussion will usually be non-recognition by other existing states. However, this result does not deny the existence of the affected people's right of external self-determination.

Prohibition of the use of force is a *jus cogens* norm of international law. In other words, it is a fundamental principle of international law considered by the international community of states as non-derogable. In the *Kosovo Case*, the ICJ took the view that the use of force is forbidden in secession cases. The Court failed, however, to clarify whether this prohibition is operative within the territory of a state that has not fully dissolved and whether it is addressed to the seceding group or the host state (Anne Peters, 2011).

In answer to the above, Crawford argues that the "use of force by a non-state entity in exercise of the right of self-determination is legally neutral, that is, not regulated by international law at all." (James R. Crawford, 2007) He further insists that the use of force by a host state to quell a seceding entity does not amount to the use of force against the territorial integrity and independence of a state, although it would be a different issue altogether if it is done in a way that is contrary to UN objectives(James R. Crawford, 2007).

While the prohibition on the use of force is clearly binding on third states, a salient question is whether they are permitted to use force against the territorial integrity and political unity of a state that has failed to conform to the principle of self-determination and provide a representative government. Would the use of force in such a case be lawful?

Crawford sketches two scenarios of unlawful use of force by third states in Relation to external self-determination. One is where "an effective self-governing entity is created in accordance with an applicable right to self-determination by unlawful use of force," while the other is where "an effective self-governing entity is created in violation of an applicable right to self-determination by external unlawful force."(James R. Crawford, 2007)

In the second case above, secession from the host state would be unlawful since the act breaches both the principles of self-determination and non-aggression. The first case is less straightforward because of the double-sided nature of the secession process. Although the act of secession is consistent with the principle of self-

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determination, being the legitimate exercise by a people of their right of external self-determination, the prohibition on the use of force is contravened by a third party state that aided the secession.

It seems, therefore, that an unlawful third state intervention would render an act of secession unlawful. Crawford argues, nonetheless, that, "the status of local entity and the legality of the use of force ought to be regarded as separate issues so that the illegality of the intervention should not prejudice the pre-existing right of the local unit to self-determination." (James R. Crawford, 2007)

It is clear from the discussion, thus far, that there exists no legal stipulation forbidding secession and, in certain grave circumstances, it may be morally justified. However, there are situations where secession may be illegal. As scholars, such as Tancredi, argue, while in substantive terms, international law does not address the issue of state formation, it provides for procedures through which secession could legitimately occur (Tancredi, Antonio, 2006). Three cumulative requirements may be identified.

As already seen, one of them is that secession should not involve direct or indirect foreign military intervention. This is because secession being the internal affair of a host state, foreign military involvement would violate peremptory norms, including the territorial integrity principle (A/RES/2625, 1970(XXV)and 3314 (XXIX), 1975). In this regard, reference may be made to UN General Assembly Resolution 2131, the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty.

Another procedural requirement for the legitimacy of secession is the people's freedom to express their wish. Since the Badinter Commission, which made the conduct of a referendum a condition for the recognition of the independence of Bosnia and Hercegovina, this criterion has assumed a greater importance. (Alain Pellet, 1992) Expectedly, there has been an increasing tendency for the holding of referenda, as witnessed among secession-inclined populations in such places as Transnistria, Chechnya, Karabakh, Abkhazia, South Ossetia, Crimea, Catalonia, Scotland, Kosovo, South Sudan and Eritrea, the last three of which have now secured independence.

The last procedural requirement for the legality of secession is compliance with the principle of *uti possidetis juris*. This means that the pre-independence borders of the seceding entity must be maintained. In the case involving Burkina-Faso and Mali, the ICJ affirmed that this "is a general principle which is logically connected with the phenomenon of obtaining independence, wherever it occurs." (ICJ Judgment,1986)

All the above requirements must be fulfilled, otherwise the secession would be illegal. As a result, any state purportedly formed would not be accorded international recognition, as witnessed in cases such as Manchukuo, Republika Srpska, Southern Rhodesia and Northern Cyprus, among others. It remains subject to argument whether the denial of recognition to secession due to illegality would also deprive a seceding entity of statehood and legal personality, even where it enjoys effective control over a specific territory and population, consistent with the Montevideo requirements.

