

Full Length Research Paper

Barotseland and the advocacy for statehood: A case entailing the complexities of statehood and state recognition in public international law

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This paper discussed the Barotseland claim for statehood from the republic of Zambia with respect to the Barotseland Agreement (1964) signed between the Northern Rhodesian government and the Barotse Royal Establishment (BRE) in April 1964. In discussing the Barotseland question, using a qualitative approach, this paper considered the sentiments that fuel the reasons for seeking separate statehood by Barotseland pro-separatists. An analysis based on the criteria of 1933 Montevideo Convention on Statehood was made, and considerations were also made on the viability of these claims (for statehood) with respect to the possible ramifications of the grant of statehood. Self-determination of people is guaranteed and is a principle or right supported by the United Nations (UN) Charter within the rights of groups seeking self-determination. Ergo, statehood is a matter that requires the satisfaction of the criteria necessary for its pursuit. However, as this paper contended, the status of statehood is usually placed outside the domestic confines of where the claim is being made, and into the international realm. It is therefore imperative to consider these questions within the framework of Public International Law and Politics because ultimately, in a highly-globalized world, statehood or recognition of an entity as a state cannot be conferred without the involvement and resolutions of the international community through the auspices of the United Nations - in which case statehood is concretized as this gives a state legal personality. For comparative and illustrative purposes, the paper drew on some famous statehood questions from different parts of the world. This paper concludes that the Barotseland calls for statehood do not satisfy the 1933 Montevideo Convention and that the feasibility of a separate Barotseland is far from possible.

Key words: Barotseland, independence, secession, self-determination, sovereignty, statehood, state recognition, Zambia.

INTRODUCTION

'Barotseland' is an area in Zambia that largely encompasses what is today referred to as Western

province. It is made up of 38 ethnic groups prime among the Lozi who established the Barotseland kingdom. The

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kingdom was a self-governing and independent territory that became a British Protectorate in 1890 at the request of King Lewanika I. (Sikayile, 2014; Mufalo, 2011).

The questions or calls for statehood wherever they are made involve a deep desire for disengagement; or more appropriately secession; based largely on history, identity and most importantly, the relationship between the secessionists and the state from which they desire to secede. Although most calls for secession are on the most purely objective level: 'legal'¹, logical and without malicious intent; they are often characterized by tensions which in some instances escalate into violence, suppression and the creation of virtually irreconcilable differences. The highly political nature of secession issues are in most instances very difficult to resolve. The most famous example of a long-ranging statehood stand-off is that of the Israeli-Palestinian question. This problem represents fully, the many dimensions of the politics of statehood. Most importantly, as is relevant to this paper, the Palestinian-Israeli question exposes the international nature of questions of statehood. Following from this point is the objective of this paper: which is the discussion on the question of Barotseland statehood in Zambia; which unlike the erstwhile stated has not captured the imaginations of the international community, one would argue. However, what remains relevant is that the Barotseland question, which to most Zambians is considered a domestic issue, must also be discussed by those that know otherwise, within the international legal framework within which it also categorically falls and matters the most; since the calls for secession are for the purposes of conferring statehood upon Barotseland. The underlying issues of statehood are informed by such concepts as self-determination which are captured in the closest document the international community has to a global constitution: the UN Charter. The Barotseland question is premised on the Barotseland Agreement of 1964 which is an agreement that was entered into between Northern Rhodesia (now Zambia²) and Barotseland, both under British rule³ at the time. In fact, the purpose of the Agreement was to establish a union of Northern Rhodesia and Barotseland into one sovereign state called the Republic of Zambia, after the independence of the former. However, this agreement was dissolved by the emergent Zambian government, and has become the source of much agitation between the Zambian government and emergent Barotseland pro-separatist movements.

METHODOLOGY

This paper used the desk research method. This entailed a reliance

¹The term here is used to refer to the theoretical legal concepts that address statehood and recognition in Public International Law

² The Northern Rhodesian government was represented by the then Prime Minister, Dr. Kenneth Kaunda and Barotseland was represented by Sir Mwanawina Lewanika the Third, the Litunga of Barotseland.

³Barotseland was a Protectorate of the BSAC

on pre-existing discussions (suggesting secondary data) on the Barotseland question, and statehood in Public International Law. Data was therefore obtained from peer-reviewed journal articles, published research reports, books, and online news items from international media houses. Also, the Barotseland Agreement of 1964 between Northern Rhodesia and the Barotse Royal Establishment (BRE) was used. The internet was used as the major source of data because of the method selected to conduct the research, and also because the internet is now a great source of research material that provides easier access to the otherwise stated. Access to peer-reviewed journals and databases of published materials is now a dominant feature of the internet. Therefore, a content analysis approach was employed vis-à-vis drawing meaning from the text that was analysed through the employment of the secondary data employed in addressing the research questions asked herein. The questions asked were: (a) Is the claim for Barotseland statehood in line with Public International Law vis-à-vis the 1933 Montevideo Convention on statehood, and have such claims been made with cognizance of the central role that international recognition plays in state creation? (b) What is the feasibility of the creation of an independent Barotseland state from Zambia?

Krippendorff (2004: 18) describes content analysis as, "a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the context of their use". It must be noted from this point of departure that content analysis can be employed in either quantitative or qualitative contexts. This paper takes the qualitative approach. Content analysis provides some advantages. From a pragmatic viewpoint, analysing content is well suited to the desk research method especially when the researcher is time-constrained, logistically and materially limited. Further to this, content analysis does not infringe upon the content that is, the analysis of text plays no part in changing what is being studied. This removes the subjectivity or bias that may occur by way of the researcher or even the subjects of the research during interviews for example, or the changing of the results of a study or experiment by means of influencing the participants' expectations.

The Barotseland question

The Barotseland Agreement 1964 in effect ended any responsibility that the British government had to the governments of Northern Rhodesia and Barotseland. The Agreement (1964: 1) states in part that:

"all other treaties and other agreements subsisting between her Majesty the queen of the United Kingdom of Great Britain and Northern Ireland and the Litunga of Barotseland will terminate when Northern Rhodesia becomes an independent sovereign republic and her Majesty's government in the United Kingdom will there upon cease to have any responsibility for the government of Northern Rhodesia including Barotseland.....and the Litunga of Barotseland to enter into arrangements concerning the position of Barotseland as part of the Republic of Zambia to the place of the treaties and other arrangements hitherto subsisting between Her Majesty the Queen and the Litunga of Barotseland".

The Agreement further reads in part that:

"and where as it is a wish of the government of Northern Rhodesia and of the Litunga⁴ of Barotseland, his council, and the chiefs and people of Barotseland that Northern Rhodesia should proceed to independence as one country and that all its peoples should become one nation".

⁴The Litunga is the paramount chief or supreme ruler of the Lozi people of Zambia who form a large portion of the ethnic groups that make up Barotseland.

We see from the given statements of the Agreement that the parties concerned with this merger⁵ were before the independence of Northern Rhodesia, considerably separate entities. This is not a matter of equivocation.⁶ It is a consistent truth that Barotseland existed as an independent nation before the birth of Northern Rhodesia. The preserve of maintaining or disengaging from its attachment to Northern Rhodesia in historical and legal terms remained with the people of Barotseland (Caplan, 1970)⁷. Barotseland's status at the onset of the colonial era differed in many ways from the other regions which were included in Zambia. It is this distinction which made Barotseland the first territory north of the Zambezi River to sign a minerals concession and protectorate agreement with the British South African Company (BSAC) of Cecil Rhodes (Sikayile, 2014: 22)⁸. The discussion of the Barotseland question must encompass or rather make recognition of the fact that in pre-colonial Zambia, a very small number of ethnic groups were centrally organized around a chief with functional bureaucracies (Mufalo, 2011: 2)⁹. Of the aforementioned ethnic groupings, Barotseland (Lozi Kingdom) was arguably the most politically centralized and so-culturally cohesive, and this is what explains the existence of a sense of national consciousness among the Lozi people (ibid).

In 1969, the then president of Zambia, Dr. Kenneth Kaunda announced that Barotseland will from that point forward be referred to as the Western Province of Zambia. This in effect was taken to mean - by proponents of secession - that the declaration abrogated¹⁰ the rights conferred to the Litunga under the Barotseland Agreement, which created a semi-autonomous Barotseland. As Namushi (n/d) writes, "in October, the Government of Zambia introduced and passed the Constitution Amendment Act No 36 of 1969 in parliament to cancel the "Barotseland Agreement of 1964" and abolish all rights, obligation and liabilities attached to the agreement. It stated that the Agreement shall on and after the commencement of the constitution amendment Act No 5 of 1969 cease to have effect, and all rights (whether vested or otherwise), liabilities and obligations there under shall thereafter lapse."¹¹

Tensions have arisen over the years mainly due to calls - by those that advocate the creation (or re-establishment) of an independent Barotseland - that the government of Zambia must honour the conditions of the Barotseland Agreement by reinstating it or let Barotseland secede and become an independent state; a call which has become much louder in recent years. As Sikayile (2014: 1) observes, "... the Barotseland question, which, like a bad birthmark, has over the years kept on re-emerging, much to the detriment of

Zambia's national integration project¹² and its sovereign outlook." In January, 2011, the crescendo of these political tensions was reached in which the calls for the reinstatement of the Barotseland Agreement were coupled with blatant calls for a separate state (ibid). In 2012, it was resolved by the Barotse National Council (BNC) to accept the repudiation of the Barotseland Agreement 1964 to pave the way for the process of territorial separation between Barotseland and the rest of Zambia (BNFA, 2015)¹³. The Barotse National Freedom Alliance (BNFA)¹⁴ for example, in January, 2015 wrote to the president¹⁵ of the Republic of Zambia and stated in part that, "Since independence, the people of Barotseland have watched with great dismay how successive Zambian regimes violated the Barotseland Agreement 1964; the very fabric of the basis of the unitary state of Zambia thereby leading to its unilateral repudiation in 1969, and, thereafter, continued violations of the human rights of the peoples of Barotseland"¹⁶

As Sikayile (2014: 2) asserts, "the Barotseland question demonstrates resistance by the people of Barotseland to the hegemonic erosion of the political existence of Barotseland as a pre-colonial nation". These continued calls for secession are informed by the foregoing 'abrogation' of the terms of the Barotseland Agreement and also the seeming general lack of a concrete development agenda, and sentiments of government neglect in the area that forms Western Province (Barotseland). A British Broadcasting Corporation (BBC) article on the Barotseland question stated in quoting their reporter in Lusaka¹⁷, that, "the Barotse royal household has backed the calls for the region to become independent, which have long been made by activists who accuse the government of ignoring the region, which remains one of the poorest in the country"¹⁸. Even more so, the termination of the Agreement, which has been argued by the BNFA, essentially means that the two united entities seized to exist as one nation and therefore constitutes the right for Barotseland to be self-determined and create or be considered a separate state. They (the BNFA) argue that "without the Barotseland Agreement 1964, there is no unitary state called Zambia. As it were, the Barotseland Agreement 1964 is no more. Barotseland has since taken steps to engage the leaders of Zambia with a view to working out transitional arrangements towards self-determination and self-rule for Barotseland." Stemming from this could be that the Agreement expressly conferred upon the people of Barotseland all the constitutional rights of the Zambian people, access to judicial and public services and an assumption of general financial responsibility for the administration and economic development of Barotseland on equitable and fair terms as with other parts of Zambia (Barotseland Agreement, 1964)¹⁹. The Litunga was

⁵Merger here is used as a principle of territorial acquisition in Public International Law where it is understood that a merger is the coming together of two separate entities— in this case Northern Rhodesia and Barotseland—came together via agreement to form a new independent (from British control) sovereign republic to be called, Zambia.

⁶As a matter of fact, Barotseland had long agitated for an independent state from the British. It had become a Protectorate in 1900. For purposes of not wanting to make this a heavily historical account, the author offers that the reader sees: Gerald Caplan (1970) Elites of Barotseland 1878-1969; Political History of Zambia's western Province, London.

