CRITICAL EXAMINATION OF THE CONCEPT OF *RIGHT* IN RIGHT TO SELF-DETERMINATION UNDER INTERNATIONAL LAW*

Abstract

The topic of this article is: Examination of the Concept of Right in Right to Self-Determination under International Law. The aim of the research is to ascertain the significance of the concept of right as a correlative of duty especially with respect to the international law rule of right to self-determination. In other words, the aim is to determine whether there is always in existence the correlative of duty in every circumstance when the concept of right is mentioned and whether the rule of right to self-determination is one of those circumstances where the concept of right creates the correlative of duty. The methodology employed in the research is doctrinal using primary and secondary sources. Our findings and conclusion is that the concept of right does not always create the correlative of duty. However, with respect to the international law rule of right to self-determination, there is a correlative of duty to the concept of right therein created even though the legal instruments creating the right are not quite clear as to the mechanism for enforcing the duty thereby created. Thus, our recommendation is that a clear and precise procedure for the enforcement of the duty created by the concept of right be adopted by the international community to ensure uniformity and effectiveness in the application and operation of the concept.

Keywords: Concept, International Law, Right, Duty and Self-determination.

1. Introduction

The issue of *right* has no doubt become a topical legal issue in modern jurisprudential analysis. Thus, according to Freeman, Thinking about rights ('rights-talk') is a pervasive concern of modern analytical jurisprudence.[1] A good discussion of the concept of right will involve two major questions namely (i) whether there is existence of right as a legal concept and (ii) what the nature of right is. Whilst there appear to be a general consensus amongst legal minds as to the existence of right, the question as to the nature of right is not quite settled. In the course of years, the controversy as to the nature of rights has crystallized into two competing theories namely (i) the Will/Choice Theory and (ii) The Interest/Benefit Theory. However, before going into these theories, we must first of all look at the meaning of right as a prelude to understanding the nature of right.

2. The Concept of Right

According to the Oxford Advanced Learner's English Dictionary[2], the term right as a noun, among other things, means a moral or legal claim to have or get something or to behave in a particular way. For the Merriam Webster's Collegiate Dictionary[3], right means something to which one has a just claim and the power or privilege to which one is justly entitled. In quoting Salmond and Holland respectively, the Osborn's Concise Law Dictionary[4], states that right means an interest recognized and protected by law, respect for which is a duty and disregard of which is wrong, and a capacity residing in one man of controlling, with the assent and assistance of the State, the actions of others.On its part, the Black's Law Dictionary[5] gave several definitions of the term right among which the relevant ones for the purpose of our discussion here are as follows: (a) something that is due to a person by just claim, legal guarantee or moral principle (b) A power, privilege, or immunity secured to a person by law (c) A legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong. In the opinion of Nwebo, the word right can be broadly and indiscriminately used to include privilege, a power or an immunity, rather than a right in the strictest sense.[6] For Omeregbe, A right is a justifiable claim to anything, any privilege or immunity to which one is entitled.[7] Finally, according to the erudite Honourable Justice Chukwudifu Akunne Oputa, JSC (as he then was) of the blessed memory,

> a right in its most general sense is either the liberty (protected by law) of acting or abstaining from acting in a certain manner, or the power (enforced by law) of compelling a specific person

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[1] MDA Freeman, *Lloyd'sIntroduction to Jurisprudence, (Seventh Edition) (London: Sweet & Maxwel, 2001), p.353.*

[2] A S Hornsby, ed., *Oxford Advanced Learner's Dictionary of Current English, Eighth Edition* (Oxford: Oxford University Press, 2015), p. 1272.

[3] Frederick C Mish, and others, *Merriam Webster's Collegiate Dictionary, Tenth Edition*, (Massachusetts: Merriam Webster Incorporated, 1993) p. 1008.

[4] Leslie Rutherford and Sheila Bone, *Osborn's Concise Law Dictionary, Eight Edition* (London: Sweet & Maxwell, 1993) p. 293.

[5] GA Bryan, *Black's Law Dictionary, Ninth Edition* (Minnesota: West Publishing Co. Ltd, 2009) p. 1436.