In relation to the above, the ICJ also affirmed in *Namibia Legal Consequences* that, "physical control of a territory, and not sovereignty or legitimacy of title, is the basis of state liability for acts affecting other states."

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(Resolution 276, 1970) Relatedly, in *Cyprus v. Turkey*, even though the Turkish Republic of Northern Cyprus has not been recognised as a state except by Turkey, the European Court of Human Rights acknowledged that the *de facto* entity's governing machinery wielded authority (ECHR 131, 2014).

The inescapable conclusion is that, despite their non-recognition, in reality, entities formed through illegitimate secession are still actors in the international system and remain subject to international law norms. Viewed in this way, it would mean that, although the denial of international recognition to such *de facto* entities would restrict their legal capacity to act in the international system, that does not prevent them from eventually becoming states insofar as they meet the basic requirements for state formation namely, territory, population and government.

V. SECESSION HISTORICAL

5.1 Secession in Pre-1815 Era

In the period before 1815, international legitimacy was based on the idea that states were vested with certain rights in customary international law, which meant that they had hereditary rights since most of them were monarchies (Mikulas Fabry, 2010). During that period, the notion of sovereignty took the form of legitimacy. Challenge to state legitimacy, particularly of the British monarchy, first occurred during the U.S. declaration of independence in 1776. In 1815, after the Congress of Vienna, which was meant to ensure balance of power and restore peace in Europe, the recognition of secessionist groups became more common. For example, as would be seen shortly, in 1816, there were only 25 states in the international community, but a century later, this increased to about fifty, and in another century, to 150 states, about 67 per cent of which attained statehood through agitation for independence (Coggins Bridget, 2011).

5.2 Secession from 1810 to 1945

During this period, the first wave of secessionist struggles occurred in the colonies then held by Spain in Latin America. Between 1810 and 1820, the Spanish monarchy grappled with a torrent of secessions that inundated the continent, which was then constituted by general captaincies and viceroyalties stretching from Texas to Patagonia, excluding Brazil, then a Portuguese colony (Pfirter, Frida Armas and Napolitano, 2006). In 1810, the United Provinces of New Granada declared its independence from Spain, a move followed, in 1811, by the Republic of Venezuela. These secessionist efforts proved abortive, however, as Spain regained control of Venezuela in 1812 and New Granada in 1816. New Granada and Venezuela eventually formed the Republic of Colombia in 1819. Two years later, Panama, another Spanish colony in Latin America, seceded to unite with Colombia, a step, which Ecuador similarly took in 1922.

Also, the General Captaincy of Guatemala, which had briefly joined Mexico, declared its independence to form the Central America Federation made up of five states: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. On its part, Mexico fought a protracted war of independence that lasted from 1810 to 1821, leading to its creation from the then Viceroyalty of New Spain. Similarly, the General Captaincy of Chile became the independent Republic of Chile in 1818, while the Republic of Peru was formed from the Viceroyalty of Peru in 1821. Mexico, Colombia and Rio de la Plata received recognition in 1822 from the then U.S. President, James Monroe.

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Recognition, as used above, is, in its contemporary sense, understood as *de jure* recognition. What this means is that host state recognition was not a prerequisite for the success of secession; what mattered, as Secretary Canning observed, was the effectiveness of the secession (James R. Crawford, 2007). It should be noted that, among European powers, it was only Britain that recognised the independence of the former colonies of Spain in Latin America. Other European states, such as Austria, Prusssia and Russia were sharply opposed to Britain's recognition of the independence of the former Spanish colonies, an act which they viewed as a blatant disrespect for the sovereignty of Spain. Subsequently, however, other European powers, such as France and Prussia, joined Britain in recognising their independence, with Spain itself doing the same after the demise of King Ferdinand in 1836 (Mikulas Fabry, 2010).