⁸Citing Mainga Bull (1969) and Caplan (1970)

⁹Citing Roberts (1976)

⁷Cited by Mbinji Mufalo (2011) in Re-examining the argument for the restoration of the Barotseland Agreement

¹⁰This was deemed contrary to Section 112 of the Constitution of Northern Rhodesia which enshrined the protection of Barotseland against alienation of any part of the kingdom without approval of the Litunga and his council.

¹¹1969-1970 the Government of Zambia passed the Western Province (Land and Miscellaneous Provisions) Act No. 47 which had the effect of stripping the Litunga of his powers over land in the province. It vested all land in Barotseland in the President of Zambia as a Reserve within the meaning of and under the Zambia (State lands and Reserves) Orders 1928 -1964.

¹²This project can be referred to as the 'One Zambia, One Nation' which was introduced by Zambia's first president, Dr Kenneth Kaunda with the aim of uniting the ca. 73 tribes forming the nation.

¹³Can be found at www.unpo.org/Article17923

¹⁴The BNFA are a member of the Unrepresented Nations and Peoples Organization (UNPO) which states that it "is an international, nonviolent, and democratic membership organisation. Its members are indigenous peoples, minorities, and unrecognised or occupied territories who have joined together to protect and promote their human and cultural rights, to preserve their environments, and to find nonviolent solutions to conflicts which affect them." This demonstrates in some fashion the consideration as 'separate' that pro-separatists consider themselves.

¹⁵Edgar Chagwa Lungu

¹⁶Can be found at www.unpo.org/Article17923.

¹⁷The administrative capital of the Republic of Zambia

¹⁸<http://www.bbc.com/news/world-africa-17546620>

¹⁹The author finds it imperative to paraphrase the Agreement and capture the most salient aspects of the agreement for the purposes of the discussion. Therefore, if necessary, the agreement in its entirety can be found at <http://www.barotseland.info/Agreement1964.html> for the full scrutiny of those that wish to examine it entirely. This is a matter of transparency and objectivity on the part of the author.

also given control of local matters in Barotseland in as far as they fall within the customary laws of local administration (ibid).²⁰

Namushi (n/d) quoted Litunga Ilute Yeta IV who in 1994 stated that, “secession is a matter of right and is inherent in the Barotseland Agreement of 1964 so that the parties to the said Agreement reserve the right to revert to their original status if the Agreement under which they intended to achieve unity can no longer work. Zambia has no moral right to hold the people of Barotseland in perpetual enslavement on account of an Agreement, which was entered into voluntarily, we cannot be expected to adhere to the terms of the Agreement, which the other party to it does not recognise”.

The question of statehood is a very important one in international relations. Evans and Newnham (1998: 45) state that, “the notion of sovereignty here should be seen as the normative or enabling concept of International Relations through which nation-states assert not only their ultimate authority within their distinct territorial boundaries but also their membership in the international community Amos, (2014).” Many ethnic groups in the world still seek their own statehood separate from the states under which they are considered to be members. This is often a fractious issue because of the various political, economic, social and geographical implications that may emerge as the ramifications of statehood. Many questions of statehood are still unresolved today primarily because of the erstwhile mentioned corollaries.

Statehood, secession and recognition

Discussions of statehood often evoke particular connotations. For the legal traditionalists, the primacy of states in international relations is the forerunner in discourse on statehood and the international system, such that, as primary actors, there is parity among the states in terms of their powers as sovereign entities (Taylor, 1997). The traditional definition of statehood confers legal personality in international law to a state that in declaratory terms satisfies the criteria for statehood (Montevideo Convention, 1933). The Icelandic Human Rights Centre (n/d) states that:

“International law is based on rules made by states for states²¹. States are sovereign and equal in their relations and can thus voluntarily create or accept to abide by legally binding rules, usually in the form of a treaty or convention”. By signing and ratifying treaties, states willingly enter into legal, contractual relationships with other state parties to a particular treaty, which observance is normally controlled by the reciprocal effects of non-compliance. The capacity of states to enter into such relationships with other states and to create legally binding rules for themselves, is a result of states’ international legal personality²², a prerogative attributed to all sovereign states²³

²⁰ Again, here, it is the understanding of the author that a clear distinction is made between the powers of the Litunga in the jurisdiction ‘traditionally’ forming Barotseland and the subsequent powers bestowed or retained by his leadership under customary law. The Agreement makes a distinct demarcation between these customary land powers and the overall control that government of the Republic of Zambia could exercise especially over land matters that fall within national jurisdiction. It further clarifies the necessary cooperation to exist between the government of the Republic of Zambia and the Litunga

²¹ This is the traditional definition of legal personality. It is employed here for the purposes of specificity in dealing with the subject matter vis-à-vis statehood and recognition. This definition encompasses some of the salient classificatory criteria or aspects that the 1933 Montevideo Convention enumerates. It is therefore employed here deliberately owing to its capture of the relevant aspects informing the criteria for statehood especially with relation to the constitutive theory of statehood.

²² A broader and ‘contemporary’ definition of legal personality is given by Gunaratne (2008) by stating that, “States and non-state actors like individuals, international organizations, multinational companies and international non-governmental organizations are regulated by, or subjected to international

This classification is drawn from the development of the concept of statehood and sovereignty referent to the European Middle Ages. Post-European reformation, monarchs became very powerful in absolute terms as their power augmented in the given territories they controlled. The epoch of sovereign equality was crystallized with the signing of the Peace of Westphalia in 1648. All power became vested in the monarchs whose power was absolute and far reaching as to penetrate almost every aspect of the lives of the people they ruled (Brand, 1995). Some proponents of sovereignty on these terms were of the view that there was some limitation of the power that monarchs wielded (Kratochwil, 1995). With the developmental progression of the law of nations, the powers of monarchs extended from beyond the territories they controlled to include influence that was external to their territories (Delupis, 1974).

The foregoing definition of statehood was the precursor or the provisional premise for the emphasis on the centrality of the state in Public International Law. Therefore, following the traditional theoretical approach or definition, statehood and the attendant sovereignty are qualified by the ability to have full authority over the citizens that constitute a state, the authority for policy formulation whose impacts are only mitigated or arrested by concession made with other states or their direct impact on other states. Statehood is also defined or considered by equality with other states. The foregoing classificatory markers corroborate the designation of the state as the exclusively recognized player in the international community, creating a definition for statehood and sovereignty as the most immediate apparatus by which a state’s recognition by other states is maintained (Slaughter, 1995).

The two theories of state recognition emphasize the importance of recognition disparately (Dimitrios, 2011). The declaratory theory is founded on the objective classifications of the Montevideo Convention of 1933. On the other hand, the constitutive theory is predicated upon the insistence that statehood is only qualified by the recognition of a state in the international community. These two positions in their apparent competition have not produced the emergence of a consensus amongst legal scholars in the epistemic community of International Public Law (Eggers, 2007).

The declaratory theory is much preferred by most scholars, with the inclusion of the International Court of Justice (ICJ).²⁴ Firstly, under the criteria of the declaratory theory, any dispensation seeking statehood must give account for the fact that it possesses a population considered permanent. This infers two things; a population with the intention to occupy or be extant on the territory permanently, and secondly, the territory must be habitable. The criterion of territory is not an entirely strict one (Raic, 2002). Further to this, the borders of the state do not need to be strictly elaborate.²⁵ Thirdly, for the criteria of an existing government, there is no explicit requirement on the part of the state, to follow any particular

law. They are called subjects of international law. These subjects have international legal personality. . . . They have certain rights and duties under international law and they can exercise these rights and duties”. To be found at: <https://ruwanthikagunaratne.wordpress.com>

²³ The Icelandic Human Rights Centre(n/d). International legal personality. Retrieved from: <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-actors/international-legal-personality>

²⁴ The court was asked to determine whether a self-proclaimed republic, referred to as Srpska, was a state whose leadership could be liable for various atrocities carried out by its leaders. It concluded that “Srpska met the definition of a state by noting that it ‘is alleged to control defined territory, control populations within its power, and to have entered agreements with other governments. In Eggers (2007).

²⁵ In the North Sea Continental Shelf Cases, the ICJ held that there is “no rule that the land frontiers of a State must be fully delimited and defined, and often . . . for long periods they are not . . .” in N. Sea Continental Shelf Cases, (Federal Republic of Germany. v. Denmark/Netherlands), 1969 ICJ. 3, 33, P 46 (Feb. 20).

governance model or style. It must however, expend of its authority effectively. Flowing from this, an effective government is constituted by internal and external governance. Internally, a government must have the ability to effect and maintain order legally through an established legal system. Externally, governance encompasses the ability for a state to act of its own volition. Therefore, it is the establishment of functional, administrative and legislative bodies that generically provide the indication of the presence of strong and effective governance mechanisms within a state (Schoiswohl, 2004). The ability of a state to enter into external or foreign relations is said to be somewhat contestable. The phrasing of this requirement falls short in conveying a clear meaning and has led to debate amongst theorists as to whether it demands ability or capacity to be able to conduct or engage in foreign relations. The American Law institute opines that this criterion specifically refers to a state having the capacity to engage into foreign relations (Brownlie, 1990). The declaratory theory conveys upon its characterisation of the criteria for statehood the fact that statehood is met without the need for the endorsement of the international community (Poore, 2007). In reality however, it is highly probable that a state will remain without the classification as a state or rather will have no rights in the international community absent of international recognition. Resultant here is that, the declaratory theory reduces a state to subjective criteria in which case the international community has the final veto power in conferring statehood. As a result, declaratory theory may simply subject the state to a series of subjective criteria before providing the international community final veto power (Worster, 2010)

The postulations of the constitutive theory assert that the conference of statehood is not satisfied by meeting the criteria of the declaratory theory. The international community needs to recognise an entity if it is to be considered a state (ibid). This theoretical position is drawn from the transition from the natural law to positivist theory in international law which laid emphasis on the centrality of consent as the most important aspect of statehood (Schoiswohl, 2004). Declaratory theory is postulated by most theorists but from a realistic perspective, the constitutive theory is what reflects accurately what transpires in practice. This is given corroboration by the argument that it is only states that make up the UN Security Council and that only states have recourse to the International Court of Justice (Worster, 2010). However, despite the imperative of state recognition, hardliner constitutive theorists do not posit that recognition alone confers statehood (Crawford, 1988). According to Lakshman (2013: 2):

“Recognition is often withheld when a new state is seen as illegitimate or has come about in breach of international law. Almost universal non-recognition by the international community of Rhodesia and Northern Cyprus are good examples of this. In the former case, recognition was widely withheld when the white minority seized power and attempted to form a state along the lines of Apartheid South Africa, a move that the United Nations Security Council described as the creation of an “illegal racist minority regime”. In the latter case, recognition was widely withheld from a state created in Northern Cyprus on land illegally invaded and occupied by Turkey in 1974. Most sovereign states are states de jure and de facto that is, they exist both in law and in reality.”

It is important to note that after an entity achieves recognition, *uti possidetis*: a doctrine of territory in international law, dictates that newly created states will maintain the borders which determined their territory prior to their independence from a colonial power (Raic, 2002). This served the purpose of maintaining the integrity of international frontiers by limiting the fragmentation that new statehood may create (Poore, 2007). In Africa, in the period of decolonization, it was generally agreed that secession was to be denied (Schoiswohl, 2004). According to Dimitrios (2011), *“this intention was emphasized in the Charter of the Organization of*

*African Unity*²⁶, which affirmed the principle of respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence.” And, the Cairo Resolution, which reaffirmed that *“all the states undertake to respect the boundaries existing at . . . independence”*.

International boundaries are created and become permanent by way of agreement or Treaty (Raic, 2002). When boundaries are established in the post-colonial life of a state, *uti possidetis*, is superseded by the notion of territorial integrity. In the post-League of Nations²⁷ era, the UN Charter stands anathema to the aggression against the territorial integrity of another state by the threat or employment of force (Dimitrios, 2011²⁸). Territorial integrity in Africa has been contextually interpreted in manner that rarely condones self-determination (Schoiswohl, 2004).

