SECESSION: NEW TRENDS AND PRACTICE AFTER THE COLD WAR

David Ighojohwegba Efevwerhan*
Rusniah Ahmad*

Abstract

In the cold war era, only one case of secession, that of Bangladesh, succeeded. Others like Biafra, Katanga and Southern Rhodesia met with ignominious failure. But the end of the cold war witnessed many more secessions all over the world and brought with them, several newly created states in the comity of nations. Why was this, the case? Why were the post-cold war secessions successful where their precursors failed? Has the attitude of the international community towards secessions changed with the end of the cold war? This paper sets out to review cold war and post-cold war secessions with a view to ascertaining the current trends and states' practice regarding unilateral secession in international law. It concludes that most of the successful secessions occurred in Europe and that the success of secessions in Europe after the cold war was purely as a result of Regional willingness to jettison territorial integrity in the face of bloody conflicts, in order to preserve Europe. It urges African and Asian leaders to take a cue from the European example and avert fratricidal wars on their continents. It also identifies several placebos and peace-building mechanisms that have been employed by States to placate secessionists.

---

* LL. M., Benin (Nigeria), Ph.D. Law Candidate, Universiti Utara Malaysia, email: efedave@yahoo.co.uk
* Ph.D. (Law), Manthester, United kingdom Associate Professor of Law, College of Law, Government and International Studies, Universiti Utara Malaysia

Keywords: secession, unilateral secession, territorial integrity, autonomy, supervised secession, communism, self-determination, independence, cold war, parent state

Introduction

Secession is as old as there have been sovereign states on the earth. But in modern era, it has been the major source of fratricidal wars just as it has generated a lot of debates among international lawyers and political scientists alike. It is the breaking away of a unit of a sovereign state in order to establish itself as a separate sovereign state. Sometimes, this can be achieved through mutual consent of the parent state and the break-away unit like it happened in Malaysia when Singapore seceded. But more often than not, parent states resist any such attempts by a unit within its sovereign territory. This often leads to a unilateral declaration of independence by the intending break-away unit, followed by armed conflicts arising from the determination of the parent state to resist the secession. While the consensual secession like the Singapore case is often greeted with admiration by the international community, a unilateral secession is more likely to be met with cold shoulders in the international community. We shall now proceed to review several cases of secession both during and after the cold war, making comparisons where appropriate.

Cold War Era

In the cold war era, secessionist conflicts were minimal. It was actually at the end of the cold war in the late 1980s that secession became a recurrent decimal in the affairs of Sates. As a matter of fact, most secession conflicts erupted from the former USSR and Eastern European countries, where Communism was entrenched. The prominent cases of secession during the cold

war were those of the Katangese of Belgian Congo, Biafra of Nigeria and East Bengal of Pakistan, which happened to be the only successful one in that era. It must be mentioned that there were other cases involving independence struggles like those of Algeria, Guinea-Bissau, the Federation of Mali and Singapore. These were however, cases of decolonization as it affects the first two, and consensus, in the latter two, that saw Senegal and Mali emerge from the former Federation of Mali, after an initial opposition from Soudan, the other constituent unit that later became independent Mali. The withdrawal of Singapore from Malaysia was also as a result of mutual agreement. An attempt by the white minority government of Southern Rhodesia to secede from colonial Britain was thwarted by the United Nations in 1965. In fact there was a call on member nations not to recognise the entity as it was an attempt to further a racist agenda.[1] This paper is mainly concerned with unilateral secession of a group from a sovereign independent State-the breaking away by a unit without the consent of the parent State; and not secession from imperialist, colonial States or by agreed partition. We shall therefore, not include the latter in the consideration of the cold war era practice among States.

Katanga

Soon after independence from Belgium in 1960, the province of Katanga purported to have seceded from Congo. The response from the United Nations was swift, as it sent its forces (ONUC) to the Congo. Initially, the forces were supposed to be neutral

1. See Security Council Res 216, November 12, 1965, para 2, available at http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/222/87/IMG/NR022287.pdf? OpenElement last visited on April 20, 2010.
See also UNSC Res 217, November 20, 1965, para 3, which condemned the usurpation of power by a racist settler minority and regarded the declaration of independence as having no legal validity.

but its mandate clearly included the preservation of the territorial integrity of the Congo; most probably due to the influence of Belgian forces in the Katangese province. This was followed by a Security Council Resolution, deprecating the "illegal secessionist activities" carried out by the provincial administration of Katanga, with the aid of external resources; and declaring that all secessionist activities against the Republic of Congo were contrary to "the *Loi fondamentale* and Security Council decisions." The Resolution also demanded that "all such secessionist activities should cease forthwith."[2] It is pertinent to note that no sovereign State recognized Katanga as a State until the secessionist conflict was ended in 1963, mostly as a result of the activities of the United Nations in Congo. But it is equally important to observe that the UN described the secessionist activities as illegal although, it did not refer to any rule of international law that was being violated. Rather, it referred to the contrariness of such activities to the "*loi fondamentale*" (fundamental law), i.e., the Constitution of the Congo.

Biafra

On May 30, 1967, the former Eastern Region of Nigeria, declared independence from Nigeria as the Republic of Biafra, owing to wanton killing of ethnic Ibos in the Northern part of Nigeria and the seeming inability of the Nigerian government to safeguard the existence of the Ibos in Nigeria. The ethnic Ibos were indigenous to the Eastern Region. The secession was resisted by the government of Nigeria, leading to a bloody civil war between the Federal forces and those of the break-away region. While the resultant war and brutal killings took place, the world

2. UN Security Council Resolution 169(1961), November 24, 1961, paras. 1, 3 and 8, available at http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/171/76/IMG/NR017176.pdf? OpenElement last visited on April 20, 2010

wouldn't care less. The Organization of African Unity was clearly on the side of the Federal Government of Nigeria, maintaining the principle of territorial integrity.[3] The United Nations was more popular with the statement of its Secretary General, U Thant, insisting on territorial integrity of the Nigerian State thus:

> *As far as the question of secession of a particular section of a state is concerned, the United Nations attitude is unequivocal. As an international organization, the United Nations has never accepted and does not accept and I do not believe will ever accept the principle of secession of a part of its member states.*[4]

However, five States[5] recognized Biafra as a sovereign and independent State, although without diplomatic relations, until Biafra's surrender in January 1970. France never officially recognized Biafra but was engaged in some form of moral and financial support. Several other countries like The Netherlands, Belgium, Britain and the USSR supported the Federal Government and even partook in lucrative arms supply contracts to the Federal Government.[6] It is therefore not too clear whether the support for the Federal Government by many European countries was induced by a conviction in the principle of territorial integrity

---

3. See statement of Emperor Haile Selassie of Ethiopia, "The national unity and territorial integrity of member states is not negotiable. It must be fully respected and preserved. It is our firm belief that the national unity of individual African States is an essential ingredient for the realization of the larger and greater objective of African Unity.", Report on the OAU Consultative Mission to Nigeria, p. 9, quoted in Ijalaye, D.A., "Was Biafara at Any Time a State in International Law?", 65 AJIL (1971) 551 at 556
4. UN Monthly Chronicle 7 (1970), p. 36, cited in Tomuschat, C., 'Secession and Self-Determination', in Kohen, M.G., (ed.) *Secession: International Perspectives*, Cambridge, Cambridge University Press, 2006, p. 29, fn 25
5. Tanzania, Gabon, Ivory Coast, Zambia and Haiti
6. Okeke, C.N., *The Theory and Practice of International Law in Nigeria*, Enugu, Fourth Dimensions Publishers, 1986, pp. 267-274

or by economic reasons. The five countries that recognized Biafra, including France that was merely sympathetic to the cause, did so mainly on humanitarian grounds owing to the massive killing of Biafrans through acts of war and starvation; rather than an approval of the right of Biafra to self-determination.[7] It is however pertinent to note that in spite of the OAU's support for the Federal Government, the issue of the five recognitions never came up for discussion at the Organization. Biafra surrendered unconditionally on January 12, 1970, following a brutal suppression from the parent government.