In the case of Brazil, its declaration of independence hardly caused any friction among European powers largely because Portugal wasted no time in recognising the new state. Even before Portugal's extension of recognition, the U.S. had already taken the initiative by recognising the nascent independent state on the rationale, just as Britain did in the case of the Spanish colonies, that there already existed a "government of Brazil, exercising all the essential authorities." (Mikulas Fabry, 2010). Worthy of note is that the newly independent states kept to their territorial borders, as existed prior to their attainment of independence, thus abiding by the general principle of *uti possidetis juris*.

Over the course of the 19th century, new states also emerged in Europe. In Western Europe, despite repeated demands, King William I of the then United Kingdom of the Netherlands, failed to address the concerns of its Belgian population. In 1830.

That, coupled with human rights abuses committed by the Turkish military and the worsening security situation in the Mediterranean, Great Britain, Russia and France signed the Treaty of London in 1827 with a demand for truce in return for Greek autonomy. The Ottomans opposed that treaty, but having subsequently lost in a war with Russia, they succumbed to pressure from the three Great Powers. In 1830, they agreed to recognise not just Greek autonomy, but complete independence.

The next five decades also produced three new European states namely, Romania, Serbia and Montenegro, all three of which had seceded from the Ottoman Empire, which in the 1870s, saw widespread uprising in the Balkans. The whistle was first blown in Bosnia and Hercegovina, which staged a local rebellion in 1875 (Mikulas Fabry, 2010). Austria-Hungary, Russia and Germany advised the Ottoman Sultan to adopt political and economic reforms.

In the World War I period, another wave of secession took place in Europe. The Central Powers comprising Germany, Austria-Hungary, the Ottoman Empire and Bulgaria, as well as the Entente Powers, which included Britain, France, Russia, Italy and the U.S., pursued a policy of instigating their ethnic groups in other rival sovereign territories to secede and undermine the effectiveness of those sovereigns. In 1916, Poland broke away from Russia to form an independent kingdom.

In October of 1917, another revolution, spearheaded by the Bolsheviks, occurred in Russia, which weakened the country significantly, paving the way for the different provinces to secede in rapid succession. Starting with Ukraine, which declared independence in November of 1917, Finland, as well as states in the Baltic and Caucasus,

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followed suit. After the Treaty of Brest-Litovsk in 1918, Russian forces were compelled to leave the territories of these new states, whose independence was recognised by Germany and its allies over the course of 1918.

Other new states were formed in Europe as the continent witnessed more incidents of secession by groups populated by Czechs and Slovaks, Serbs, Croats and Slovenians, coupled with the defeat and eventual collapse of Austria-Hungary. Czechoslovakia and Yugoslavia gained recognition as independent states at the Paris Peace Conference of 1919. In all these cases of new state formation, the principle of *uti possidetis juris* was brought into question, with border disputes between neighbouring states, which staked territorial claims pushed by reasons of "economic viability," "fortification of defence" or "access to the sea."(Nikoloz Samkharadze, 2016) It should be noted that the emergence of numerous new states was the result, not only of war, but also the impetus provided by the notion of self-determination of peoples championed by former U.S. President, Woodrow Wilson.

5.3 Secession from Post-1945 Period

5.3.1 Successful Secession

In the post-World War II era, the first among the series of successful secession was staged by the then East Pakistan, now Bangladesh, which declared independence from Pakistan on 26 March of 1971. East Pakistan was once a part and parcel of the Pakistani state, but had its own distinguishing ethnic, language and cultural identity, Islam being the only feature shared with the host state, the then West Pakistan (Thio, Li-Ann, 2006). More relevantly, it suffered serious political and economic discriminations from West Pakistan, (David Raič, 2002) with wage disparity, low government investments and poor representation in public institutions (S. R. Chowbury, 1972).