According to Crawford (1979: 274), *“secession is the creation of a state by the use of force and without the consent of the former sovereign.”* Minority groups are not permitted under international law to unilaterally secede, unless there are some attendant special circumstances such as colonial domination. This desire to secede must also collaborate with the desire of the majority. The UN acknowledges that it cannot give membership to a secessionist territory without the allowance of the mother state. This in turn means that secession is subject to the law obtaining in the mother state (Crawford, 2006). Deng (1973: 19) calls this ‘bilateral’ secession. He states that, *“in practice, two things can together justify bilateral secession: ‘a clear expression of democratic will’ by those wishing to secede, and negotiations between the secessionists and the parent country”*. On the other hand, secession can be termed: remedial. This form of secession is premised on the participatory rights of citizens to take part in the process of deciding on the question of secession (Raic, 2002). However, other than subjugation and being dominated, without the effective means, minorities are mostly economically and politically side-lined from these processes of the state (Buchheit, 1978). From this theoretical position, the exclusion of minorities from taking part in matters of the state gives them impetus to create their own state and govern themselves. Under remedial secession theory, these exclusions from participation in the government enable the minority region to form a state to govern itself (Raic, 2002).

Minorities can call for unilateral secession where they have been deliberately hampered in their pursuit of political, social, cultural and economic development by means of being denied access to the government (Dimitrios, 2011). The concept of remedial secession thus resembles dissolving secession in which case a state may come into being without the express consent of the parent state. As Schoiswohl (2004:50) asserts, *“dissolving secession posits that a state may be created without the consent of the former sovereign, which in view of its collapse and lack of effective (central) governance has at least temporarily de facto ceased to exist as a state.”* Without the foregoing occurring, the territory seeking session may be denied doing so. Further to this, internal colonialism adds another dimension to the remedial secession theoretical approach”. Internal colonialism results where an ethnic group in control of government systematically exploits resources of the regions occupied by minority ethnic groups, reducing the development of those regions to dependencies and allocating the members of minorities to specific roles in the social structure on the basis of objective cultural distinctions (Hechter, 1999). This reveals that internal colonialism is conceptualised with close links of territorial disengagement from the parent state under considerations of some particular elements of the traditional conceptualisation of colonialism

²⁶ Now the African Union

²⁷ Under the Covenant of the League of Nations, member states were required to “preserve as against external aggression the territorial integrity and existing political independence of all Members of the League.”

²⁸ UN Charter Art. 2 paragraph 4

(Franck, 1993). With respect to the historical boundaries or ethnic groups, the area in question for secession must be subordinated to the parent state. Subordination of the minority population in such a fashion makes internal colonialism appear like remedial secession. In Public international law, the sequence of remedial secession moves from the protection of individual rights, to minority rights, and terminates with secession as the ultimate outcome. However, the right to self-determination is legitimized by the harshness with which the minority population are treated. It is the severity of the treatment of the minority population that will legitimize the right to self-determination (Buchheit, 1978).

The question of statehood for Barotseland remains a hotly contested issue which has seen violent police crackdowns, arrests and court convictions of those that have tried to protest the seeming government inertia on the issue. Also, it is a very thorny political question that has seen subsequent governing regimes since the signing and repudiation of the Agreement, only raise the issue as a matter of concern mostly in election years. The disillusionment of the people that occupy Barotseland (Western Province), due to what they deem government neglect - feelings buttressed by low levels of development and ethnic affinities - often because the region is deemed a stronghold of, or rather seemingly votes in favour of opposition parties; the calls for the restoration, by the pro-separatists, of the Barotseland Agreement and subsequent secession from Zambia have become stronger over the years. In fact, they have never gone away but are somewhat kept from the public space because of the contentious nature of the matter; which has been typically used for political mileage by competitors in the political market and at the same time thwarted by ruling regimes because of its controversial nature. It is therefore a permutational necessity to discuss the subject matter in light of Public International Law in attempts to establish prospects for statehood as they pertain to the international community vis-à-vis the criteria of the 1933 Montevideo Convention and state recognition. This is also underlined by the fact that pro-separatist groups are calling for secession for the purpose of establishing an independent state.

DISCUSSION

In Public International Law, statehood remains a primary factor in establishing the ability to participate in the international community in a legal and legitimate manner. Statehood is what gives the primary entry point to engaging in international affairs. Even though the number of subjects or actors²⁹ in Public International Law has widened to include private individuals, International Organizations and Multinational Corporations, states arguably remain the foremost actors and statehood is very central to this.

In discussing the case for statehood of Barotseland, it is proposed here by the author that this is best done by considering the secessionist question historically and in contemporary terms. The reason for this is that the Barotseland agreement should be considered as a bridge between two distinct existential conditions or statuses of Barotseland. Therefore, it is the opinion of the author that the Barotseland land question must from the declaratory pronouncements of the Montevideo Convention on statehood, be divided into the historical state that is, before

amalgamation with Northern Rhodesia, through the Barotseland Agreement, and after. In reiteration, Article 1 of the Montevideo Convention on Rights and duties of the State (1933), gives the widely-accepted criteria in International Public Law, of statehood. It asserts that the state as an international person should possess the following qualifications: a permanent population, a defined territory, government, and capacity to enter relations with other states (Shaw, 2008). Further to this, Shaw (2008: 198) offers that, "*the Arbitration Commission of the European Conference on Yugoslavia in Opinion No. 1, declared that the state is commonly defined as a community which consists of a territory and a population subject to an organized political authority, and that such a state is characterised by sovereignty*". Therefore, historically, used here to specifically refer to Barotseland before the amalgamation with Northern Rhodesia, one is presented with a much more incontrovertible case for or rather status of statehood. As Sikayile (2014: 2) reiterates, "*given that Barotseland once existed as an independent national entity long before the creation of Northern Rhodesia, it could be argued that Barotseland's separatist motives reflect an inviolable entitlement (right) they have held for so long*".³⁰ Therefore, even though using the Montevideo criteria may be considered *ex post facto*³¹ when applying it to the pre-agreement condition of Barotseland, it does fit the classification provided by the Convention. *Barotseland (currently Western Province) had territory which was described by the Geographer*³² (1973) wherein it was stated that. "*The territory of the Barotse Kingdom was defined as that over which the King of Barotse was paramount ruler on 11th June 1891*" (Figure 1 in Appendix).³³ With regards to a permanent population, while this has been classified as not pertaining to a specific number, Barotseland is said to have been constituted by the predominant Lozi ethnic group (5.7% of the Zambian ethnic demographic)³⁴ whose Litunga consolidated power and brought other tribes³⁵ under his rulership³⁶ to constitute Barotseland. To this effect, it is undeniable that Barotseland had a permanent and considerable

³¹ The author contends that it is still very relevant to place the pre-colonial Barotseland nation-state under this criterion because of the alluded to dichotomous nature of the status of the state before and after the Barotseland Agreement. This is for the purposes of distinctions of the situations.

³² International Boundary Study No. 123 of 3rd July 1973 by the Geographer, Directorate for Functional Research, Bureau of intelligence and research, Department of State, The United States of America. Retrieved from www.barotselandpost.com

³³ Map can be accessed at <http://unpo.org/downloads/1582.png>

³⁴ According to the World Fact Book-CIA, Zambia's ethnic demographic is as follows: Bemba 21%, Tonga 13.6%, Chewa 7.4%, Lozi 5.7%, Nsenga 5.3%, Tumbuka 4.4%, Ngoni 4%, Lala 3.1%, Kaonde 2.9%, Namwanga 2.8%, Lunda (north Western) 2.6%, Mambwe 2.5%, Luvale 2.2%, Lamba 2.1%, Ushi 1.9%, Lenje 1.6%, Bisa 1.6%, Mbunda 1.2%, other 13.8%, unspecified 0.4% (2010 est.) To be found at: <https://www.cia.gov/library/publications/the-world-factbook/fields/2075.html>

³⁵ These tribes according to Stokes (1965) co-existed as a coherent polity within an ethnic melange of what was the Barotseland Kingdom

³⁶ Suggesting effective control of territory

²⁹ This point can be cross-referenced with the definitions of legal personality on page 15 by the Icelandic Human Rights Centre and footnote No. 33

³⁰ Citing Englebort (2009) and Mufalo (2011)

population.³⁷ Gluckman (1965) stated that, *“the Lozi are the dominant tribe of Barotseland, and their king rules not only his tribal people but also members of some twenty-five³⁸ other tribal groups. The Barotse kingdom includes 250,000 to 300,000 people inhabiting some 80,000 square miles in north western Northern Rhodesia (now Zambia)”*.³⁹ In terms of a government, Barotseland had an established governance system (Figure 2 in the Appendix for the governance structure of the Barotseland Kingdom).

As Mufalo (2011:2) elaborates:

“The Lozi Kingdom evolved out of a citizen and subject paradigm, where the Aluyi or Luyanas subdued or coerced other groups in most of western Zambia, and created extensive spheres of influence and also posted consuls to other neighbouring ethnic groups. The governance model among the subdued and coerced was based on the political institutional structures of the central authority of the Litunga. Governance inclusiveness was however practiced as all subjects had representation in spiritual, military and judicial roles, although supremacy of aristocratic heredity reigned”.

As for the ability to enter relations⁴⁰ with other states or entities⁴¹ (Refer to Figure 3 in the Appendix), this can be confirmed, arguably, by the various Treaties that the Litunga was able to sign with the BSAC. This is confirmed by for example, the 1890 Frank Lochner Treaty which was signed between King Lewanika I and the British South Africa Company, making Barotseland a British Protectorate. This was for the purposes of protection of Barotseland against German, Portuguese and Ndebele forays (Mufalo, 2011). While the attempt here is not to cite all the treaties that Barotseland king signed, it is important to view this Treaty-signing ability as confirmation of the independent nature of Barotseland as a separate entity akin to statehood, and reflecting an effective control over territory with relation to dealing with states or forces outside the territory of Barotseland; confirming or

characterising this as dealing with national (state) matters with foreign elements; to underscore an ability to engage in foreign relations. It should be kept in mind that pre-colonial Barotseland was a self-governing entity⁴²: an independent entity.

As Mainga (2010: 162) states, *“the external features of the process by which between 1886 and 1911 Bulozzi⁴³ passed from an independent African state to become a protectorate within a protectorate, are now firmly established. It is the history of a series of concessions and agreements signed by Lewanika by which his sovereign rights were whittled away.”* Ergo, the entering into the Lochner Treaty, although reducing independence must be seen from the point of view of an independent ‘state’ willingly shedding some of its independence for protection. This is actually buttressed by the other three cited criteria for statehood vis-à-vis the Montevideo Convention on Statehood. It therefore can be concluded with sufficient surety that the pre-Agreement (1964) Barotseland was indeed a state in the classificatory criteria employed here. In fact, relation should be made to the fact that the Barotseland Agreement was entered into by Barotseland as a contracting party, conveying the independence of the Kingdom, and exhibiting its ability to relate with other nations/states, that is, Northern Rhodesia.

The calls for statehood by pro-Barotseland separatists in the contemporary or post-Barotseland Agreement ‘era’ can be said to be quite obfuscated in how they correspond to the classification criteria of the Montevideo Convention. It is imperative here to also apply the case for statehood under the methods or criteria employed for the pre-Agreement consideration. All things considered, calls for statehood in the post-agreement or rather contemporary times are best interrogated with the acceptance that they are based largely on the pre-agreement considerations of statehood; which have erstwhile established a qualification of statehood on an ex post facto basis⁴⁴. However, this must not distort the concomitance with the criteria of the Montevideo classification. In fact, the claim for statehood is rooted in the historical basis of the status of statehood.⁴⁵

³⁷ Barotseland is made up of as many as 38 ethnic groups. In what is considered a state of co-habitation. These groups include among others the Mankoya, Kwanga, Mafwe, Matotela, Mambukushu, Masubiya, Imilangu, Matokaleya, Mambunda, Mwankamakoma, Mbowe, Mishilundu, Muenyi, Mahumbe, Makwamulonga, Manyengo, and Simaa (Sikayile, 2014) who offers further direction to: <http://www.unpo.org/members/16714#sthash3TQTWGHG.dpuf> for more.,

³⁸ Consider this as of 1965 so as to avoid any confusion with Sikayile (2014)’s revision.