Bangladesh

Pakistan was created out of British Raj India in 1947. The basis for this State was set down in the Lahore Resolution of 1940 which was adopted by the Muslim League and which demanded that "the areas in which the Muslims were numerically in a majority, as in the north-western and eastern zones of India, should be grouped to constitute 'independent States' in which the constituent units shall be autonomous and sovereign".The unitary State of Pakistan consisted of two territorial units, West and East Pakistan (East Bengal), which were separated by 1200 miles of Indian territory.[8] Following intentional underdevelopment and discrimination against the people of East Bengal, there were agitations for a constitutional reform in accordance with the Lahore Resolution. The Awami League of East Bengal (Pakistan) won elections in December 1970 on the basis of a six-point programme channeled after the Lahore Resolution, but the central government in West Pakistan prevented the Awami League from

---

7. Ijalaye, D.A., "Was Biafra at Any Time a State in International Law?", 65 AJIL (1971) 551 at 553-554

8. Raic, D., *Statehood and the Law of Self-Determination*, The Hague, Kluwer Law International, 2002, p. 335

assuming power. This was coupled with a declaration of martial law in East Bengal, followed by acts of repression that commenced on March 25, 1971. The Awami League then felt compelled to declare independence from Pakistan on March 26, 1971. The Order of Independence made it clear that the proclamation of independence was a last resort measure for safeguarding the Bengali people, and that it was based on "the legitimate right of self-determination of the people of Bangladesh".[9]

This act was stoutly opposed by the central government in West Pakistan. The resultant occupation and war caused severe humanitarian problems, which later forced over 10 million refugees to flee East Bengal into India; eventually prompting Indian forces to intervene after a pre-emptive strike by Pakistani forces on Indian airfields. The Pakistani forces in East Bengal surrendered to Indian forces on December 17, 1971, thus making the secession of East Bengal, a *fait accompli*. The Awami League exercised effective control over the territory of East Bengal, with the aid of Indian forces. The secession of East Bengal, which later became Bangladesh, was criticized by many States because of the intervention of India- a fact they considered a violation of international law norms. India insisted that it acted on humanitarian grounds and in defence of the right of Bengalis to self-determination.[10] However, many States rapidly recognized Bangladesh as an independent State in spite of the alleged illegality of Indian intervention.[11] Attempts by aggrieved States to get the Security Council of the United Nations to take a decision on the matter were thwarted by vetoes from USSR.[12] Bangladesh was finally recognized and admitted into the membership of the United Nations on September 17, 1974, after Pakistan was

---

9. Raic, Ibid, at p. 338
10. Raic, ibid, at p. 340
11. Between January and May 1972, 70 States had recognized Bangladesh. Raic, ibid, at p. 339
12. Hannum, H., "Rethinking Self-Determination", 34 Va. J. Int'l L (1993) 1 at 49-50

persuaded to recognize it. Raic argued that the issue with States, who criticized the Indian intervention, was not whether a people had a right of rebellion against a discriminatory government, but rather, the Indian claim to be entitled to act unilaterally, as the populations' vindicator.[13] Crawford however argued that East Bengal was a Non-Self-Governing Territory under Chapter XI of the UN Charter and under Principle IV of GA Resolution 1541(XV), on ground of being both geographically separate and ethnically distinct from Pakistan, the administering territory; and so, was qualified as a self-determination unit entitled to the assistance of third States in its quest for external self-determination.[14] In whatever way one looks at it, the argument of humanitarian intervention is more tenable and defensible in international law, as it is justified under remedial secession. This was the claim of East Bengal, itself, in its Independence Order, earlier referred to above. Relying on the non-self-governing territory theory is fluid as it was not officially so recognized by the UN at the time of secession, a fact Crawford himself acknowledges. Otherwise, Hawaii, Sabah and Sarawak would be given a blank cheque to rebel and secede from the United States and Malaysia respectively.

It would be observed that other than geographical separateness, all the facts that occurred in Bangladesh were also present in the earlier case of Biafra, yet Biafra did not enjoy the support of the international community like Bangladesh did. The same UN Secretary General that had emphasized territorial integrity in the case of Biafra made the following curious statement, just a year

---

13. Raic, ibid, at p. 340. Hannum however observes that despite the near unanimous condemnation of the repressive acts of Pakistan, Western democracies voted in favour of Pakistan in the Security Council and that the success of the secession was solely due to Indian intervention and Soviet political support rather than to the principle of self-determination. Hannum, ibid, at p. 49-50

14. Crawford, J., *The Creation of States in International Law*, Oxford, Oxford University Press, 2nd (ed.), 2006, p. 142

later, when asked about the situation in Bangladesh:

> *A problem which often confronts us and to which as yet no acceptable answer has been found in the provisions of the Charter is the conflict between the principles of the integrity of sovereign states and the assertion of the right to self-determination, and even secession by a large group within a sovereign state. Here again as in the case of Human Rights, a dangerous deadlock can paralyze the ability of the United Nations to help those involved.*[15]

It therefore becomes more complex following the contradictory utterances of UN Secretary General, U Thant, on the two situations within the pace of one year. It only sounds true therefore, that if Biafra had a strong ally like India to ward off the aggression of the Nigerian government, its story would have been different today. This situation of uncertainty and double standard compelled Hannum to admit that the attitudes of the international community towards several post-colonial secessionist attempts provide "little support for any but the geopolitical non-theory of secession".[16]

Post-Cold War Era

The end of the cold-war opened a floodgate to numerous secessionist conflicts and agitations. According to Nicholas Kittrie, the conclusion of the era of bipolar politics caused the resurgence of many older hostilities and grievances within each camp; and that secession and lesser forms of domestic conflict, rather than international warfare, are becoming the growing threat to world

---

15. 26 UNGAOR Supp. 1A, UN Doc. A/840 1/Add 1, para. 148, quoted in Addo, M.K., "Political Self-Determination Within the Context of the African Charter on Human and Peoples' Rights", 32 Journal of African Law (1988) 182 at 191

16. Hannum, ibid, at 49

peace as we proceed toward a new millennium.[17] Tom Farer seems to agree with the above assertion. He observed that the end of the Cold War has facilitated the aggravation and multiplication of ethnic tensions and has facilitated as well, their eruption into armed conflicts of a particularly virulent nature. He attributed the epoch of Communist Party power to the seeming cohesion of the USSR; and that with the fall of Communism[18] it became obvious that the ability to rule depended on popular support. Popular support depended on national identities, which had previously been silenced during the era of Party domination. He continued that Party elites belonged to one ethnic identity or the other and that with the collapse of Party authority, elites identified with their kith and kin, promoting ethnic sensibilities that culminated in separatist agitations.[19] Hurst Hannum, in agreeing with the two scholars above in the same forum, however pointed out that the post-cold war era has not seen more secessionist movements than in the 1940s, 1950s, 1960s or even 1890s. He argued that because the Cold War has ended, there are greater possibilities of intervention, both unilaterally and on the part of international organizations.[20] What can be deduced from the above discourse is that secessions have always been around but may

---

17. "International Responses to Secessionist Conflicts", Proceedings of the American Society of International Law, March 27-30, 1996, 90 Am. Soc'y Int'l L. Proc. (1996) 296 at 297

18. The fall of Communism is associated with the collapse of the Communist Power in the former Soviet Union, which was the Central force of the Communist world and its satellite States. The Tiananmen riots of 1989 failed to topple Communism in China. So, China and some few countries like Cuba, Laos, Vietnam and North Korea still practise Communism

19. "International Responses to Secessionist Conflicts", Proceedings of the American Society of International Law, March 27-30, 1996, 90 Am. Soc'y Int'l L. Proc. (1996) 296 at 304

20. "International Responses to Secessionist Conflicts", Proceedings of the American Society of International Law, March 27-30, 1996, 90 Am. Soc'y Int'l L. Proc. (1996) 296 at 315; Nanda, V.P., "The New Dynamics of Self-Determination: Revisiting Self-Determination as an International Law Concept:

have been suppressed during the cold war due to Communist authoritarianism. The end of the cold war merely created an avenue for the proper or improper venting of previously pent up passions by suppressed nations.