[6] O Nwebo, *Law & Social Justice in a Developing Society: A Critical Approach*, (Owerri: International Universities Press Ltd, 1995) at .142.

[7] J I Omeregbe, *An Introduction to Philosophical Jurisprudence*, (Lagos: Joja Press Ltd, 1997) at p.95

> to do or abstain from doing a particular thing. A legal right is thus the capacity residing in one man of controlling with the assent and the assistance of the State, the action of others. It follows then that every right involves a person invested with the right, or the person entitled; a person or persons on whom that right imposes a correlative duty or obligation; an act of forbearance which is the subject matter of the rights and in some cases an object that is, a person or thing to which the right has reference, as in the case of ownership. A right, therefore, is in general, a well-founded claim; and when a given claim is recognized by the civil law, it becomes an acknowledged claim or legal right enforceable by the power of the State.[8]

The first common feature in all the above definitions which is germane to our discussion here is the fact that right is a creation of legal rule (either by natural law or positive law) by reason of which a duty to respect the right so created becomes established and enforced. The second corollary feature inherent in the definition of right is the fact that there are two major types of rights namely: legal/civil rights created by positive laws and natural rights created by natural laws. Thus, according to Omeregbe, a right is always granted by a law. Hence every right can be traced to a law that grants it. Now, as there are basically two kinds of law namely, the natural law and positive laws, so are there basically two kinds of rights namely natural rights and legal rights (or civil rights).[9]

While legal rights (otherwise called civil rights) on the one hand are those rights created and recognised by the laws made by the governments of different States and which thereby are conferred on the individual by rules of positive law which are enforceable through society's approved institutions of coercion such as the court, the police etc.[10], natural rights on the other hand are said to be a right conceived as part of natural law and that is therefore thought to exist independently of rights created by the government of any society by way of positive laws. Thus, natural rights are regarded as inalienable and inherent in man by virtue of his being born a human being. They are, therefore, otherwise known as human rights. In the words of Franklin Gamwell, The term 'human rights' is a more recent formulation of the older concept of natural rights, and in the course of a long conversation, the latter concept has generally been inseparable from the idea of natural law.[11] In line with the above, Elegido has equally asserted that:

> To each of the strict negative precepts of natural law, like those prohibiting the killing of the innocent or lying in a context where truth is reasonably expected, corresponds a strict universal right like not to be killed except in war, legitimate defence or as a just penalty; or to be deceived or defrauded; etc. These universal rights belong to every human being irrespective of age, sex, race, endowments etc. and also irrespective of whether or not they are recognized in a given society. These universal rights are called natural rights or, in an expression more commonly used nowadays, fundamental human rights.[12]

Generally speaking, legal rights carry with them specified correlative duties imposed on some other individual as a product of the positive law creating them as against natural rights otherwise known as human rights created by natural laws which may not carry with them specific correlative duty though are antecedent to the positive laws. Thus, in the case of *Chief (Mrs.) Olufunmilayo Ransome-Kuti & Others v The Attorney-General of the Federation,*[13] Honourable Justice Kayode Eso, JSC, (of the blessed memory), has explained that, It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence…

As we did mention above, the controversy surrounding the nature of rights has given rise to two competing theories of right namely: the will/choice theory and the interest/benefit theory. While the *will theory* holds that the purpose of the law is to grant the widest possible means of self-expression to the individual, the maximum degree of individual self-assertion,[14] and that Individual discretion is the single most distinctive feature of the concept of 'rights',[15] the *interest/benefit theory* holds that the purpose of rights is not to protect individual assertion but certain interests.[16] Thus, while the proponents of the will/choice theory claims that this theory is closely related to ideas of sovereignty, so that the only way of reconciling conflicting wills is by postulating a superior will which can