³⁹ This is to substantiate the point on permanence of population.

⁴⁰ This point and the appended example must also be taken to mean the generic classificatory criterion stated as the ‘ability to enter into foreign relations.’ This could be with other states or other foreign entities whose interaction with the state constitutes foreign relations. In this case, Barotseland signing a treaty to become a protectorate of the BSAC. This point is imperative because it clarifies the obfuscation that may arise from strict adherence to language used. It is necessary to clarify that the ability to enter into foreign relations is not strictly on a state-to-state basis but encompasses the state’s ability to engage in other foreign relations with entities that are not states. What is crucial here is that the state in question is able to engage in foreign relations with either other states or entities such as foreign companies or organizations that are independent of the

state from which they hail.

⁴¹ In this case MNCs or international organizations or other bodies.

⁴² As Muimui (n/d) puts it, “the early Lozi politics depicted an evolution of a concrete rule which branched throughout their own territory and that of the conquered tribes”.

⁴³ Barotseland

⁴⁴ It should be noted here that the term ex post facto is used just as an operational term for making the distinction between the historical status of Barotseland and the contemporary question vis-à-vis the Barotseland Agreement. This should in no way be construed as inferring the use of the term in matters or cases that involve the contestation of issues at (international) law, and its use in the sense of defence or judgement of cases. In fact, the declaratory and constitutive means of statehood involve no ‘court’ judgements giving statehood.

⁴⁵ For a more detailed discussion on the statehood criteria of the contemporary Barotseland question see the Article at: <http://barotselandpost.com/index.php/monarch/itemlist/user/180editorgeneralbarotselandpost?start=610> which highlights the aspects of criteria for statehood that are being used by the BNC. Minor changes may be noticed in the territorial classifications elucidated here, but this does not take away from overall classification criteria and the aspects covered. This article expands further on

The only differences however, for which clarity must be sought are: the status of independence or autonomy (post-agreement), the ability to enter relations with other states, and the question of sovereignty on the part of the Zambian government vis-a vis effective control of territory and territorial integrity. For the two former criteria, it is presumably safe to conclude that the current status of Barotseland (Western Province of Zambia) does not make it autonomous or independent (sovereign) nor does the BRE have the ability to engage in foreign relations akin to a separate/independent entity or state because currently, Barotseland is a province of the Republic of Zambia and the sole responsibility of managing foreign relations lies with the government of the Zambian state.

Furthermore, it can be deduced that the absence of independence or autonomy means that effective control of the claimed Barotseland territory is not under that of the Litunga and is by the nature of Zambia's sovereignty, under, and is subject to the control of the state. In fact, one is led to the conclusion that a call for reinstatement of the Barotseland Agreement and the further call for statehood, which has gathered much momentum, suggest a desire to reinstate the status quo in which the conditions of the agreement gave autonomy to Barotseland and the Litunga, and the restoration of the pre-colonial independent state of Barotseland, respectively, which may restore its Montevideosque (sic) statehood status as established in the preceding examination of the historic or pre-colonial Barotseland. In this scenario, the author has sufficient reason to concede-with strict⁴⁶ adherence to the Montevideo classification of statehood-that the contemporary Barotseland separatist movement (considered as a whole) does not qualify for statehood in the way that it historically did, before the Barotseland Agreement.⁴⁷ The disqualifying factor lies in the fact that a completely complex situation was created by the abrogation or rather the termination of the Agreement in 1969 by the Zambian government, in which case Barotseland had already acquiesced to the unifying and state-forming⁴⁸ Barotseland Agreement of 1964.

For speculative argumentation, it is worth referencing Distefano and Heche (2014) who state that, the 1978 Vienna Convention on Succession of States in Respect of Treaties in Article 2(1)(b) defines state succession as, "*the replacement of one state by another in the responsibility of international relations of territory*"⁴⁹. They further state that, "*decolonization, unification, and separation are the possible occurrences of state succession. . . . unification of states is the merger of two or more states into a new*

some criteria the BNC deem necessary for statehood qualification such as a Barotseland currency and flag. However, this is edifying but does not alter or stand in stark difference of the object of this paper to cause a change in meaning.

⁴⁶ This is simply for the purpose of keeping in line with the research questions.

⁴⁷ However, a very important caveat is necessary here. As offered by Farley (2010) "On the other hand, failure to satisfy the Montevideo Convention criteria does not conclusively prevent an entity from achieving statehood. The process of decolonization in Africa resulted in the emergence of several entities recognized as states despite their failure to satisfy one or more of the Montevideo criteria"

⁴⁸ The amalgamation of Northern Rhodesia and Barotseland via the Barotseland

entity.⁵⁰ Therefore, given what this scenario implies, the formation of the Republic of Zambia, and the emergent government, meant that it assumed the responsibility for the new territory of which Barotseland had become a constituting part. It shall be further assumed here, that abrogation of the Barotseland Agreement was made on the consideration that despite the terms of the agreement, with respect to the semi-autonomous nature of the agreement granting local powers to the Litunga⁵¹, territorially, authority over Zambia (Northern Rhodesia + Barotseland) lay with the Zambian government, and hence the Agreement, it can be argued, was dissolved on this manner of thinking. It must be noted here that this line of argumentation based on the Vienna Convention of 1978 is only made in light of the logic that it applies in matters of state succession, and that this although coming into being later than the date of the termination of the Barotseland Agreement does not necessarily mean the decision to terminate (in 1969) may have not been orchestrated on similar reasoning referent to overall territorial administration, with this sole power vested in the emergent Zambian government. In other words, the author is not implying that termination of the terms of the Barotseland agreement were made based on the Vienna Convention on State Succession (1978).

Moreover, in considering the Barotseland secessionist movement from the perspective of sovereignty as a means of state survival in international relations, where territorial integrity is a necessary pre-requisite for the ability of a nation to operate as a functional unit that allows for it to participate in the global community economically (trade, foreign investments, access to loans and grants etc.), politically (diplomatic relations and membership to International organisations) and culturally⁵², secessionist movements have a tendency to trigger the 'state survival' button. Secession in effect means redefining borders and this may have geo-economic consequences that may threaten the survival of the Zambian state as it is. Here the author argues that, the territory that Barotseland (refer to map/Figure 1 in Appendix) covers, encompasses mineral-rich areas where mining firms have invested heavily. Mining activities still contribute approximately 70% of Zambia's national income.⁵³ The secession of

Agreement 1964 to form the Republic of Zambia.

⁴⁹ In this case Zambia

⁵⁰ The unification of Northern Rhodesia and Barotseland to form Zambia entailed the falling away of these previous entities.

⁵¹ Refer to Article 4 of the Barotseland Agreement available at: <http://www.barotseland.info/Agreement1964.html>

⁵² Cultural relations can be facilitated through official diplomatic state to state interaction or the travel of individuals who normally require a passport to travel across state borders. This highlights that even cultural interaction whether at state or individual level requires statehood and the benefits that accrue thereof. This point can be cross-referenced with Figure 3 in the Appendix.

⁵³ According to analysis by the Extractive Industries Transparency Initiative (EITI) ten companies contributed approximately 88 percent of total government revenues from the extractive industries sector in 2015, with FQM's Kansanshi Mining accounting for almost 23.60 percent of the total extractive revenues for the year from mineral royalties, income tax, pay-as-you earn (PAYE), VAT,

Barotseland as a separate state threatens the survival of Zambia as a state and has the potential to alter its international relations. Ergo, the Barotseland calls or demands for secession pose a threat to the fundamental underpinnings of Zambia's statehood. Further to this and in keeping with the principle of *uti possidetis*, Barotseland territory extends beyond Zambia's borders⁵⁴ (Refer to map/Figure 1 in Appendix) and into portions of Angola, Zimbabwe and Namibia. In this respect, Dr Alex Ngoma's assertions, a political analyst at the University of Zambia, were quoted in an article that stated that: *"the boundaries of the Barotseland go beyond some of Zambia's borders and has wondered how possible it will be for the people of western province to claim the land in such countries."* The principle of *uti possidetis* clearly states that a newly-independent state must maintain its colonial borders in order to protect its territorial integrity. However, this poses a very difficult problem to the Barotseland question because this means that the secessionists are also contesting for territory that now belongs to independent and internationally recognized states whose territorial integrity and sovereignty are protected by the UN Charter. Public International law is very clear about the respect for the territorial integrity of independent states that form the international community: this point will not be over-emphasized here. However, it is imperative that the complexity of the Barotseland question is highlighted here in reflecting that if statehood is sought within the postulations of Public International Law vis-à-vis *uti possidetis*, it becomes a very complex situation to navigate because the independence of Barotseland moves beyond contentions between pro-separatists and the Zambian government, but also brings into the picture the territorial integrity of Zambia's neighbours as erstwhile enumerated. Ergo, the contention can be made here that the pro-separatists agitations may create tensions between the Zambian government and its affected neighbours. The pro-separatists in this instance have to consider the principle of *uti possidetis* and its attendant implications and keep in mind that the principle of *uti possidetis* is in a manner of speaking "violated" by the pro-separatists' calls for secession because the principle is clear on the maintenance of colonial borders at independence. Furthermore, the tensions that may result from this pro-separatist position would need a diplomatic solution: a solution to be reached between the Zambian

customs duties and other taxes and fees. "These figures demonstrate the importance of the mining sector as a whole, and First Quantum in particular, to the nation's economy. Adopted from an article titled *First Quantum Minerals was Zambia's largest taxpayer in 2015-EITI Report, which can be found at* <https://www.lusakatimes.com/2017/01/06/first-quantum-minerals-zambias-largest-taxpayer-2015-eiti-report/> This has been included because FQM mine falls in the territory that forms Barotseland.

⁵⁴ The article is titled: *Western Province people advised to understand implication of secession, boundaries of Barotseland go beyond Zambia's borders.* Retrieved from: <https://www.lusakatimes.com/2012/04/05/western-province-people-advised-to-understand-implication-secession-boundaries-barotseland-zambias-borders/>

solution: a solution to be reached between the Zambian government, as the custodian of international relations pertaining to its territory, and the affected states. This suggests the primacy of the Zambian state in the effective control of territory/borders and management of international relations thereby further demonstrating the weakness in the pro-separatist position and hence highlighting their shortcomings in satisfying the classificatory criteria of the 1933 Montevideo Convention.

The lack of a clause in the Barotseland Agreement expressly providing for secession or giving condition that an abrogation of the agreement would (legally) revert to the status of the two unifying parties before their merger in which they retain their status quo as independent/separate entities may have been exploited here (refer to link provided for the entire Barotseland Agreement 1964). Furthermore, the Constitutional amendments of 1969 and the land Acts of 1970⁵⁵ previously alluded to, may be considered to have corroborated or emboldened the Zambian government's consideration of the territory of Zambia in sovereign terms to the point of viewing the entire country as a unitary state not beholden to any privileged (semi-autonomous) considerations of the Litunga and Barotseland, which may otherwise corroborate the further demand for secession and subsequent independence. In essence, these constitutional amendments terminated this special consideration and placed the Litunga and the Barotseland under the Zambian presidency. As Sikayile (2014:28) puts it, *"these constitutional alterations drastically reduced the Barotseland king's powers and realigned Barotseland's legal status to that of other provinces elsewhere in Zambia."* Therefore, it is a conspicuously complex case, the Barotseland question, which must then be further considered in terms of self-determination, secession, statehood and the role of international recognition, with special reference to the structure of the international community vis-à-vis international politics.