In the 1980s, following increased diplomatic pressures on the USSR by the USA, Gorbachev had adopted the *glasnost* and *perestroika* reforms between 1985 and 1987. These reforms enabled free speech and openness of government in the Soviet Union, thus, equally enabling nationalist grudges to be voiced. The introduction of the "Sinatra Doctrine", that allowed Warsaw Pact nations to decide their own internal affairs, as against the previous "Brezhnev Doctrine", adopted as Soviet foreign policy in 1968,[21] was all that was needed for communism to crumble. The adoption of the Sinatra doctrine saw previous socialist/ communist governments like East Germany, Czechoslovakia, Bulgaria and Romania toppled. Poland had prior to the adoption of this doctrine, held democratic elections in September 1989, which the Gorbachev regime refused to intervene in.

The Former USSR Republics

The USSR itself became a victim of the fall of communism as it disintegrated into 12 new States that had previously constituted it, in December 1991, signaling the end of the cold war. Before the disintegration, the Baltic States of Estonia, Latvia and Lithuania had unilaterally declared independence from the USSR. Seeing

---

A Major Challenge in the Post- Cold War Era", 3 ILSA J Int'l & Comp L 443 (1997) at 450

21. The Brezhnev doctrine states, "When forces that are hostile to socialism try to turn the development of some socialist country towards capitalism, it becomes not only a problem of the country concerned, but a common problem and concern of all socialist countries.", Wikipedia, at http://en.wikipedia.org/wiki/Brezhnev_Doctrine last visited on April 22, 2010

the futility of waging a war of unity after the failed coup of August 1991, the USSR recognized the break-away States, which it had forcibly annexed in 1940 and they were admitted into the membership of the United Nations.[22] The issue of secession or territorial integrity was never considered in the admission of the Baltic States into the UN membership. In fact, the Security Council described the independence of the Baltic States as a return to "their rightful place in the community of nations".[23] The USSR was formed from the Old Russian Empire which was a conglomeration of Russian and several non-Russian, annexed and conquered nations. After the World War I, in the early stages of self-determination as a political principle, Lenin had cajoled the constituent nations into remaining in the union with the promise of the right to secede if need be but with no real intention of allowing secession.[24] This was later entrenched in the 1977 Soviet Constitution.[25] The cohesion of the Union was therefore secured with the Communist-style rule of force.[26] After the secession of the Baltic States, three republics of the Soviet Union,

---

22. Much of the historical contents of the end of the cold war has been culled from the history pages of Wikipedia at http://en.wikipedia.org/wiki/Cold_war last visited on April 21, 2010

23. UNSC Res 709, 710 and 711, September 12, 1991, para 6 of the President's speech available at http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/596/47/IMG/NR059647.pdf?OpenElement last visited on April 21, 2010; Crawford, J., op. cit., note 14, at p. 45. It would be recalled that the Baltic States of Estonia, Latvia and Lithuania were forcefully annexed by the USSR in 1940

24. Lenin was often quoted as saying, the "right of divorce is not an invitation to all wives to leave their husbands." Quoted in Blay, S., "Self-Determination: A Reassessment in the Post-Communist Era", 22 Denv. J. Int'l L. & Pol'y (1994) 275 at 285

25. See for instance, Art. 72, Constitution of the USSR 1977, available at http://www.friends-partners.org/oldfriends/constitution/const-ussr1977.html last visited on April 26, 2010, which provides, "Each Union Republic shall retain the right freely to secede from the USSR."

26. Blay, S., "Self-Determination: A Reassessment in the Post-Communist Era", 22 Denv. J. Int'l L. & Pol'y (1994) 275 at 285-286

Russia, Belarus and Ukraine, met on December 8, 1991 in Minsk, Belarus, and adopted a declaration proclaiming that the Soviet Union had ceased to exist; establishing in its place, a rather loose Commonwealth of Independent States and invited other former Soviet republics to join the Commonwealth. Later, at Alma Ata, Kazakhstan, on December 21, 1991, eight[27] more republics joined, bringing the membership to eleven. This spelt the death blow on the Soviet Union as the Soviet Parliament voted on December 25, 1991, to dissolve the Union effective from December 31, 1991. President Mikhail Gorbachev also resigned on that day. All the former Soviet republics were admitted into the membership of the United Nations. Again, the question of secession or territorial integrity was never an issue during the admission proceedings.

The din of separatism did not end in the disintegrated Soviet Union. It resonated in its satellite Communist States. Prior to the disintegration of the Soviet Union, the adoption of the Sinatra doctrine had opened the door for the collapse of East Germany. First, the Berlin Wall that separated West and East Germany came down in 1989, followed by the unification of East and West Germany as one Germany after an overwhelming support by East Germans for reunification in a referendum in 1990-an event that would have been unthinkable under the Brezhnev doctrine. Czechoslovakia also consensually separated into two independent sovereign States and the two States were so recognized by the UN.

The Former Yugoslav Republics

The former Socialist Federal Republic of Yugoslavia (SFRY) was a federation comprising Croatia, Slovenia, Bosnia-Herzegovina, Montenegro, Macedonia, and Serbia. It also included the two

27. Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Tajikistan, and Uzbekistan. Georgia joined later in December 1993.

autonomous regions of Kosovo and Vojvodina. The dominant nationalities were the Serbs, Slovens, and Croatians. Ethnic or nationalistic antagonism among these groups however dates back to post-World War I era. But the drum for secessionist agitations and the eventual collapse of the former Yugoslavia was first sounded, when the Republics of Croatia and Slovenia seceded unilaterally and simultaneously from the former Federation on June 25, 1991. After a feeble attempt to reunite the federation by Yugoslav forces, the Federation abandoned its efforts in Slovenia but intensified efforts in Croatia. The resultant armed conflict was bloody, leading to a freeze or moratorium on the independence of the two republics in the Brioni Accord of July 7, 1991, brokered by the European Community. The Brioni Accord was broken almost immediately as Serb forces intensified its violence towards Croats, leaving in its trail, over 10,000 Croat deaths and over 600,000 Croat refugees as at November 1991; within a space of 5 months.[28] Following this wide scale pogrom that was indiscriminate as to combatants or civilians, the European Community (EC) moved swiftly to adopt two declarations, the *Declaration on Yugoslavia* and the *Declaration on the Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union*.[29] The former invited the constituent republics to apply to the Arbitration Commission (Badinter Commission) for recognition in accordance with the latter. The latter had stated the readiness of member States "to recognise, subject to the normal standards of international practice and the political realities in each case, those new States which, following the historic changes in the region, have constituted themselves on a democratic basis, have respect for inviolability of all frontiers, disarmament