[8] CA Oputa, *Human Rights in the Political and Legal Culture of Nigeria*, (Lagos: Nigerian Law Publishers Ltd, 1989) at 39 cited in Nwebo, *op. cit*., at p.143.
[9] J I Omeregbe, *An Introduction to Philosophical Jurisprudence*, (Lagos: Joja Press Ltd, 1997), at p.95.
[10] F Adaramola, Jurisprudence (Fourth Edition) (Durban: LexisNexis Butterworths, 2008), p.143.
[11] F I Gamwell, The Purpose of Human Rights, *Process Studies*, pp.322-346, Vol.29, Number 2, Fall-Winter, 2000, at p.1.
[12] J M Elegido, *Jurisprudence* (Ibadan: Spectrum Books Ltd, 1994), p.21.
[13]*(1985) 2 NWLR (Pt.6) 211 at 230*.
[14] M D A Freeman, ed., *Lloyd's Introduction to Jurisprudence*, 7th Edition, (London: Sweet & Maxwell Ltd, 2001), at p.353.
[15] Flathman, Cited in Freeman, ed., *Lloyd's Introduction to Jurisprudence*, ibid, at p. 354.
[16]*Ibid.* at p.355.

overcome all opposition,[17] the proponents of the interest/benefit theory maintains that rights are said to be benefits secured for persons by rules regulating relationships.

However, notwithstanding whatever may be the acceptable theory between the two competing theories of right, James Nickel and David Reidy[18] have equally noted that there are four elements which every right must possess namely: (i) the *rightholder*, (ii) the *object* of the right, (iii) the *addressee* of the right and (iv) the normative *content* of the right. While the *rightholder* refers to the party or parties who have the right, the *object* of the right refers to what the right is a right to. On their part, the *addressee* of the right refers to the party or parties who are directed to do something about making available to the *rightholder* the *object* of the right and finally, the *normative content* of the right specifies the normative position of the *addressees* and *rightholder* in relation to the *object*. In other words, the normative content of a right simply refers to the intrinsic worth of the particular right in question which will either make it obligatory for the *addressee* to comply with its dictates or rather allows the *rightholder* to waive or to enforce it at his discretion.

Now, the major question at this juncture borders on the determination of the normative content of the concept of right in the international rule of right to self-determination. To answer this question, we will take a look at the Hohfeldian theory of rights. This theory, according to W. N. Hohfeld in his *Jural Relationships*, holds that there are four different types of rights namely (i) right as a legal claim or right *stricto sensu*, (ii) liberty/privilege, (iii) power, and (iv) immunity.[19] With respect to right as a legal claim or right s*tricto sensu,* Hohfeld postulated that this exists where such right is legally protected from interference by another or requiring another to provide assistance in the realization of the right. In that case, the person required not to interfere with the right or to provide assistance in respect of the right is under a correlative duty in respect of the right. For such right-claim, there must be a definite person who has the correlative duty to realize it.

For *liberty/privilege***,** Hohfeld maintained that it is an absence of a duty to abstain from an action. In other words, liberty or privilege exists where one is free to do or refrain from doing something. The operating word here is may i.e. what one may legally do or refrain from doing based on his/her choice. The correlative here is a no-right concerning the activity to which the liberty relates. As to the meaning of right as *power***,** he explained that this exists where one has the ability to change his legal relationship with another e.g. by making a contract or a Will. The correlative here is liability of the person with whom he exercised the power. Finally, for *immunity***,** Hohfeld argued that this simply expresses an absence of power i.e. where one lacks the power to produce a change in another's legal position with respect to any entitlements covered by the immunity. And the correlative here is disability.

From all the above, the question that readily comes to mind is: to which of the above Hohfeldian *jural postulates* does self-determination belong to? In other words, does the right in right to self-determination establish a claimable right or right *stricto sensu* which thereby create the correlative of duty or is it merely a matter of liberty/privilege, power or immunity? This question will then take us to the discussion of right as a correlative of duty