The UN Charter in relation to self-determination

Granted that the UN Charter⁵⁶ provides for the rights of peoples to self-determination, the call for separatists to establish their own state is, by virtue of this recognition by the Charter, a starting point in its own right. Ergo, the desire for independence or statehood is not problematic in this sense. Historically the quest for a return to self-rule in Barotseland dates as far back as 1907 when request was made by King Lewanika for Barotseland to be detached

⁵⁵ (* Author's re-emphasis of point*) 1969-1970 the Government of Zambia passed the Western Province (Land and Miscellaneous Provisions) Act No. 47 which had the effect of stripping the Litunga of his powers over land in the province. It vested all land in Barotseland in the President of Zambia as a Reserve within the meaning of and under the Zambia (State lands and Reserves) Orders 1928 -1964

⁵⁶ UN Charter art. 1, para. 2

from North-Western⁵⁷ Rhodesia and BSAC rule. In 1921, King Yetta III demanded direct rulership of the imperial government as a protected native state over all the territory referred to as Barotseland North-Western Rhodesia; and the termination of all concessions and agreements between the Litunga and the BSAC (Mufalo, 2011). Demonstrably, Barotseland has been historically on the search for a restoration of their self-governing status or statehood; in a manner of speaking. However, the calls for self-determination themselves fall within a legal paradigm in Public International Law which is itself mired in contradictions. However, calls for the right to self-determination must at least be grounded, for example, in the sentiments of oppression, socio-economic and political marginalization that can be substantiated. As Mufalo (2011: 1) asserts, in light of the Barotseland question *“dissent to a sense of belonging to a state has myriad reasons. Dominant of them however are sustenance of a sense of belonging to a traditionally and colonially recognized historically defined nationhood; and a sense of socio-economic and political exclusion (or marginalization) in the post-colonial state...”*. In this light, it is essentially a matter of the separatists proving that the government of the Republic of Zambia has denied them their socio-economic, political and other rights; but to whom? This question suffices to borrow the words of Brilmayer (1991)-*“because secessionist movements call for international recognition of the states they seek to create, they necessarily concern the world community”*; but more importantly this question is asked in order to highlight the inherent complexities of secession in particular, because Public International Law has no provision for a ‘right to secession’. Christakis (2012) observes that, *“It is commonly admitted today that, outside the context of decolonization and military occupation, there is no “right” to create an independent state.....even though secession is not prohibited, international law disfavors it and creates a presumption against effectiveness and in favour of the territorial integrity of the parent state. Indeed, the final consent or, at least the “resignation” of the parent state and the abandonment of its efforts to reassert its authority seem*

⁵⁷ *historical trajectory*: North-Western Rhodesia/Barotseland was formed in 1889 and North-Eastern Rhodesia was formed in 1900 by what were respective Order-in-Councils which divided territory between these two regions for the purposes of separate administration. However, these two territories were merged in 1911 by the Northern Rhodesia Order-in-Council which replaced the previous Order-in-Councils (North-Western Barotseland and North-Eastern Rhodesia). Northern Rhodesia came under full control of the British Crown in 1924 after the termination of the BSAC rule. It is important to note here that Barotseland maintained its separate status as a British Protectorate even after the merging of North-Western Rhodesia/ Barotseland and North-Eastern Rhodesia to form Northern Rhodesia. Special Order-in- Councils of 1953 and 1962 were very clear in indicating that Barotseland was a British Protectorate within Northern Rhodesia in which the Litunga’s authority was preserved by earlier treaties and concessions, and that Northern Rhodesia was to be governed separately under the rule of the British crown respectively. A precise account can be found in Muimui’s (n/d) article: *The Political history of Barotseland to be found at: <http://www.barotseland.info>*

crucial in permitting the secessionist entity to “normalize” its situation by demonstrating the “ultimate success” of the secession”.

However, secessionist movements borrow from particular Public International Law provisions that support their claims. Much of their focus is on the United Nation’s clear recognition of self-determination, but they do this while ignoring the fact that the Charter holds that self-determination does not supersede a state’s territorial integrity (Brilmayer, 1991). In the case of a minority region, which is “persistently and egregiously denied political and social equality” it is conceivable that international law will define such repression as colonialist⁵⁸ in nature. As a result, if repression is recognized as colonialist, the minority region would be given the right of decolonization. Furthermore, as elucidated previously, self-determination and the attendant calls for secession, unilateral or remedial, vis-a- vis colonialism or internal colonialism must produce sufficient evidence showing that the minority group seeking secession have in each defining circumstance been outrightly colonized or treated severely and marginalized based on their ethnicity (internal colonialism) to the effect that they have been denied their economic, political, and socio-cultural rights. This would be a difficult allegation to prove or substantiate considering the Barotseland question and the arguments of the pro-separatists.

It is contended here that, the people of Barotseland are allowed to take part in the political, economic, and socio-cultural processes of the Zambian state as full citizens. For example, they can vote, form and join political parties, work as civil servants, and are not restricted in any fashion or form, from taking part in economic activity such as owning businesses or being employed. Suffice to say, the current Vice President of Zambia is Inonge Wina; a woman who hails from Barotseland (Western Province). Furthermore, because of the philosophy of ethnic or tribal unity dubbed *“One Zambia, One Nation”* initiated by the first President of Zambia: Dr. Kenneth Kaunda, citizens from all the 72⁵⁹ tribes/ethnic groups of Zambia, can be found almost in any province of the country. This is so because the national unity philosophy created a situation where members of various ethnic/tribal groups could move to, and even settle in any part of Zambia for work, business and even marriage (inter-tribal) such that the argument for colonization or internal colonization does not suffice, and

⁵⁸ It must be noted that some fervent pro-separatists deem the Barotseland question as one of colonialism/colonization in which case Barotseland is colonized by Zambia or more accurately, Northern Rhodesia. This can be illustrated by the sentiments of the Political Editor of the Barotseland Post who states in part that, “colonisers can build schools, hospitals and roads, but that does not change their character and nature, they still remain colonisers. The Barotzis do not enjoy the freedom of assembly and expression under the colonization of Zambia”. To be found at: <http://http://barotselandpost.com/index.php/all-news/barotseland/item/2154-barotseland-and-zambia-will-never-be-one-nation-afumba-mombotwa-to-the-united-nations>

⁵⁹ Others put this figure at 73

in any case, makes the calls for self-determination on these premises difficult to substantiate. The Barotseland question cannot be tendered along the lines of colonization because a Treaty was signed between Northern Rhodesia and Barotseland to form Zambia, a state in which the people of Barotseland have not been denied the rights to participate, and are in fact, citizens of the Republic of Zambia with full rights.

Similarly, internal colonialism cannot suffice in this instance because no evidence premised on the examples given can sufficiently argue that the people of Barotseland have been side-lined as an ethnic group whose resources are being utilized and distributed only on the basis of created dependencies; and are assigned roles in society based on cultural structuration.

Furthermore, because of such socio-cultural things as the intermarriages between the people of 'Barotseland' and those of other tribes/ethnic groups in Zambia, it is arguably sufficient that the calls for secession may not have majority support because of the relatively successful tribal/ethnic integration in Zambia in which the majority of people consider themselves Zambian nationals as opposed to considering themselves as willing to become citizens of a separate Barotseland. Furthermore, the uniformity with respect to demands for secession must be examined or rather interrogated from the perspective of the other ethnic/tribal groups that make up Barotseland. Is there overwhelming consensus in Barotseland that evidences a widespread sentiment for secession from Zambia; where Zambian citizenship is renounced for the preference of establishing an independent Barotseland and the attendant citizenship this creates? Sikayile (2014: 55) who in his study interviewed members of other ethnic groups in 'Barotseland' cited a Chairperson of the Nkoya Royal Council (NRC) who speaking at a press briefing stated that:

We want to state that we will never be part of Barotseland. We are part of Zambia and the issue of seceding does not arise, it is a non-starter. As far as we are concerned, Kaoma and Lukulu districts are not part of their resolutions to break away from Zambia. Our position is very clear; we have said as custodians of the land, we will not be part and parcel of that area. We have nothing to do with Barotseland⁶⁰.

This reflects the reality that the presentation of the calls for secession as representative of the entire Barotseland population are erroneous and do not account for the underlying politics and stakeholder⁶¹ interests in the matter.⁶² This further adds to the complexities that hinder

the justifications for secession. *Also, the Lozi who make up the bulk of the population of Barotseland can hardly be considered a minority. According to the Zambia Tourism Board, "About 90% of the population fall into 9 major ethno-linguistic groups: the Nyanja-Chewa; Bemba; Tonga; Tumbuka; Lunda; Luvale; Kaonde; Nkoya; and Lozi"*⁶³. Worth considering also is that with regards to internal colonialism, and that is in keeping with the definition, the Zambian government is not dominated by any specific ethnic or tribal group.

The matter deserving determination in this case further falls within the brackets of establishing whether pro-separatists are considered mere 'rebels' in which case they constitute a threat to the sovereignty and security of the Zambian state: an argument the Zambian government has made or rather implied with the arrests of pro-separatists and in some instances asserting that pro-separatist sentiments are tantamount to treason. A 2013 article by Peter Wonacott in the Wall Street Journal stated in part that:

"when residents sang and danced in Mongu's dusty streets in August to celebrate the self-declared birth of their new nation, Zambia's policed pounced.....59 people arrested in the sweep appeared at a court. . . . charged with treason. Many were picked up in the past few weeks for their alleged involvement in a ceremony to select a new regional administrator who would organize elections for a newly independent government. It was the latest sign of separatism taking hold in Africa - both peacefully and violently." Peter, (2013).

The complexity is that, who determines the facts of the status of the behaviour of the separatists in Public international law, if the separatists are not recognised internationally in the sense that their status or cause is not one that has caught any significant attention⁶⁴ in the international community?⁶⁵ The latter point can be clarified by the examples of the Kurdish question, South

⁶² For a more detailed account of the relationship between the pro-separatist Lozi movements and the other ethnic groups of the Barotseland as regards viewpoints on secession and the politics of group dynamics, please see Amos Sikayile (2014). *The puzzle of state sovereignty: Discourses of contested statehood; the case of Barotseland in Zambia pages 51-59*

⁶³ <http://www.zambiatourism.com/about-zambia/people>

⁶⁴ This is no way a denial under international law of the rights to seek self-determination, but is used here to highlight the awareness, interests and perhaps attitudes of the international community to secession movements vis-à-vis the recognition of those movements seeking statehood and the importance of this recognition by the most influential and powerful states in the international community.

⁶⁵ Also, considering the 'treatment of themselves as a state', do the pro-separatists, the BRE included have recourse to International Law under the bodies designated to dispense of state-related disputes? Suffice to say that it is an established fact that, there was an abrogation on the part of the Zambian government of the Agreement, but under the administration of state to state disputes in international law, the case of breach of contract may be brought under the Vienna Convention on the Law of Treaties of 1969 to which Zambia is a signatory and not Barotseland. Therefore, this presents another complexity in the Barotseland question. Interestingly, a point to consider here is that the

⁶⁰ These were statements drawn from an Article on www.lusakatimes.com that Sikayile 2014 was citing and not those from one of his direct respondents

⁶¹ Calls for secession must reflect the will of the constituent groups that fall under the territory claimed by the secessionists. Consensus must be reached in order for separatism to be reflected as being made with one voice and a uniform desire across all stakeholders.

Sudanese secession and the case of Somaliland.

Barotseland statehood vs the Kurdish question, South Sudanese secession and the case of Somaliland

The Kurdish people who are estimated to amount to approximately 35 million, designated as the largest ethnic group in the world without statehood, have been for years agitating for statehood in the regions of Turkey, Iraq, Iran and Syria. Hadji (2015) makes the affirmation that the Kurds formed the autonomous region called the Kurdish Regional Government or KRG which after the Gulf War of 1991 and the ousting of Sadaam in 2003 has since become a strong autonomous region. The KRG fulfils the criteria of statehood laid out in the Montevideo Convention. Suffice to say that, the Kurdish question is one that has the considerable attention of the international community, which in a sense gives the issue the legitimacy that recognition carries. However, the Kurdish question falls within a much larger international political matrix involving the aforementioned states and their relationships to superpowers. The Kurdish question of self-determination falls well within the paradox of international realpolitik. As Berlin (2009) intimated, while the issues of statehood in Public International Law remain controvertible, *de facto* statehood conveying upon the concerned state the validity and rights to secede ultimately requires the sanction or rather, recognition of regional and world powers for it is that recognition that allows the said state to be legitimized and indeed function as a state. It then suffices that the states that host Kurds, namely Iraq, Turkey, Syria and Iran coupled with the United States of America, have vested geopolitical interests that may not accommodate an allowance for an independent Kurdish state.