28. Raic, D., *Statehood and the Law of Self-Determination*, The Hague, Kluwer Law International, 2002, pp. 352-353

29. EC Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union and EC Declaration on Yugoslavia, December 16, 1991, (1991) 62 BYIL, 559, reproduced in Harris, D.J., *Cases and Materials on International Law*, 6th (ed.)., London, Sweet and Maxwell, 2004, pp. 147-149

and nuclear non-proliferation..." The Arbitration Commission on Yugoslavia, called the Badinter Commission, which had earlier been set up by the EC, in its Opinion No. 1 found that the Federal Republic of Yugoslavia was in the process of dissolution.[30] This proved fatal in the Yugoslav crises. In subsequent Opinions, the Badinter Commission recognized the independence of each of the republics until it remained Serbia and Montenegro, that later formed a union as the stump Federal Republic of Yugoslavia.[31] In its Opinion No. 8, the Commission held that the process of dissolution was complete and that the SFRY no longer existed.[32] Thus, ended the union once called, the Socialist Federal Republic of Yugoslavia, (SFRY). The resultant independent States were also admitted into the membership of the United Nations without secession or territorial integrity being a considered issue.

Analysis of the USSR and Yugoslav Cases

The Soviet crisis was triggered by the Baltic States' break away from the Soviet Union. The Soviet Union resisted the break away until the failure of the August 1991 coup, when it gave up the resistance. Thus the acts of the Baltic States were those consistent with unilateral secession. Secondly, the remaining twelve republics of the Union remained under the control of the

---

30. Opinion No. 1, Arbitration Commission, EC Conference on Yugoslavia, November 29, 1991, 92 ILR 162, para 3, reproduced in Harris, D.J., *Cases and Materials on International Law*, 6th ed., London, Sweet and Maxwell, 2004, pp. 122-124

31. The Federal Republic of Yugoslavia (FRY) was later renamed Republic of Serbia and Montenegro before it was further split into two independent republics of Serbia and Montenegro, following the breaking away by Montenegro under Article 60 of the Constitution of Serbia and Montenegro 2003, in 2006

32. Opinion No. 8, Arbitration Commission, EC Conference on Yugoslavia, July 4, 1992, 92 ILR 199, para 4, reproduced in Harris, D.J., *Cases and Materials on International Law*, 6th ed., London, Sweet and Maxwell, 2004, pp. 124-125

Union after the secession of the Baltic States. However, the Minsk Declaration by the trio of Russia, Belarus and Ukraine on December 8, 1991, which proclaimed the non-existence of the Soviet Union, took place when the Soviet Union was still intact. Such proclamation without the consent of the central government by three territories of the Union again, amounts to unilateral secession. The subsequent joining of the Commonwealth of Independent States by eight others at Alma Ata, which led to the final disintegration of the Soviet Union, was an act in furtherance and in proliferation of secessions from the Union. The subsequent Parliamentary resolution to dissolve the Union was not voluntary in the circumstance but was foisted on a helpless and powerless central government that now existed without members. Thus, it would be safe to conclude that the dissolution of the Soviet Union was as a result of multi-secessions of its constituent republics.

Similarly, it would be seen that prior to the dissolution of the former Yugoslavia, Slovenia and Croatia declared their independence from the Federation. These were made unilaterally. Thus, they were also acts of secession. The subsequent application for recognition as sovereign independent States by the other Republics, made possible by the EC, also occurred at a time when the central government in Belgrade was waging a war of reunification. In fact, it was the intensity of the war that prompted the EC to make the two fatal Declarations on December 16, 1991. In international law, when a parent State resists a secession bid, third States are not permitted to aid or support the seceding group. Doing this, is deemed an intervention in the internal affairs of a sovereign State.[33] But it is clear that the intervention of the

---

33. Crawford, J., *The Creation of States in International Law*, Oxford, Oxford University Press, 2nd (ed.), 2006; Blay, S., note 26 ante, p. 294; Tancredi, A., "A Normative 'Due Process' in the Creation of States Through Secession", in Kohen, M.G., (ed.), *Secession: International Perspectives*, Cambridge, Cambridge University Press, 2006, p. 171, at 190

EC and its organs, as represented in the Badinter Commission, aided and abetted the secession of Croatia and Slovenia; and subsequent Republics, thereby, foisting on the SFRY, a *fait accompli*. It would at this juncture be ripe to note that the action of the EC in Yugoslavia was an act in self preservation. Previous secessions especially in African and Asian States were not treated in this way. Perhaps, such have been far way from Europe and it was convenient for European nations to call for respect for territorial integrity, while such nations burned in the orgy of violence. The Yugoslav crises, happening in the very periphery of superpowers like France, Britain and the Soviet Union, made European powers to look beyond international norms to desperately solve a desperate problem.[34] It is without doubt therefore, that the Yugoslav crisis was not one of voluntary dissolution, but one prompted by multi-secessions, accomplished by the EC intervention.

Comparison with Post-Colonial Secessions in Africa and Asia

Unfortunately, post-cold war secessions in Africa and Asia did not receive the smooth sail of their European counterparts. As Blay put it,

> *A significant feature of the cases of self-determination in the post-communist context is that they have all attracted responses different from those in the post-colonial context. All the cases, including Yugoslavia, have attracted favorable*

---

34. Pazartzis, P., "Secession and International Law: The European Dimension", in Kohen, M.G., (ed.) *Secession: International Perspectives*, Cambridge, Cambridge University Press, 2006, p. 355 at 372, where the author observed that the justification for the EC intervention in Yugoslavia was not self-determination but on the basis of dissolution, as found by the Badinter Commission in its Opinion No. 1 - thus not creating a precedent in favour of the right of secession

responses leading to the recognition of the new states and their subsequent membership in the U.N. The question of the validity or applicability of self-determination to these cases has never been at issue, let alone been disputed.[35]

East Timor

In East Timor, in spite of UN resolutions[36] that Indonesia withdraw from East Timor after it forcibly annexed it, following Portugal's departure as colonial masters, Indonesia continued to occupy the territory. Guerilla warfare raged between Indonesian forces and the independence movement of East Timor, Fretilin, well after the end of the cold war until a UN supervised referendum in 1999, saw an overwhelming vote for independence. Although there were anti-independence resistance forces supported by Indonesia, East Timor gained independence in 2002 and was so recognized by the United Nations.[37]

Western Sahara

The African equivalent of East Timor, Western Sahara, has not been so lucky. The UN has not done anything more than its traditional admonition of parties to keep the peace. Its resolutions have been lack-lustre. So, Morocco continues to illegally occupy the territory in spite of the ICJ ruling that there exist no bonds between Morocco and the Western Sahara which will prevent the people of Western Sahara from exercising their right to self-determination.[38] The Western Sahara has been recognized and admitted into the membership of the African Union (AU), formerly

---

35. Blay, S., op cit., pp. 277-278
36. GA Res. 3485 (1975) and SC Res. 384 (1975)
37. East Timor is now officially known as Timor Leste
38. Western Sahara Case, ICJ Reports 1975, p. 12 at 68, para 162

Organization of African Unity, (OAU). For this reason, Morocco has withdrawn its membership of the AU. In spite of such weighty regional recognition, much weightier than the EU in terms of membership,[39] the Western Sahara, now known as the Saharawi Arab Democratic Republic, has not found favour in the eyes of the Western world as it did in the Yugoslav and Soviet cases. The above two situations are not strictly speaking, secession cases but semi-decolonization cases. They are however relevant for our purposes in order to underscore the discriminatory States' practice in recognition of states when it concerns Africa or Asia.