Consequently, East Pakistan unilaterally declared independence, resulting in a civil war. Neighbouring India, which was inundated with refugees fleeing the war, as well as military incursions into its border villages, purported to exercise its right of self-defence under Article 51 of the UN Charter by staging reprisals against Pakistani forces, who capitulated within a couple of weeks. Defeat of the Pakistani military left the East Pakistani territory under the complete control of the Awami-League, which, in less than six months, received recognition from over 70 existing states.

The relative success of the Bangladeshi secession, especially the international support it enjoyed, can be attributed to a number of reasons that include the relegation of the province to a quasi-colonial position through severe political and economic deprivation meted on them by West Pakistan. The other reasons were the large-scale human rights abuses committed by Pakistani forces during the civil war; the unique Bengali identity of the population inhabiting the affected territory and the internal support among the Bengalis for autonomy. East Pakistan's geographical isolation from the rest of Pakistan and its significant population size that stood at about 70 million in 1971, also contributed to the success of the secession. Equally important, is the intervention by the Indian military. Lastly, is that the secession did not threaten the economic and political stability of West Pakistan. Thus, it served the interest of overall peace and stability (Miriam McKenna, 2010).

The Bangladeshi secession was, nevertheless, peculiar in another sense. From the preceding analysis, it is clear that the secession succeeded largely due to forceful external intervention by India, which helped in the defeat of

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West Pakistan. Thus, viewed from the perspective of current international law, the secession was tainted with illegality, meaning that the subsequent recognition accorded to it had an illegitimate basis.

It could be said that, perhaps, the gross injustices suffered by East Pakistan, as well as the humanitarian crisis caused by the Pakistani military during the war, provided a legitimate basis for the secession and the international recognition of India's action as a humanitarian intervention. Altogether, Bangladesh provided the first example of situations where the highly controversial right of remedial secession was accepted. However, despite gaining independence in 1972, it was not until 1974 that Bangladesh was accepted as a UN member, following Pakistan's recognition of its independence.

Next is the case of Kosovo, which shares some commonalities with the Bangladeshi secession. Kosovo, largely populated by ethnic Albanians, was previously a province of Serbia with its own autonomy. In 1990, the Serbian government withdrew Kosovo's autonomy, which provoked the latter's declaration of independence in 1991 as the Republic of Kosovo. This move failed to receive international endorsement. Only the neighbouring state of Albania purported to recognise the new republic based largely on ethnic affinity.

Despite the UN General Assembly's call for the restoration of Kosovo's autonomy, Serbia refused to reverse its decision. The people of Kosovo became discouraged, especially since this problem was not addressed during the international conferences on Yugoslavia that were held between 1991 and 1995. Having endured protracted oppression from the then Serbian leader, Slobodan Milosevic, with the denial of representation in the country's political and economic affairs, the Kosovo Liberation Army began a rebellion in the province, which was violently crushed by Serbian forces.

After what was described by some as a policy of "ethnic cleansing" that saw most ethnic Albanians displaced and forced from the province, coupled with refusal by the Belgrade government to comply with international demands for an end to the brutal repression, NATO embarked on air attacks against Serbia. Subsequently, Serbian forces were compelled to pull out of Kosovo. In 1999, the UN Security Council passed Resolution 1244 setting up an interim UN administration in Kosovo (UNMIK), which took over all legislative, executive and judicial functions in the province (Miriam McKenna, 2010). This move meant to abide the determination of the final legal status of Kosovo, curtailed Serbia's sovereign control over the province (Miriam McKenna, 2010) and facilitated the establishment of autonomous administrative structures there.

At the same time, Resolution 1244 reasserted the territorial integrity of Yugoslavia with Serbia as a federal republic under this union (Resolution 1244, 1999). After about eight years of futile deliberations, former Finnish leader and UN Special Envoy for Kosovo, Martti Ahtisaari, proposed "independence" for Kosovo, but under international monitoring (S/2007/168). It can be said that Ahtisaari's recommendation implied a remedial right of secession for Kosovo and the affirmation of its *de facto* statehood. Serbia, a party to the discussions, however, rejected Ahtisaari's conclusions and requested that negotiations be continued on Kosovo's status; a suggestion that was met with a joint EU-U.S. statement "that the potential for a negotiated solution is now exhausted" (UN Webcast Archives, 2007).