Unlike the self-determination calls of the Kurds, the Barotseland separatists' calls do not garner or have not shown to do so, the interest of the international community in a manner that even implicitly suggests that recognition or claims of statehood are only hampered by the complexity of the geo-political nature of their statehood question, which may satisfy the given declaratory criteria of statehood, but thwarted by the interplay of varying challenges in the relationships of influential states in the international community on which recognition rests heavily. In other words, the importance of influential and powerful states in state recognition can also be viewed from the implied recognition of the state in question; which if not for their vested interests, they would recognize by the official method of admission to the UN, this of course also attendant to the domestic situation.⁶⁶ Power politics are extremely crucial in this rather unusual way of discussing

matter is actually *ex post facto* because by 1969, the coincidental year of termination of the Barotseland Agreement and the adoption of Vienna Convention on the Law of Treaties, Barotseland had ceased to exist as a 'state' but was part of Zambia.

state recognition.⁶⁷ The thin line between Kurdish and even more so Palestinian statehood for example, are the underlying interests of the international community's most powerful and influential states, in which case, the question of statehood of the concerned states is already an internationally 'recognized' issue by those states that have the power or influence to confer it by the institutional methods of UN membership, save for the status quo.

The author here offers that the Barotseland question does not have as much 'currency' or recognition as the Kurdish or Palestinian questions, for example, to the point that regardless of the aspects of Public International Law in terms of statehood that it satisfies, it is of no interest, geo-politically or otherwise, to the states that matter in concretizing statehood, even to the point of symbolic recognition. This is perhaps crude, but is offered here as an explanatory permutation. As Worster (2010) asserts, ". . . *the rules of state recognition, although legal rules, are legal vehicles for political choices.*" Lauterpacht (1944) states that, "*a state may use any criteria when judging if they should give recognition and they have no obligation to use such criteria. Many states may only recognize another state if it is to their advantage.*"

The foregoing illustrates the most glaring problem both the declaratory and the constitutive theories seemingly cannot resolve: the problem that Public International Law remains subject to high politics. Whereas recognition itself (flowing from the constitutive theory), treated here as being significantly more effective but not legally superior to the declaratory fact of statehood, can be made by any state (consider the case of the Palestinian-Israeli question)⁶⁸; it remains the endorsement of powerful states, and this specifically means a UN Security Council recommendation that is not objected or vetoed by any one permanent member, and hence recognition that seems to confer 'concrete' statehood that allows a state to become a member of the international community; used here to mean having legal personality. As Farley (2010: 792) points out, "*the question from this perspective is not when a state is a state, but rather to whom is a state a state. That is, a state may be a state internally but not externally.*"

The Barotseland question as compared to the South-Sudan case for example, provides another

⁶⁶ Refer to bilateral secession

⁶⁷ For example, Taiwan arguably meets the criteria set forth under the Montevideo Convention, but because of political circumstances, the international community has failed to recognize its statehood. See Worster (2010).

⁶⁸ The Palestinian-Israeli impasse is a clear-cut example of how high politics can interfere with the concretization of statehood to the point of full participation in the international community as a full state. The impasse in the UN Security Council of 'official' Palestinian statehood witnesses the influence of power politics vis-à-vis the veto power. 135 states have recognized Palestine as a state but the refusal of Palestinian statehood lies ultimately with veto power of the 5 permanent members in which case the US has vetoed Palestinian statehood. For example, refer to an article titled *Palestinian Statehood bid fails at UN Security Council as US, Australia vote against*". To be found at :www.rt.com

noteworthy and further permutational illustration. The secession of South-Sudan was a domestically negotiated⁶⁹ and settled solution, but took on an international dimension when the membership to the UN was granted and this gave the new South Sudanese state legitimate or undeniable international statehood, which is ultimately what gives legal personality. What needs specific mention here is that from the domestic standpoint, the Sudan-South Sudan secession agreement was made possible by an internal political process that involved negotiation between the government and the secessionists, and then taken to a national referendum. It is not the object here to give a detailed account of the proceedings, but what needs highlighting is that the willingness to negotiate on the matter meant that, or could be taken to mean that the (North) Sudanese government was willing to forego its claims of sovereignty over the entire Sudanese territory⁷⁰. This is very important. It is suggestive of the fact that the situation or status of a unified Sudan (North and South) was politically untenable⁷¹ such that the Sudanese government perceived it as an eventual solution to grant secession to the South by their willingness to forego claims of sovereignty over the entire Sudanese territory. Part of the defining factor of the situation as untenable is due to the history of Sudan in which slavery was one of the key factors in identity politics and the socio-cultural and economic relations in Sudan. Much of the violent conflict between the North and the South was premised on this historical fact. As Deng (2004: 1) states:

“as both cause and effect, slavery stratified races, ethnicities, religions and cultures, placing some in the category of slave masters and others into that of target populations, denigrated and dehumanized to justify their enslavement. In the Sudanese context, the master race comprised the Sudanese in the North who became assimilated into the Arab-Islamic mold and made to pass as Arabs. The enslavable groups were the Black Africans, especially those in the non-Arab, non-Muslim South, who practiced indigenous religious beliefs, and were therefore viewed as heathens and infidels”.

⁶⁹ This point can be cross-referenced with the assertions of Deng (1973) on pg 15

⁷⁰ Sovereignty premised on territorial integrity is one of the major reasons cited by states as the basis for refusal of secession in most cases.

⁷¹ The above point elucidating the untenable nature of relations between the North and South in Sudan was evidenced by the 2 civil wars fought between 1955-1972 and 1983-2005 in which case two underlying issues were sources of tension. After independence from Egypt and Britain in 1956, the Constitution did not settle two crucial faultlines: whether Sudan should be a secular or Islamist state, and the country's federal structure. The Arab-led government in the North reneged on promises made to Southerners to create a federal state which led to mutiny by army officers culminating in the first civil war. A failed 1972 peace agreement reached in Addis Ababa led to the second civil war. More detail can be retrieved from: <http://www.enoughproject.org> in an article titled *Sudan: Independence through civil wars, 1956-2005*. This point here was employed to accentuate what is meant by “untenable political situation” in which case secession between North and South was deemed as better than seeking to maintain a unitary Sudanese state.

This created a situation where South Sudan became an independent state by Sudan's willingness to subject its sovereignty to an internal political process that yielded the birth of new nation-state in the name of South Sudan. The point of willingness by the (North) Sudanese government to allow secession should be understood by taking into account the view that most African states have of territorial integrity. Sikayile (2014) asserts that the domestication of sovereignty in Africa is considerably a preventive factor in the disintegration of juridical states. It is for this reason that the allowance of secession of the South by the North Sudanese government can amongst other reasons be attributed to the untenable political situation characterized by violent conflict that existed between the two parties; prompting a political solution that however, was due to (North) Sudan's willingness to concede territory⁷². As Uzor and Okeke (2013: 159) state, *“South Sudan is a state created by the approval of the parent state. The mechanism for secession was rooted in the 2005 Comprehensive Peace Agreement and the constitutional arrangement that resulted from this agreement. South Sudan is thus a rare example of a right to independence being exercised under domestic constitutional provisions. Its example further affirms that such constitutional provisions tend to be implemented exceptionally, as a political compromise and an interim solution aimed at peaceful settlement of the contested entity's legal status”.*

However, the statehood of South Sudan was legitimized^{73,74} by its admission to the UN on July 14, 2011. Therefore, it is of utmost importance to consider the Barotseland question in juxtaposition to the South-Sudanese attainment of statehood. The very important reference point here is that, at the domestic level, the Zambian government must have a willingness to ‘compromise’ their sovereignty in considerations of territorial integrity if the Barotseland question is to have a conclusion like that of the Sudanese case: this willingness being an entry point to recognized statehood in the international community for Barotseland. Further following the South-Sudan example, the fundamental difference, adding to the complexity is that the Zambian government does not see the Barotseland question as an untenable political situation. In fact, it is quite difficult to see it as such because of a lack of an extremely volatile standoff between secessionists and the Zambian government. The fact that the Zambian government views any ‘conflictual’ behaviour by secessionists as treasonous or rebellious behaviour confirms the view of the Barotseland question as a matter of national security and public order, which

⁷² Cross reference can be made here to the observations of Christakis (2012) made on page 29.

⁷³ To mean that South Sudan was given legal personality which under Public International Law means that South Sudan now has recognized rights and duties in the international community.

⁷⁴ This point can be cross-referenced with the description of legal personality by the Icelandic Human Rights Centre on page 10 and the expansion by Gunaratne (2008) at footnote 25 on page 11.

necessitates their resort to the application of Zambian law. In other words, whereas secessionists may see themselves as 'liberation/freedom' fighters, the Zambian government views them as rebellious factions threatening internal stability. An example of pro-separatists considering themselves liberation/freedom fighters is captured in the words of Noyoo (2016) who asserts that, *"Ironically, the plight of the people of Barotseland, especially its nationalists and freedom fighters, would become extremely dire after Zambia became a multi-party democracy. From 1991 to date, thousands of Barotse nationalists and freedom fighters have been arrested, detained, harassed, physically harmed, tortured, maimed, maligned and killed by Zambia's security forces of different Zambian political administrations"*.

'Liberation fighters' connotes conflict and the use of force, which is necessary in so-called fights of liberation which occur under circumstances of occupation by a foreign element or colonization.⁷⁵ In Public International law this challenge to authority of the state/government is categorized in three stages of rising intensity and these are designated as rebellion, insurgency and belligerence. Without delving into a detailed discussion, operational explication of these stages will be made as follows: that rebellion is viewed as intermittent disturbances of public peace in which case the rebels fall completely under the authority of the state. Rebellion is completely domestic and falls within domestic law and the authority of the government. The same can be said of insurgency only that insurgents are seen to have a bit more organization and concentrated in a location within a state and having some measure of control of that particular location. Belligerence on the other hand suggests that a recognized state of conflict exists between two contending parties which in such an instance have the rights and duties of parties to a war (Martin Monograph series, 2004). This qualification of belligerents is according to Schindler (1979)⁷⁶ met when:

- (1) The insurgents had occupied a certain part of the State territory;
- (2) Established a government which exercised the rights inherent in sovereignty on that part of territory; and
- (3) If they conducted the hostilities by organized troops kept under military discipline and complying with the laws and customs of war. Thus, insurgents could only be recognized if the hostilities had assumed the attributes of war.

Now, this is very important to note here because the actions of the Zambian government are better understood by the perception that they have of any activities of pro-Barotseland separatists and what categorization there is in Public International Law of these actions and statuses

⁷⁵ An argument separatists have made: charging that they have been colonized by Zambia. This point can be cross-referenced with footnote No. 62 on page 29

⁷⁶ As cited in Monograph 3(2004), by the Martin Monograph Series, The Martin Institute, University of Idaho.

in relation to the parties involved in the 'secession equation' that is, the Zambian government and the pro-separatists. This is important because of the recognition that is given by the international community to groups that are 'fighting'⁷⁷ for self-determination and independence from a state. It is a noteworthy assumption or conclusion that the Zambian government and their attendant response to actions of pro-separatists that are deemed as threatening to the state and its stability suggest a consideration of the pro-separatists as mere rebels. It is necessary to steer the discussion in this direction because any questions of secession and self-determination are connotatively premised on an eventual or potential use of force creating a situation of war where the advocacy for secession does not abate and is not controlled by the state from which secession is sought.⁷⁸ Consider for example a letter⁷⁹ written in 2013 by Commander General Mwiya James, addressed to the late President of the Republic of Zambia, Michael Chilufya Sata which stated in closing that:

"We demand for the stop and release of all the Barotse Nationals Activists arrested and an apology from the former first Zambian President Dr. Kenneth Kaunda for the abrogated 1964 Barotseland Agreement in 1969 and the currently Zambian President, His Excellency, Mr. Michael Chilufya Sata, for kidnapping, languishing, torturing, Killing, hatred and intimidation of Barotse Nationals. We humbly and firmly demand for full response, failure of which will compel us to no peaceful means but war between Zambia and the Barotse Defence Force (BDF) of the Kingdom of Barotseland".