Eritrea

Eritrea was federated with Ethiopia in 1950 under UN auspices.[40] The territory was to remain an autonomous unit under the sovereignty of Ethiopia but in 1962, Emperor Haile Selassie abolished the autonomous status of the territory, making it an Ethiopian territory in clear violation of the UN resolution. The UN did not resist or oppose this violation. The Eritrean Peoples' Liberation Front (EPLF) fought for a long time for independence without the support of the international community. It took a coup that unseated the Mengistu Haile Mariam's dictatorship in 1991, for Ethiopia to acknowledge Eritrea's claim to independence. Following a UN-monitored plebiscite, Eritrea gained independence in 1993. None of the UN Resolutions on Eritrea, while the struggle lasted referred to self-determination but the agreement between the Ethiopian Government and the EPLF acknowledged the fact.[41] This inconsistence on the part of the international community with regard to the post-communist secessions in Europe and post-colonial secessions in Africa and Asia prompted Blay to conclude thus:

---

39. The AU has a membership of 53 States while the EU has 27 member States
40. GA Res 390A (V), December 2, 1950
41. Crawford, note 33 ante, at pp. 402-403

> *..the current international law position on the status of the right of self-determination in the post-colonial context seems more or less "neutral." There are no definite international law rules that forbid or permit a claim to the right. Past cases would suggest that, in general, the law would accept a claim if it is successful. On the other hand, where the claim is unsuccessful, the law would recognize the authority of the parent state as legitimate irrespective of the internal conditions that may have necessitated the claim in the first place.*[42]

The same discriminatory attitude applied to the cases of Somalia, Sudan, Sri Lanka, Moro (Philippines) and other secessionist conflicts in Africa and Asia. After over 25 years of guerilla warfare, the Tamil Tigers were finally defeated by the Sri Lankan forces in May 2009.[43] The struggle for independent Tibet is still on with China adamant about any such talks. Perhaps, African and Asian nations should borrow a leaf from their European counterparts and jettison international dogmas, in order to recognize deserving cases of secession. That way, the needless bloodshed in the above conflicts which are still going on in some places would be averted. Europe was wiser for it. And no one can blame them for doing what was just and necessary. What is ludicrous is that African and Asian nations supported the admission of the post communist secessionist States into the UN while they allowed bloodshed to continue unabated in their domains in circumstances not fundamentally different from those of the Communist enclave.[44] As one writer put it,

---

42. Blay, ibid, at p. 281

43. "Claims of massacre as Tamil Tiger leaders die", The Times (UK), May 19, 2009, available at http://www.timesonline.co.uk/tol/news/world/asia/article6315330.ece last visited on August 2, 2009

44. Blay, ibid, at p. 292

Separation seems defensible as the minor evil if people who are categorized as belonging to different nations generally hate each other, or if their political leaders exploit historical grievances to make them hate each other. Maybe the peaceful break-up of Czechoslovakia prevented an escalation of the conflict. Maybe the early international recognition of Slovenia, Croatia and Bosnia as independent nation-states had not further fuelled the war but had actually helped to forestall a full military mobilization by the Serbian government.[45]

The above is a food for thought for African and Asian nations who allow secession conflicts to deteriorate to catastrophic proportions with needless bloodbath and humanitarian sufferings which they could have nipped in the bud by allowing separation in deserving and prudent circumstances. After all, the UN Secretary General in his Agenda for Peace Report acknowledged that the days of absolute and exclusive sovereignty were over.[46] As one scholar[47] observed, territorial integrity was embraced by third world and less powerful countries in the cold war era as security from invasion and intervention by the more powerful countries and their ideological influences. With the end of the cold war and bipolar politics, the doctrine has become spent. The reality

---

45. Bauböck, R., "Why secession is not like divorce", in Goldmann, K.,(ed.), *Nationalism and Internationalism in the Post-Cold War Era*, London, Routledge, 2000, p. 214 at 217; see also Nanda, V.P., "The New Dynamics of Self-Determination: Revisiting Self-Determination as an International Law Concept: A Major Challenge in the Post-Cold War Era", 3 ILSA J Int'l & Comp L 443 (1997) at 452

46. UN Doc. A/47/277; S/24111; 17 June, 1992, An Agenda for Peace Preventive Diplomacy, Peacemaking and Peace-Keeping, Report of the Secretary-General pursuant to the Statement adopted by the Summit Meeting of the Security Council on 31 January 1992, para. 17, available at http://www.un.org/Docs/SG/agpeace.html last visited on February 22, 2010

47. Khan, A.L., *A Theory of International Terrorism: Understanding Islamic Militancy*, Leiden, Martinus Nijhoff Publishers, 2006, p. 330

of this era enjoins nations and nation-states to respect the rights of people to determine their political status; economic, social and cultural development. Being and remaining in a State should be by persuasion and conviction, rather than by brute force or some pretentious rule of international law.

New trends and States' Practice

Apart from the above discriminatory attitude, secession in the post-cold war era has generally witnessed similar problems and solutions in the international community. For instance, the age-long principles of territorial integrity and *uti possidetis* have been well observed in all regions of the world. Even in Europe, where the principles seemed to have been jettisoned in the Balkan conflict, the *EC Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union*[48] prescribed the observance of territorial frontiers (*uti possidetis*) as one of the requirements for recognition of new States. After the settlement of the Balkan conflict by the disintegration of the former Yugoslavia, the principle of territorial integrity was once more adhered to by Europe.[49] It was used by the European Council in condemning Russia's aiding of the South Ossetian and Abkhazian secessions from Georgia:

> *It [EC] recalls that a peaceful and lasting solution to the conflict in Georgia must be based on full respect for the principles of independence, sovereignty and territorial integrity recognised by international law, the Final Act of*

48. Note 29 ante

49. Xanthaki, A., "The Right to Self-Determination: Meaning and Scope", in Ghanea, N., and Xanthaki, A., (ed.), *Minorities, Peoples and Self-Determination: Essays in Honour of Patrick Thornberry*, Leiden, Brill Academic Publishers, 2005, p. 15 at 19; Pazartzis, P., "Secession and International Law: The European Dimension", in Kohen, M.G., (ed.) *Secession: International Perspectives*, Cambridge, Cambridge University Press, 2006, p. 355 at 367-373

the Helsinki Conference on Security and Cooperation in Europe and United Nations Security Council resolutions.[50] (Emphasis added)

In the African context, the principle of territorial integrity has been the basis of inaction in fratricidal secessionist conflicts in Sudan, Somalia, Congo Democratic Republic and even Eritrea, until the agreement between the Ethiopian interim government and the Eritrea Peoples' Liberation Front. One of such adherence can be gleaned from the recent Nigerian government's response to the Libyan President's suggestion that Nigeria should be split into Muslim North and Christian South independent Republics. In spite of the fact that this agitation has been ringing through the streets of Nigeria by Nigerians, owing to the incessant religious killings, Nigeria recalled its ambassador to Libya in protest to the utterances of the Libyan leader.[51] While this may be a diplomatic means of protesting, the Nigerian upper house of Parliament, the Senate, went undiplomatic, when its leader, described the Libyan leader as a "mad man" for the same suggestion.[52]

In Asia, there has been an added dimension in the adherence to the principle of territorial integrity. For instance, China has enacted the Anti-Secession Law 2005[53] that has insisted on its

---

50. EU, European Council Conclusions on Georgia, Conclusion 3, para. 2, September 1, 2008, available at http://www.consilium.europa.eu/uedocs/cmsData/docs/pressdata/en/ec/102545.pdf last visited on April 30, 2010