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Kosovo, having interpreted the EU-U.S. joint communiqué as an indication that the leading power blocs would back its independence, even in the absence of UN Security Council resolution, once more declared independence at an emergency meeting of its elected representatives on 17 February of 2008. On this occasion, unlike previously, its independence was accorded greater international recognition, with 106 states granting recognition as of 2014 (Elton Tota, 2014).

Although Kosovo is yet to gain recognition from the former host state of Serbia or membership of the UN, it can be viewed as a successful secession. Like Bangladesh, Kosovo also suffered denial of autonomy, representation in government and economic development, all of which precipitated a violent conflict that created a humanitarian crisis and external intervention by NATO. In this case, however, even though NATO's intervention was claimed to be a humanitarian one, it proved highly controversial, almost leading to a military face-off with Russia.

Another case of successful secession is East Timor, which attained independence at the end of UN administration (UNTAET) between 1999 and 2002. Formerly under Portuguese control, East Timor came under Indonesian dominion through illegal annexation, after Portugal left the territory without a recognisable government in place. In 1999, East Timor voted to break away from Indonesia, leading to violent clashes between East Timorese militias and Indonesian forces, as well as large scale displacement of East Timorese civilian population. As a result, the UN Security Council activated Chapter VII of the UN Charter on the maintenance of international peace and security. It dispatched a multinational force to East Timor, which facilitated the restoration of peace and the establishment of a temporary administration. East Timor eventually set up its own government mechanisms and in 2002, gained UN membership.

Reference can be made to numerous other cases of new state formation. It is not appropriate, however, to include them here because they emerged through mutual agreement between the departing entities and the existing host states. Examples are such cases as Eritrea, which separated from Ethiopia in 1993 and South Sudan, which parted with Sudan in 2011. Others are Senegal and Mali, which split from the Soudan Federation in 1960, Singapore from Malaysia in 1965, the commonwealth of independent states from USSR in 1991, as well as Czech Republic and Slovakia from Czechoslovakia in 1992. These were instances of dissolution since there were mutual consents of the constituent parts to dissolve the federations.

Declarations of independence by Slovenia and Croatia from the former Yugoslavia in 1991 were also acts of unilateral secession. However, the eventual independence of those states resulted from the dissolution of Yugoslavia, which Bosnia and Macedonia also used an opportunity to declare their own independence. According to the Badinter Commission, an arbitration body set up by the EU Council of Ministers to provide legal advice to the Conference on Yugoslavia, the Yugoslav republic had a federal structure comprising largely autonomous units. Four out of its six republics having declared independence, the federal authorities could no longer claim to provide the requisite representation expected of a federal state (Pazartzis, Photini, 2006). Thus, this was a case of dissolution resulting from the rebalancing of the federation with the implicit backing of Serbia.

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5.3.2 Unsuccessful Secession

There were far more failed attempts at secession in the period after 1945 than there were successful ones. Starting with Europe, Chechnya is a typical case of failed secession. It was formerly a part of Chechen-Ingush Autonomous Republic of the former Soviet Union. In 1991, it seceded, following the victory of the National Congress in the first free elections organised after the abortive coup of August that year to topple the Soviet President and General Secretary, Mikhail Gorbachev.

Turning to Africa, Katanga was another case of unsuccessful secession in the post-colonial era. Less than two weeks after Congo attained independence in 1960, Katanga declared independence, enjoying this *de facto* status for three years. Buoyed by backing from colonial Belgium and the lucrative copper and gold mines in the province, the Katanga administration proved more effective than the Congolese central government (James R. Crawford, 2007). Nonetheless, its secessionist bid soon failed as UN forces landed in Congo with a mission to preserve the country's territorial integrity and end the presence of Belgian troops in the province (Resolution 146, 1960). Katanga's independence never received recognition from any member of the international community of states.