Higgins (2014) asserts that:

"Wars of national liberation are armed struggles waged by a people through its liberation movement against the established government to achieve self-determination."

⁷⁷ Encompassing all forms of advocacy for independence. Particular to this point is that even if separatists do not take up arms, actions that are deemed as threatening stability, peace and territorial integrity are met with force by the parent state.

⁷⁸ See: <http://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo9780199743292-0072.xml>

⁷⁹ This letter titled: *Barotse defence force appeals for unconditional release of all 'Barotse' citizens and apology from KK* can be found at: <https://www.lusakatimes.com/2013/08/22/barotse-defence-force-appeals-for-unconditional-release-of-all-barotse-citizens-and-apology-from-kk/>. Of interest here is that in this letter are copied the following: United Nations Secretary General, His Excellency Mr. Ban Ki Moon; The International Criminal Court, The Hague, Royal Netherlands; The Secretary-General, Commonwealth; The Secretary-General, African Union; The Secretary-General, Amnesty International, UK; The President – International Criminal Court (ICC), Hague the Netherlands; The President -International Court of Justice (ICJ), Hague the Netherlands; The Secretary-General, SADC, Embassies accredited to Zambia. This, highlights firstly, that the pro-separatists consider themselves a state. This point must be cross-referenced with footnote No.70 on page 30. Secondly this warrants the examination of the matter in terms of the interest and awareness of the international community and the pending question of recognition. This point must be cross-referenced with references to the interest or awareness of the international community made on pages 34 and page 46.

While wars of this type have been fought since the foundation of the sovereign state system, the main spate of such conflicts occurred in Africa in the postcolonial era of the mid- to late 20th century. A number of postcolonial self-determination conflicts continue today. National liberation movements and governments have opposing views of wars of national liberation. National liberation movements view their armed challenge to the established government as a "just war"; indeed, they view it as a legitimate exercise of a right to revolution, waged to achieve the right of the people they represent to self-determination. Conversely, governments view challenges to their authority as the acts of terrorists and criminals, seeking to destroy public order and, ultimately, territorial integrity, and, in general, they attempt to deal with such violence under domestic criminal or martial law".⁷⁰

It suffices to include here that the viewpoint and actions of the Zambian government as concerns the Barotseland pro-separatists may very well be substantiated on the grounds of monopoly of violence, in which case the Barotseland secessionists are viewed merely as Zambian 'rebel' citizens or criminal elements subject to the full effects of internal methods of legally managing fractious situations, real or imagined, by the state. Sikayile (2014) offers that instrumentalization of the principles of international sovereignty by the Zambian government is obvious for the purpose of ensuring that the state's territorial integrity remains intact. What accrues here, especially with regard to the constitutive and declaratory theories is that there are situations of flux in which the pending delineation of legal classifications of statehood matter for very little and only to the state so-willing to consider itself a state. It is perhaps important here to bring forth the example of Somaliland. The latter is in the declaratory sense of the word: an entity with the stark features of statehood. Or more bluntly, as Farley (2010:777) argues:

"The Republic of Somaliland declared its independence in 1991, presenting the international community with the question of whether to recognize it as a state. Since then, the nations of the world have consistently answered that question in the negative. Yet, the Republic of Somaliland has survived to become a relatively stable and democratic state. Its endurance continually renews the question of recognition for Somaliland. Today, that question's answer must be in the affirmative: Somaliland meets the objective criteria of statehood and its separation from Somalia represents the dissolution of a state in conformity with international norms".

Farley in fact makes his argument in full cognizance of the importance of state recognition by the international

community in concretizing statehood; to mean full participation in the international community with the full rights given to states by International Public Law. He states that, *"recognition is more than a mere formality in the contemporary international system. Its denial places real constraints on the capacity to function as a modern state, both domestically and internationally."* He further observes that Somaliland functions as a state, with the ability to enter foreign relations, manage its internal affairs through a government, has a currency, and a defined territory (ibid). With respect to Somaliland's ability to enter foreign relations, he states that, *"as part of a concerted effort to garner recognition, Somaliland has cultivated international relationships, including an agreement with Ethiopia, granting Ethiopia overland access to Somaliland's port of Berbera. That agreement also formalized trade relations between Somaliland and Ethiopia, and included an agreement to establish customs offices along Somaliland's border with Ethiopia. Somaliland has opened liaison offices in Ethiopia, Djibouti, the United States, and the United Kingdom. It has hosted delegations from states like Pakistan and from international organizations like the World Bank and the African Union."* This is especially in reference to the traditional statehood criteria of the 1933 Montevideo Convention. The legitimizing importance to statehood of UN membership vis-à-vis state recognition can be extrapolated from again referring to the South Sudan example by citing the words of the UN General Assembly President at the time⁷¹, who on 14 July, 2014 said that, *"today we are firmly entrenching South Sudan in the community of nations in the same way as other member states with the same rights and responsibilities."*⁷²

It is important to note here that membership to the UN although voted by a 2/3 majority of the General Assembly is dependent on UN Security Council recommendation without which membership cannot be granted. As Chen (2001) asserts:

"Article 4(2) of the UN Charter provides: The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council." Accordingly, the decision-makers, regarding the applications for subsequent membership, are the Security Council, whose recommendation is indispensable, and the General Assembly, whose decision effects an admission. Without the recommendation of the Security Council, because of either a negative vote or inaction, an application cannot go forward to the General Assembly and is "dead" for all practical purposes until the Council again takes it up. Since a negative decision of the Security Council is not subject to review, it is in that sense "final".

⁷⁰ As retrieved from: <http://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0072.xml>

⁷¹ Joseph Deiss

⁷² Can be found at www.un.org in an article titled *UN welcomes South Sudan as 193rd Member State*

The institutional power of the veto, has shown itself in the politics of statehood and state recognition vis-à-vis powerful states when we consider the impasse on the Israeli-Palestinian question in the UN Security Council as previously alluded⁷³. The foregoing is captured well by Lalos (1979: 800) when he states that, "... existing states merely act as the gatekeepers to ensure that de facto states meet the criteria outlined under the Montevideo Convention. This de facto gatekeeper function makes recognition a political instrument, with powerful states effectively exercising veto power. It also means that until international "personality" is granted, the state is not attributed any rights or duties. Ultimately, in absence of international recognition, a de facto state is unlikely to achieve complete statehood".

Furthermore, it is necessary to reiterate here that statehood in the sense of attaining legal status in the international community, pursuant to recognition and the confirming act of admission to the UN; where it is not mixed up with geo-political interests of powerful and influential states, on whom this is highly dependent, must overcome the sovereignty and territorial apprehensions of the state from which secession is sought. It is only after impasses so created from the erstwhile stated that a state seeking statehood as a legal person can then arguably, grab the attention of the states with the power to recognize and confirm statehood. The fact that secession is the 'product of struggle' has consequences for state sovereignty and territorial integrity. There is minimal possibility that those seeking secession and contending with a superior parent state, would be able to secede without external⁷⁴ help (Gudeleviciute, 2005; Akehurst, 1997). Ergo, it suffices that even the satisfaction of the criteria for statehood (the 1933 Montevideo Convention), despite the obfuscated nature of the qualification itself due to wide legal interpretations of statehood by legal scholars, a state may be a state unto itself in the declaratory sense, and even domestically⁷⁵, which is legally provided for in Public International Law, but the recognition which is

⁷³ This point is made to emphasize the role that power politics play in state recognition even at the institutional level of the UN, to which membership as highlighted in this section of the paper, is the surest way of legitimizing statehood.

⁷⁴ There is a fine line here. External help must be understood here as pertaining to recognition by other states in the international community and not help in the form military or other assistance in the struggle for independence/statehood by the secessionists. The latter type of assistance would be considered a breach of Public International Law because it is expressly prohibited to meddle in the domestic affairs of another state. This is especially critical when the stand-off between secessionists and the parent state is not a liberation struggle constituting a legal status of war between the parent state and secessionists (herein considered belligerents). Therefore, it is important here to note the author's point stressing that the matter of secession must be first addressed at the domestic level between the parent state and the secessionists in order to avoid the technicalities of breach of international law that may stem from recognizing a state that secedes illegally. However, the fact that statehood is being sought means that the international community vis-à-vis Public International Law cannot be left out of the equation.

ultimately conferred by membership to the UN is of the utmost importance.⁷⁶ In this regard, statehood in the case of the Barotseland question, appears to have a very long, frustrating and virtually impossible journey to travel.

Conclusion

Far from being about merely satisfying the criteria for statehood, the question of secession and the subsequent statehood are far more complex than they may be understood even by the secessionists themselves. It is a long-drawn battle that has several pitfalls and twists to render it an almost impossible task unless the statehood in question poses no severe consequences to those granting it, internally or externally. The modern international system works in such a fashion that even though Public International Law is steeped in the contradictions of the law itself in terms of the status of statehood and recognition; where a state can be a state unto itself, meeting the legal classificatory (declaratory) criteria and can still not be recognized; but a state that fails in one aspect or the other in satisfying the declaratory criteria for statehood can still be recognized and have legal personality. This is captured accurately by Farley (2010: 791) to reveal the importance of recognition, as well as the role of powerful states in recognizing and concretizing statehood via UN membership when he states that:

"On the other hand, failure to satisfy the Montevideo Convention criteria does not conclusively prevent an entity from achieving statehood. The process of decolonization in Africa resulted in the emergence of several entities recognized as states despite their failure to satisfy one or more of the Montevideo criteria. The former Belgian colony, the Democratic Republic of the Congo, provides the best example of a state emerging from colonial dominion that substantially failed to meet one or more of the Montevideo criteria. For example, at independence, the Congo did not possess an effective government. Instead, the UN and the state's former colonial power propped up the new state. Despite its inability to govern itself and thus its failure to satisfy one of the four Montevideo criteria of statehood, the Congo's "application for United Nations membership was approved without dissent"

The questions or claims of statehood, though inspired by the usually moralistic undertones of the language of the UN Charter is ultimately decided upon by the political context within which statehood is sought. The dichotomy of the statehood question in the domestic-external construct is so

⁷⁵ As is the case between Somalia and Somaliland.

⁷⁶ The constitutive approach stems largely from a shift from natural law to positivism, which focuses on "consent as the essential element from which obligations under international law derive." Under positivism, the international community must consent to the admission of a new state because recognition creates additional obligations for existing states. In addition, new states are not bound by international law until consent is given. See Schoiswohl (2004).

fluid that it would not be wrong to consider it cyclical.