51. "Nigeria recalls Libya ambassador in Gaddafi row", BBC News, March 18, 2010, available at http://news.bbc.co.uk/2/hi/africa/8575383.stm last visited on March 19, 2010

52. "Ghadaffi is a mad man, says Mark", Vanguard (Nigeria), March 17, 2010, available at http://www.vanguardngr.com/2010/03/17/ghadaffi-is-a-mad-man-says-mark last visited on March 19, 2010

53. China's Anti-Secession Law 2005, March 14, 2005, available at http://www.taiwandc.org/aslaw-text.htm last visited on April 29, 2010

territorial claim to Taiwan;[54] In the Philippines, there is the Human Security Act 2007,[55] which makes terrorism an offence. The definition of terrorism under the Act, includes inter alia, rebellion and insurrection; and coup d'état.[56] While it is perfectly alright in international law, for sovereign States to promulgate against forcible change of government, the fear is that secessionist agitations, where they become violent, may be surreptitiously classified by the government, as terrorism, so as to silence all separatists' movements and agitations. Several groups have gone to the Philippines Supreme Court to challenge the constitutionality of the Act for the same fear.[57] The tendency to classify secessionist activities as terrorist is not peculiar to Philippines. China, Thailand and Indonesia have also been fingered for the treatment of separatists as terrorists in order to justify their brutal repressions.[58] Several international Conventions' definition of terrorism tends to include the activities of violent secessionists,[59] prodding some regional bodies to specifically exclude activities of self-determination

---

54. Ibid, Articles 1 and 2

55. Act No. 9372, February 19, 2007, available at http://www.senate.gov.ph/republic_acts/ra%209372.pdf last visited on April 30, 2010

56. Ibid, Art 3

57. Lyew, B.H., "An Examination of The Philippines' Anti-Terror Law", 19 Pac. Rim L. & Pol'y J., (2010) 187. The author is of the opinion that there is nothing unconstitutional or in violation of international law in the Act; at pp. 194-198

58. Thio, L., "International Law and Secession in the Asia and Pacific Regions", in Kohen, M.G., (ed.) *Secession: International Perspectives*, Cambridge, Cambridge University Press, 2006, p. 297 at 323-326

59. Art. 2(1), International Convention for the Suppression of Terrorist Bombings 1997, states, "Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility: a) With the intent to cause death or serious bodily injury; or b)With the intent to cause extensive destruction of such a place, facility or system, where such a destruction results in or is likely to result in major economic loss". But Art. 3 excludes such act if done

groups.[60] This does not however apply to a secessionist group outside the scope of colonialism,[61] except where there are egregious violations of human rights by the parent state in which case, the secessionist group may receive the sympathy of the international community.

A. Efforts at Minimizing Secession Conflicts

Apart from the extent to which States have gone to assert the principle of territorial integrity and resistance to secession, there also seems to have evolved among the comity of nations in the post-cold war era, an antidote to secession conflicts. This is the placation of secessionist groups with the grant of greater political autonomy within the State, as an alternative to secession. Prominent among these is the case of Spain. The Spanish state is made up of regional autonomies that allow different nationalities a great measure of political self-determination within the Spanish sovereignty, with a reserve power of the centre to intervene in the best interest of Spain when an autonomous region takes a step that can undermine the greater unity of the Spanish nation.[62] Thus, the counties of Basque and Catalonia, which were hitherto

---

within a single State by a national of that State and on nationals of that State only. Text of the Convention is available at http://treaties.un.org/doc/db/Terrorism/english-18-9.pdf visited on May 4, 2010. Art 1(1)(c) of the Terrorism Act (UK) 2000, makes the act a terrorist act if "made for the purpose of advancing a political, religious or ideological cause".

60. See Convention of the Organisation of the Islamic Conference on Combating International Terrorism 1999, Art. 2(a); Organisation of African Unity Convention on the Prevention and Combating of Terrorism 1999, Art. 3(1); Arab Convention on the Suppression of Terrorism 1998, Art. 2. For a detailed discussion of self-determination and terrorism, see Clapham, A., "Secession, Terrorism and the Right of Self-Determination", in Kohen, M.G., ed., *Secession: International Law Perspectives*, Cambridge, Cambridge University Press, 2006, p. 46

61. Weller, M., *Escaping the Self Determination Trap*, Leiden/Boston, Martinus Nijhoff, 2008, p. 42

62. See Article 155, Spanish Constitution 1978, available at http://www.congreso.

hot spots of secessionist agitations, have been immensely placated.[63] The Irish Republican Army of Northern Ireland that engaged the British government in a fierce terrorist and guerilla warfare of a secessionist nature was also finally placated by the grant of greater autonomy in the British-Irish Agreement, popularly called the Good Friday Agreement,[64] signed between the governments of Ireland on the one hand and the United Kingdom of Great Britain and Northern Ireland on the other. Other important autonomy agreements reached in the post-cold war era include those in Moldova, in which Transdniestria and Gagauzia could secede from Moldova should a decision be taken for Moldova to be united with another State;[65] the 1995 Dayton Accords[66] in

---

es/portal/page/portal/Congreso/Congreso/Informacion/Normas/const_espa_texto_ingles_0.pdf visited on May 6, 2010

63. For full details of the Spanish example of autonomies, see Martinez-Paoletti, J., "Rights and Duties of Minorities in a Context of Post-Colonial Self-Determination: Basques and Catalans in Contemporary Spain", 15 Buff. Hum. Rts. L. Rev. (2009) 159; McWhinney, E., *Self-Determination of Peoples and Plural-Ethnic States in Contemporary International Law*, Leiden, Martinus Nijhoff, 2007, p. 80-81

64. British-Irish Agreement, Belfast, April 10, 1998, available at http://www.nio.gov.uk/agreement.pdf visited on May 5, 2010. For a detailed account of the Good Friday Agreement and its implications, see O'Leary, B., "Complex Power-sharing in and over Northern Ireland: A Self-determination Agreement, a Treaty, a Consociation, a Federacy, Matching Confederal Institutions, Intergovernmentalism, and a Peace Process", in Weller, M., and Metzger, B., (eds.), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, pp. 61-124

65. The Law on the Special Legal Status of Gagauzia, December 23, 1994, available at http://www.regione.taa.it/biblioteca/minoranze/gagauziaen.pdf visited on May 5, 2010; Draft Memorandum on the Basic Principles of the State Structure of a United State in Moldova, Kozak (Memorandum) November 17, 2003, available at http://pridnestrovie.net/node/612/print visited on May 5, 2010; "Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova", The Record, Vol. 61, No. 2 (2006) 196 (Publication of the Association of the Bar of the City of New York), available at http://www.abcny.org/Publications/record/vol_61_2.pdf visited on May 5, 2010; Jarve,

Bosnia and Herzegovina, the Machakos Protocol[67] in Sudan, the Mindanao Peace Agreement 1996 in Philippines[68] and the Bougainville Peace Agreement 2001 in Papua New Guinea.[69] The use of the grant of political autonomy has been substantially successful as a self-determination disputes settlement mechanism in the post-cold war era.