Next in Africa is the case of Biafra, which seceded from Nigeria, seven years after the latter attained independence from Britain in 1960. Biafra's independence was accorded recognition by five states, but the secession failed eventually in 1970 when Nigerian federal forces crushed the insurgency and reincorporated the territory into the country.

Africa has witnessed other cases of unsuccessful secession, some of which remain unresolved today. One of these is Somaliland, a former British protectorate, which after the end of colonialism, joined the Italian trust territory of Somaliland to form the Republic of Somalia. In 1991, the Somali government broke down and serious conflict arose among different factions in the country, with the northern part seceding and declaring an independent Republic of Somaliland. In the past twenty years, Somaliland, once described by former UN Secretary General as having "maintained a high degree of autonomy," (James R. Crawford, 2007) has refused to form a unity government with the remaining part of Somalia. Although it has enjoyed greater stability and effectiveness than the host state of Somalia, the international community has, so far, not granted it recognition.

Azawad is yet another case of unsuccessful secession in Africa. In April of 2012, following a coup in Mali, Touareg nomads expelled Malian troops from the northern part of the country and declared independence for Azawad. With the arrival of French, as well as AU troops, the secession of Azawad, controlled by Touareg and Islamist groups, came to an abrupt end.

In Asia and the Pacific, there have also been cases of secession. These have arisen largely due to the arbitrary incorporation of the seceding entities into newly independent states created at the end of colonialism. Some examples include Tamil Eelam in Sri Lanka, Aceh and West Papua in Indonesia, Bougainville in Papua-New Guinea, Mindanao Island in the Philippines and Karen Lands in Burma. Even though these entities have managed to form relatively effective states, they failed to achieve international recognition, confining them, instead, to the exercise of the right of internal self-determination.

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It has been seen that the right of secession is usually exercisable as a remedy of last resort for the violation of human rights. Given that human rights abuses are rampant in most states of the international community, a pertinent question is what degree of human rights abuses would justify unilateral secession? Also, when can secession be an ultimate remedy? The following section examines these issues.

VI. FINDINGS

Findings from this paper suggest a failure to differentiate between secession and the right of secession. While the former is a factual matter unregulated by international law, the latter is a legal question because it has consequences under international law. Nonetheless, the perceived legal-neutrality of international law on secession is only apparent since acknowledgement of the right of secession implicitly legitimates secession.

This paper, however, found divergences among states on the question of secession. While some consider minority and other distinct groups in a state to be vested with the right of secession, others take the opposite view. This disagreement also exists among scholars. Overall, no definite international law principle or state practice exists to determine the existence or otherwise of the right of secession.

To exercise the right of secession, a group must prove that they are a people, who have been subjected to the grave, organised, large-scale and prolonged human rights violations by their host state. They must also have exhausted all other available and effective remedies to no avail, thus justifying secession as the remedy of last resort. This right must be exercised once these conditions are present because it would cease once the alleged violations stop.

VII. RECOMMENDATIONS

From the legal and theoretical implications of this study, it is clear that several measures at the legal, theoretical and policy levels are desirable to improve the quality of national and international responses to claims by ethnic groups to statehood and demands for recognition.

Findings from this study point to inadequacies in current international and national law. The study contributes to their development by calling attention to the complex issues they raise and how they could be addressed. The findings also show that, in theoretical terms, several areas of international law require more indepth study or reconceptualisation altogether. Addressing these concerns will provide valuable insights for statespeople, ethnic minority groups and courts, as well as important new knowledge for the scholarly literature.

At the same time, secession is also viewed as an internal matter for a host state, unless the seceding entity is subject to an external authority. Yet, even where new states have emerged as a factual matter and despite the silence of international law on the issue of secession, they have failed to receive international recognition. This was the case of states created after the fall of the erstwhile Soviet Union and the Socialist Federal Republic of Yugoslavia.