The Barotseland question is premised on the principles of self-determination and the feelings of nationhood that inspire a desire for a historical nostalgia of ethnic unity and self-governance that inspires a drive for secession and subsequently: statehood or nationhood. This is an understandable endeavour given that the people of Barotseland were an independent pre-colonial society that demonstrated a high political capacity for the maintenance of their state, in a manner concomitant with the 1933 Montevideo criteria for statehood. However, the dilution of their independence and their eventual loss of autonomy due to the political and economic⁷⁷ conditions surrounding the state, has left Barotseland a victim of changing times and the modern classification of statehood; still largely predicated on the Westphalian model which emphasises the sanctity of territorial boundaries. It is perhaps in this light that the Barotseland question vis-à-vis the sovereignty of the Zambian state, may be considered a battle for historicism in a modern world where, as Englebert and Katharine (2008) as cited by Sikayile (2014: 37) state that, *“the demand for international recognition of Africa’s peripheral and separatist regions is largely constrained by the limited supply of sovereignty in the international system.”*

The Barotseland secessionists are fighting for statehood in a domestic scenario where Barotseland is a shadow of its independent pre-colonial and semi-autonomous post-colonial self. This is in a situation where the secessionists seek to detach territory from an entity whose statehood is internationally recognised, and by virtue of this, gives definition to Barotseland (now called Western Province) as a constituting component of a fixed territorial space that qualifies it as the (recognized) Republic of Zambia, under Public International Law. It is not difficult for one to draw on the complexity of the situation that Barotseland secessionists find themselves in. As long as the republic of Zambia remains sovereign and insists on this being informant of its territorial integrity, the feasibility of the return to Barotseland semi-autonomy or separate statehood, respectively is not in near sight. The geo-economic, political and socio-cultural impacts of secession threaten the integrity of the Zambian republic. In bargaining for statehood, the Zambian government legally, has a heavier hand by the standards of Public International Law because it is an internationally recognized state, which in this case may be considered as merely seeking to ensure public order and secure its territorial integrity.⁷⁸ Suffice to say, internationally, the Barotseland question though provided for in Public International Law in both

matters of the criteria for statehood and the self-determination of peoples entrenched in the UN Charter, requires its accommodation in the much wider political context that is informed by the interest of the most influential and powerful states in the world (herein, referent to the recommendations made by the Security Council devoid of a veto by any permanent member). Here, it is argued that the surest way, especially for secessionists in the modern international system, intending to become new states, can only be achieved through UN membership which most certainly confers upon a new state: legal personality. This however is caught within a matrix of power politics where, if a state so impliedly recognized by the said powers is of geo-strategic or other interest to them, recognition and subsequent UN-based membership is ‘prevented’. A reference point is the Palestinian-Israeli question.

On the other hand, if the question of statehood like that of Barotseland finds itself nowhere near any significance to the powers that be, it is most likely to be only hampered by the domestic tussles that secessionists must endure with the government of the state it wishes to secede from before it reaches the walls of the UN for state recognition. Such is the complexity of the Barotseland question; that it is not tenable both domestically at the entry level point, and internationally (exit point) because apart from any interest to the international community, the current status of Barotseland does not even meet the 1933 Montevideo criteria of statehood. This is said with the full cognizance of the fact the Barotseland secessionists though considering themselves as meeting the criteria for statehood, in a historical sense vis-à-vis the pre-colonial Barotseland⁷⁹; Barotseland is not independent or autonomous; the Litunga has no effective control over the territory that constitutes Barotseland, neither can the BRE establish external relations⁸⁰ with other states or entities pertaining to the territory of Barotseland, which in actual fact forms what are today called Western, and parts of North-Western, Copperbelt and Southern provinces of Zambia (Refer to map/Figure 1 in the Appendix) and are under the effective control of the government of the Zambian state which is solely responsible for the local/public and international administration of the affairs of ‘Barotseland’ and Zambia as a whole.⁸¹ Furthermore, in considering the criterion of a permanent population, pursuant to its permanence and ethnic uniformity, it poses great difficulty in identifying the inhabitants of ‘Barotseland’ along this delineation because it is also populated by people from other tribal/ethnic groups that

⁷⁷ Vis-à-vis the agreements/concessions between Barotseland and the British Crown, the BSAC and eventually the Barotseland agreement are attendant reasons for the loss of statehood of Barotseland. Ergo, the political and economic conditions here refer to the nature of the agreements which were informed by economic concerns such as mining concessions to the BSAC, and the political issues of protection of Barotseland from foreign forces, as a protectorate of the BSAC, and the eventual signing of the Barotseland Agreement with Northern Rhodesia which created the republic of Zambia.

⁷⁸ Refer to the UN Charter’s emphasis on the sanctity of territorial borders where it is stated that self-determination does not supersede territorial integrity.

⁷⁹ Even the contemporary aspects of their criteria for statehood are based on the pre-colonial or historical structures.

⁸⁰ An entity is not a state unless it has competence, within its own constitutional system, to conduct international relations with other states, as well as the political, technical, and financial capabilities to do so. See Brownlie (1990).

⁸¹ Save for those matters that are customary in nature and are within the Litunga’s jurisdiction.

originate from different provinces in Zambia. These people forming part of the population in 'Barotseland' are considered and consider themselves citizens of the territorial entity called the Republic of Zambia and inhabit 'Barotseland' because of socio-economic matters such as employment, business and marriage. Further to this is the fact that as a Zambian citizen, the freedom of movement is a constitutional right; in this sense, which translates to mean that the Zambian constitution, which is applicable in all ten provinces making up Zambia; of which 'Barotseland' is an integral and indivisible part⁸² affords all Zambian citizens the right to work and live in any part of the territory that is by Public International Law designated and recognized as Zambia. Therefore, in this respect, any citizen of Zambia shall not be denied access to any part or region of the Zambian state premised on the consideration of some regions, and in this case Barotseland, as a separate entity or rather state. Also, considering the other 38 ethnic groups that form Barotseland, there is no evidence suggesting consensus that these ethnic groups are in support of or advocating separate statehood as the example of the Nkoya people presents, where separate statehood was blatantly rejected by a representative of the Nkoya Royal Council. Connected to this is also the fact that there is no evidence of agitations for separate statehood in the other provinces (North-Western, Copperbelt and Southern) that Barotseland encompasses as shown in the map/Figure 1 in the Appendix. As it currently sits, the claims for Barotseland statehood are being made, and mainly by members of the historically dominant Lozi ethnic/tribal group, on a pre-colonial status that ceased to exist with signing of the Barotseland Agreement (1964)⁸³ and the subsequent constitutional amendments made by the Zambian government. Also, the very contentious fact that Barotseland territory, premised on colonial boundaries, goes beyond Zambian borders, and is in conflict with the principle of *uti possidetis*, makes the call for separate statehood very problematic. Suffice to say, a state may not satisfy all the conditions prescribed by the 1933 Montevideo Convention, as the DRC example provided but the Barotseland question remains elusive because ultimately it is part of an internationally recognized state, under Public International Law, called Zambia and is not or may not be viewed by the international community as a separate state or that the Barotseland question is not of

⁸² The Zambian government may argue. Take for example Part I Article 4 (sub-sections 1,3,4 and 5) of the Constitution of Zambia which are stated as follows: 4(1) Zambia is a sovereign Republic under a constitutional form of governance. 4(3) The Republic is a unitary, indivisible, multi ethnic, multi-racial, multi-religious, multicultural and multi-party democratic state. 4(4) The Republic shall not be ceded in whole or in part. 4(5) The Republic may enter into a union or other form of interstate organization; which action shall not be construed as ceding the Republic. Can be found at <http://www.electionszambia.org>

⁸³ To mean, in Public International law that amalgamation (of Northern Rhodesia and Barotseland to form the republic of Zambia) and state succession happened in which case Barotseland ceased to exist as a 'separate' entity.

significant international political interest.

CONFLICT OF INTERESTS

The authors have not declared any conflict of interests.

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APPENDIX



Figure 1. The Territory of Barotseland. This image demonstrates the territory Barotseland encompassed.
Source: <http://unpo.org/downloads/1582.png>

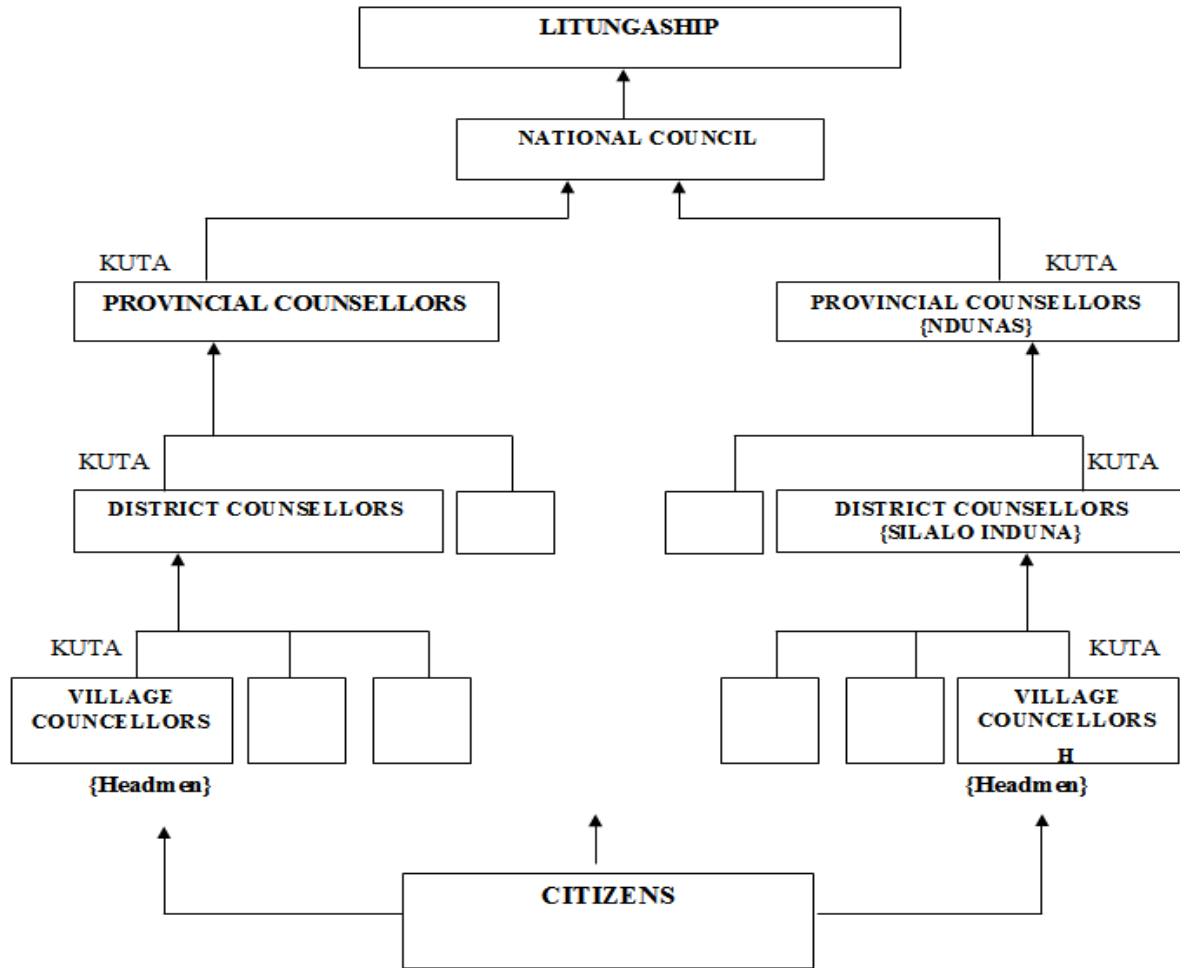


Figure 2. Structure of the Barotseland Government.

Source: This image illustrates the existence of a functional government in Barotseland. This structured illustration reveals the nature of the Barotseland royal establishment as characterised by an organized means of managing state affairs. This further suggests an effective control over the territory so designated as Barotseland. It must be noted that this structure remains in the BRE, but the stark difference is that the Litunga's chieftaincy is as that of every other chief in Zambia and presides over matters of customary law as concerns Barotseland and the Lozi people. The Litunga is given no other special status beyond this to infer that Barotseland is an autonomous self-governing territory.



Figure 3. The Queen Mother of Briatin visit to Barotseland in 1960. His Majesty King Mwanawina III, with the Queen Mother in 1960. This image illustrates what official state visits imply. In the context of this paper and the criteria for the 1933 Montevideo Convention on Statehood, this visit by the Queen Mother exhibits the ability of Barotseland before the Barotseland Agreement to engage in foreign relations.
Source: <http://www.barotseland.info/1960.html>