In pre-cold war era, it was a means of assuaging the fears of minorities regarding their preservation within the State from which they sought to secede. For instance, the people of the Aaland Islands were granted autonomy within Finland.[70] China,

---

P., "Gagauzia and Moldova: Experiences in Power-sharing", in Weller, M., and Metzger, B., (eds.), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, pp. 307-343

66. The General Framework Agreement for peace in Bosnia and Herzegovina (The Dayton Accord), Paris, December 14, 1995, available at http://www.ohr.int/dpa/default.asp?content_id=379 visited on May 5, 2010. For details of the Bosnian conflict settlement, see Bieber, F., "Power-sharing and International Intervention: Overcoming the Post-conflict Legacy in Bosnia and Herzegovina" in Weller, M., and Metzger, B., (eds.), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, pp. 193-241

67. Machakos Protocol on the Settlement of the Sudan Conflict, July 20, 2002, available at http://www.smallarmssurveysudan.org/pdfs/HSBA-Docs-CPA-2.pdf visited on May 5, 2010

68. Full details of the Mindanao Peace Agreement are discussed in Turner, M., "Resolving Self-determination Disputes through Complex Power-sharing Arrangements: The Case of Mindanao, Southern Philippines" in Weller, M., and Metzger, B., (eds.), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, pp. 161-192

69. Full details of the Bougainville Agreement are discussed in Regan, A.J., "Resolving the Bougainville Self- determination Dispute: Autonomy or Complex Power-sharing?" in Weller, M., and Metzger, B., (eds.), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, pp. 125-159

70. The Åland Agreement in the Council of the League of Nations 1921, available

in its Anti-Secession Law 2005, even dangled expanded autonomy to Taiwan if the latter would quit its secessionist moves.[71] The establishment of the Hong Kong Special Administration Region (HKSAR) is another successful effort by China to keep the people of Hong Kong from secessionist agitations after the territory was vacated by the British in 1997. Hong Kong enjoys wide autonomy, including international trade and distinct currency, the Hong Kong Dollar, as against the Yuan. The prevalence of autonomy agreements between States and their minority groups in the modern era has prompted one scholar to suggest that there is an emerging right of autonomy in international law.[72]

Another new found mechanism for assuaging the fears and agitations of secessionists after the cold war is the adoption of development programmes by the central government geared towards massive development and empowerment of the disaffected territories. This has arisen on the realization by central governments that most secessions are bred by disaffection caused by systematic neglect and marginalization of the disaffected regions in terms of development infrastructures and perceived exploitation of regional resources. For instance, the persistent neglect of the Niger-Delta area of Nigeria, in spite of the region accounting for the bulk of the national revenue generated from oil exploration in the area has been generally responsible for the conflicts in the area.[73] The Philippines reacted to this feeling by appropriating more than half of a US aid of $55 million to the economic development and empowerment of the Mindanao in 2001.[74] In

---

at http://www.kultur.aland.fi/kulturstiftelsen/traktater/eng_fr/1921b_en.htm visited on August 7, 2009

71. China's Anti-Secession Law 2005, note 96 ante, Articles 5-7

72. Gilbert, G., "Autonomy and Minority Groups: A Right in International Law?" 35 Cornell Int'l L.J. 307 (2002) at 353

73. "Nigeria offers militants amnesty", BBC News, June 26, 2009, available at http://news.bbc.co.uk/2/hi/africa/8118314.stm visited on May 11, 2010

74. "Arroyo to inject $50m into Mindanao", Straits Times (Singapore), December

China, the sum of 2 billion Yuan is to be set aside as development fund for the 55 minority ethnic groups in order to accelerate their economic and social development under the Chinese National Human Rights Action Plan (2009-2010).[75] In pursuit of this, the sum of $2.07 billion has been earmarked for the development of the restive Xinjiang region.[76]

The end of the cold war has also seen the emergence of international administrations in conflict-ridden States. Such international involvement in the administration of territories or States as a mechanism for achieving a lasting peace in secessionist conflicts were under the auspices of the UN, EU, NATO, OSCE, etc and can be seen in the Bosnia Conflict and perhaps, the most popular and more extensive type witnessed in Kosovo after the NATO intervention in Serbia, arising from Security Council Resolution 1244 under which the UN took over the administration of Kosovo from Serbia, pending the final determination of its status. The international community, especially the UN, has also been involved in supervision of referenda and elections in secession conflicts in order to truly ascertain the wishes of the people concerned. Such supervisions were successfully done in Eritrea and East Timor, leading to full independence of the two entities and their admission into the membership of the UN.

11, 2001, p. A6, cited in Thio, L., "International Law and Secession in the Asia and Pacific Regions", in Kohen, M.G., (ed.) *Secession: International Perspectives*, Cambridge, Cambridge University Press, 2006, p. 297 at 335

75. See paragraph on Guarantee of the Rights and Interests of Ethnic Minorities, Women, Children, Elderly People and the Disabled. Full text of the Action Plan is available at http//www.english.gov.cn/official/200904/13/content_1284128.htm last visited April18, 2009

76. "Xinjiang to get $2.07b boost", Straits Times (Singapore), May 5, 2010, available at http://www.straitstimes.com/BreakingNews/Asia/Story/STIStory_522909.html visited on May 8, 2010

B. Assisted or Supervised Secession

Perhaps, the most novel and most debated development in the post-cold war era in regards to secessions is the emergent concept of what is popularly termed, "supervised secession" by scholars.[77] The Kosovo secession is the only known and acclaimed beneficiary of this emergent concept so far. Although the Kosovo secession is still inchoate, the International Court of Justice has however held that Kosovo did not breach any general rule of international law or Security Council Resolution 1244 (1999) or the Constitutional Framework, in unilaterally declaring independence from Serbia.[78] However, it is widely believed that the recommendation of the UN Secretary General's envoy, Martti Ahtisaari, prescribing an independent status for Kosovo,[79] was the last straw that broke Serbia's claim to Kosovo, which unilaterally declared independence from Serbia on February 17, 2008.[80] This recommendation, coupled with the divestment of Serbia of its territorial sovereignty over Kosovo under Resolution 1244 (1999) offered the opportunity to secede on a platter for Kosovar authorities; hence it would be more appropriate to refer to it as an internationally assisted

---

77. Weller, M., *Escaping the Self-determination Trap*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, pp. 139-43. The author refers to this emergent concept as "supervised independence"

78. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, ICJ Advisory Opinion, July 22, 2010, para. 122, available at http://www.icj-cij.org/docket/files/141/15987.pdf visited on July 23, 2010

79. Letter dated 26 March 2007 from the Secretary General, addressed to the President of the Security Council and Report of the Special Envoy of the Secretary General on Kosovo's future status, S/2007/168 and S/2007/168/Add.1 (26 March 2007), para 5, also available at www.unosek.org/docref/report-english.pdf visited on June 17, 2009. The UN Secretary General supported the recommendation and proposals of his envoy and urged that they be brought to the attention of the Security Council in paragraphs 2 and 3 of his letter

80. Weller, op. cit., p. 141

secession. It is imperative to also mention the purported secession of South Ossetia and Abkhazia from Georgia in August 2008, made possible through the intervention of Russia, which cited the Kosovo example as a precedent. But there is a great deal of difference between the two secessions which are outside the scope of this paper. Suffice to say that while the Kosovo situation was preceded by a UN mandate-type administration over Kosovo and a UN Secretary General's recommendation, albeit not discussed in the Security Council, Russia's act was absolutely unilateral and comes squarely as an act of intervention in the internal affairs of Georgia.

Finally, the end of the cold war and the proliferation of secessionist movements have seen more and more States including secession provisions in their Constitutions. The availability of a constitutional right to secede has kept most governments on their feet so as not to cause disintegration of their constituent units. Such provisions are in the Ethiopian Constitution 1994,[81] Constitution of Serbia and Montenegro 2003[82] and the The Law on the Special Legal Status of Gagauzia.[83]

Conclusion

We have seen in the course of this paper, that the response or attitude of the international community to secessions at the end of the cold war has been one of inconsistence. Territorial integrity has both been applied and abandoned depending on the

81. Article 39, Constitution of Ethiopia 1994, available at http://www.servat.unibe.ch/law/icl/et00000.html last visited on April 14, 2009

82. Article 60, Constitutional Charter of Serbia and Montenegro 2003, available at http://en.wikisource.org/wiki/Constitutional_Charter_of_Serbia_and_Montenegro visited on June 10, 2009; Under the constitutional provision above, Montenegro peacefully seceded or broke away from Serbia in 2006.