Nevertheless, if secession, as a domestic dispute that impinges on state survival is deemed to be a factual issue, then could it be regulated by international law? This question is relevant since international law could not possibly be seen to meddle in what is purportedly a domestic affair. On the other hand, if international law is said to be

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neutral on the issue, it would still face the dilemma of addressing the legal personality, rights, and duties of seceding groups, as well as those of existing states. Still, if international law abandons its neutral stance, it would undermine the territorial stability of existing states.

A careful examination of UN practice however reveals that secession has, in some cases, been viewed as illegal. This raises the question whether under certain conditions, international law may consider secession as legal or illegal. Framed differently, if international law is believed not to explicitly forbid secession, then on what legal premise could an act of secession be determined to be legal or illegal? On what legal grounds have some acts of secession been recognised or rejected? In effect, even if secession is deemed to be a neutral act, could its effects be subject to international regulation?

That would leave groups exercising the right of secession in a dilemma as recognition could become a political, rather than legal issue. In the absence of an international body charged with state recognition, individual states may accord or deny recognition to such groups based on selfish motivations. Further, despite its status as the preeminent actor in the international system, even the term, "state," does not have an explicit definition in international law.

With regard to the controversy over the status of secession under international, it is suggested that a clear distinction be made between secession and the right of secession. As seen in the findings, there is presently a mix up between both concepts. The former means the effective separation of an entity from a host state to form a new independent state or join another sovereign state. This is typically a factual matter and, as already mentioned, is generally considered a domestic affair.

In any case, if international law imposed a blanket prohibition on secession, while that would certainly reinforce the territorial integrity of states, such a prohibition would have to be addressed to seceding entities, rather than states. This result would be objectionable to states, which are likely to view it as the recognition of such entities as subjects of international law. In the same vein, if international law were to explicitly recognise the right of secession, its addressees would necessarily have to be seceding entities, thus granting them legal personality. A possible way out of this quandary would simply be to say that international law grants entitlement to secession, with peoples as the beneficiaries.

Admittedly, the neutrality of international law on secession could be problematic. Even if it chooses not to concern itself with this issue, it would eventually still have to address questions concerning the legal personality of seceding groups, their rights and duties, as well as the corresponding obligations of existing states, especially in terms of recognition. International law could conveniently grapple with these matters through the notion of the right of secession, which means the legality of secession.

Prohibition on the use of force, the use of force by a third state to assist secession in a host state is unlawful.

In terms of definition, although secession is viewed as the effective separation of an entity from a host state to form a new independent state or join another sovereign state, this definition seems descriptive. To equip it with a legal nature, secession could more appropriately be defined as the unilateral withdrawal of territory and sovereignty from part of an independent host state against its consent, to form a new, independent state or join another existing

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independent state, while the original host state continues to exist. It is the intentional refusal by a segment of the territory of a host state and its people to continue to recognise the legitimacy and authority of that state, having resolved to form their own independent state.

VIII. CONCLUSION

International law does not regulate secession as such because secession is a fact. However, the academicians tend to neglect the distinction between secession and the right to secession. While secession falls in the international law - free Zone "international legal order is not neutral to causes and legal consequences of secession. The illegality connected to secession might qualify secession as "unlawful". Moreover, international law might be rejecting neutrality to secession by authorizing "right to secede". If there is a "right to secede" in international law, this would imply that the legitimacy of secession could be verified.

This study has examined the nation's claim to secession and the extent of its legitimacy. This ultimately necessitated the analysis of important international law concepts such as self-determination, particularly secession and its legality. Others were the notions of people, statehood and international recognition. The study has established that presently, international law remains inchoate on some of these questions.

The current customary behavior of states shows that, in some cases, new states were created with the consent of existing host states, while in others, they emerged through successful unilateral secession without the consent of host states. Many of those newly emerged states received prompt international recognition, but others did not receive the same treatment, despite being viewed generally as states.

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