83. See note 64 ante

region or continent involved. States have tried to blackmail separatists as terrorists, so as to criminalize them and justify repressive acts against them and their supporters. There has been outright criminalization of secession in national Laws. But there have also emerged, relatively successful proactive and reactive mechanisms for dissuading separatists; and settling secessionist conflicts. These have markedly been by way of complex power-sharing arrangements in terms of greater autonomy to disaffected constituent units, guaranteeing of minority rights, extensive socio-economic development of disaffected constituent units and international involvement in the administration of secessionist territories and entire nations where necessary. There have also emerged topical concepts of internationally assisted or supervised secession; and a constitutional right of secession of which Montenegro is the only known State to have successfully seceded under such right so far.

Most of all, it has been ascertained that the upsurge of secessions in the immediate years of the end of the cold war, was basically because, the end of the cold war and the fall of communism opened the flood gates for previously hidden and suppressed nationalistic agitations to be voiced. This is eminently borne out by the fact that most of the secessions in the post-cold war era came from the former Communist States of the Soviet Union and Yugoslavia.

It has also been shown that the success of most secessions in the immediate post-cold war era was as a result of the willingness of Europe and its three super powers to jettison international law norms in order to avoid bloodshed in Europe. This fact was, and still is absent in Africa and Asia, where only one State each was recognized by the UN[84] in comparison with twenty-one recognized

---

84. Eritrea and East Timor. These were not even secessions in the real sense of the word. Eritrea was by consent of Ethiopia and East Timor was by the

States in Europe.[85] As a matter of fact, secessions have not really increased after the end of the cold war. They have been drastically reduced by the implementation of dispute resolution mechanisms such as autonomy, even development of regions and constitutional right of secession. After the Balkan and Soviet crises, Europe has re-affirmed the age-long principle of territorial integrity. It is suggested that Africa and Asia should adopt the European formula for minimizing secessionist conflicts and needless bloodshed in the crises in their domains. Thus, it is evident that the failure or success of secessions in the post-cold war era has not been as a result of some well laid out international norms but as a result of some "geo-political non-theory of secessions".[86]

---

decolonization efforts of the UN

85. Fifteen from the USSR and six from the SFRY

86. Hannum, H., "Rethinking Self-Determination", 34 Va. J. Int'l L (1993) 1 at 49

References

1. "International Responses to Secessionist Conflicts", Proceedings of the American Society of International Law, March 27-30, 1996, 90 Am. Soc'y Int'l L. Proc. (1996) 296
2. "Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova", The Record, Vol. 61, No. 2 (2006) 196 (Publication of the Association of the Bar of the City of New York)
3. Addo, M.K., "Political Self-Determination Within the Context of the African Charter on Human and Peoples' Rights", 32 Journal of African Law (1988) 182
4. Bauböck, R., "Why secession is not like divorce", in Goldmann, K.,(ed.), *Nationalism and Internationalism in the Post-Cold War Era*, London, Routledge, 2000, p. 214
5. Bieber, F., "Power-sharing and International Intervention: Overcoming the Post-conflict Legacy in Bosnia and Herzegovina" in Weller, M., and Metzger, B., (eds.), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, p. 193
6. Blay, S., "Self-Determination: A Reassessment in the Post-Communist Era", 22 Denv. J. Int'l L. & Pol'y (1994) 275
7. Clapham, A., "Secession, Terrorism and the Right of Self-Determination", in Kohen, M.G., ed., *Secession: International Law Perspectives*, Cambridge, Cambridge University Press, 2006, p. 46
8. Crawford, J., *The Creation of States in International Law*, Oxford, Oxford University Press, 2nd (ed.), 2006
9. Gilbert, G., "Autonomy and Minority Groups: A Right in International Law?" 35 Cornell Int'l L.J. 307 (2002)
10. Hannum, H., "Rethinking Self-Determination", 34 Va. J. Int' l L (1993) 1
11. Harris, D.J., *Cases and Materials on International Law*, 6th ed., London, Sweet and Maxwell, 2004

12. Ijalaye, D.A., "Was Biafara at Any Time a State in International Law?", 65 AJIL (1971) 551
13. Jarve, P., "Gagauzia and Moldova: Experiences in Power-sharing", in Weller, M., and Metzger, B., (eds.), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, p. 307
14. Lyew, B.H., "An Examination of The Philippines' Anti-Terror Law", 19 Pac. Rim L. & Pol'y J., (2010) 187
15. Martinez-Paoletti, J., "Rights and Duties of Minorities in a Context of Post-Colonial Self-Determination: Basques and Catalans in Contemporary Spain", 15 Buff. Hum. Rts. L. Rev. (2009) 159;
16. McWhinney, E., *Self-Determination of Peoples and Plural-Ethnic States in Contemporary International Law*, Leiden, Martinus Nijhoff, 2007
17. Nanda, V.P., "The New Dynamics of Self-Determination: Revisiting Self-Determination as an International Law Concept: A Major Challenge in the Post-Cold War Era", 3 ILSA J Int'l & Comp L 443 (1997)
18. O'Leary, B., "Complex Power-sharing in and over Northern Ireland: A Self-determination Agreement, a Treaty, a Consociation, a Federacy, Matching Confederal Institutions, Intergovernmentalism, and a Peace Process", in Weller, M., and Metzger, B., (eds.), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, p. 61
19. Okeke, C.N., *The Theory and Practice of International Law in Nigeria*, Enugu, Fourth Dimensions Publishers, 1986
20. Pazartzis, P., "Secession and International Law: The European Dimension", in Kohen, M.G., (ed.) *Secession: International Perspectives*, Cambridge, Cambridge University Press, 2006, p. 355
21. Raic, D., *Statehood and the Law of Self-Determination*, The Hague, Kluwer Law International, 2002

22. Regan, A.J., "Resolving the Bougainville Self-determination Dispute: Autonomy or Complex Power-sharing?" in Weller, M., and Metzger, B., (eds.), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, p. 125

23. Tancredi, A., "A Normative 'Due Process' in the Creation of States Through Secession", in Kohen, M.G., (ed.), *Secession: International Perspectives*, Cambridge, Cambridge University Press, 2006, p. 171

24. Thio, L., "International Law and Secession in the Asia and Pacific Regions", in Kohen, M.G., (ed.) *Secession: International Perspectives*, Cambridge, Cambridge University Press, 2006, p. 297

25. Tomuschat, C., 'Secession and Self-Determination',in Kohen, M.G., (ed.) *Secession: International Perspectives*, Cambridge, Cambridge University Press, 2006, p. 23

26. Turner, M., "Resolving Self-determination Disputes through Complex Power-sharing Arrangements: The Case of Mindanao, Southern Philippines" in Weller, M., and Metzger, B., (eds.), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, p. 161

27. Weller, M., *Escaping the Self Determination Trap*, Leiden/Boston, Martinus Nijhoff, 2008

28. Xanthaki, A., "The Right to Self-Determination: Meaning and Scope", in Ghanea, N., and Xanthaki, A., (ed.), *Minorities, Peoples and Self-Determination: Essays in Honour of Patrick Thornberry*, Leiden, Brill Academic Publishers, 2005, p. 15