3. Right As A Correlative of Duty

The term, duty literarily means the obligation that one owes to another arising from one's position or relationship with the other person, group of persons, organization or authority. As a legal term, however, especially in the context of our present discussion, duty is that which arises from the existence of a right. It follows, therefore, that we cannot go far in our understanding of the concept of right without discussing the corollary issue of duty. This is simply because, right and duty are like the two sides of a coin. Thus, it is commonly said that right is a correlative of duty. Elegido holds that it is important to analyse with some care the idea of duty. First, because it is an especially important concept in order to understand the law. Law regulates and guides human behaviour by binding people to act in certain ways through the creation of legal duties. Any misconception of what it is to be under a duty is certain to result in a misunderstanding of how the law operates…It is also essential to clarify one's ideas about duties in order to understand what a right is. It is impossible to understand what i a right is without making reference to the idea of duty, but not *vice versa*. In other words, the concept of duty is the more basic of the two and until it is clarified it is not possible to have a proper understanding of rights.[20] He then identified different types of duties[21] such as moral, legal, social and religious duties. He rejected many theories of duty[22] such as the *sanction theories*, the *imperative theories*, *theories of duty based on feelings* as well as the *acceptance*

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[17]*Ibid.*

[18] Nickel, James and Reidy, David A., Philosophical Foundation of Human Rights, (July 11, 2009). Available at SSRN: https://ssrn.com/abstract=1432868 accessed last on 15th December, 2022

[19] M D A Freeman, ed., *Lloyd'sIntroduction to Jurisprudence*, *op. cit.*, at pp. 355-357.

[20] J M Elegido, *Jurisprudence* (Ibadan: Spectrum Books Ltd, 1994), 143.

[21] *Ibid.*

[22] *Ibid. at pp.144-150.*

theories of duty as unsatisfactory and finally postulated the theory of duty in terms of reasons for action as the much more attractive and convincing account of duty. In his words, it is possible to offer a much more attractive and convincing account of the concept of duty in terms of 'reasons for action'[23]. After his explanation of this theory through the concept of moral and legal duties, he then arrived at the conclusion that:

> We can summarise this account of the concept of duty by saying that whenever we state that a certain person has a duty to do something we will not be referring primarily to the existence of sanctions, of commands, of certain feelings or of a general agreement about a certain standard of conduct. What we will be stating will be simply that the person under the duty has good reasons to act as the duty prescribes and to disregard contrary considerations.[24]

From the above, it can be said that duty is a pre-requisite for the operation of law in any society, the international society not an exception, while sanction or coercion is not a pre-requisite for the existence of duty. This, therefore, goes to reinforce the position of some learned scholars, such as Oppenheim and Shaw, to the effect that international law does not need to have the same characteristics often attributed to domestic law in order to qualify to be called law such as the existence of coercion or sanction.

Therefore, as stated above, while the idea of duty is necessary for the understanding of right, it does not necessarily follow that to understand duty one must refer to the existence of sanction. In other words, while the existence of right creates a duty, the existence of duty does not always entail the existence of sanction as there could be duty created by mutual agreement as is often obtained in international relationships. In relating right as a correlative of duty, the American scholar, Gray, had long ago stated that:

> Right is a correlative of duty; where there is no duty there can be no right. But the converse is not necessarily true. There may be duties without rights. In order for a duty to create a right, it must be a duty to act or forbear. Thus, among those duties which have rights corresponding to them do not come the duties if such there be which call for an inward state of mind, as distinguished from external acts or forbearance. It is only to acts and forbearances that others have a right.[25]

By way of illustration, Chipman explained that It may be our duty to love our neighbour but he has no right to our love.[26] Again, according to Allen Farnsworth: 'In Hohfeldian terminology, A is said to have a right that B shall do an act when if B does not do the act, A can initiate legal proceedings that will result in coercing B. In such a situation, B is said to have a duty to do the act. Right and duty are therefore correlative; since in this sense there can never be a duty without a right'.[27] Furthermore, in the opinion of Nwebo,

> In ordinary legal discourse, when we talk of right we see it as a correlative of duty. Accordingly, when a right is invaded, a duty is violated. For example, if A has a right to the use and occupation of land, B is under a duty to keep off the said land otherwise he would be committing trespass if he violates that duty which A may have a claim against B. Thus, a right is one's affirmative claim against another.[28]

A typical illustration of right as a correlative of duty in international relationships can be seen in Article 3 of the Charter of the Organisation of American States (OAS) which provides in its paragraph (e) thus: Every State has the *right* to choose, without interference, its political, economic, and social system and to organize itself in the way best suited to it, and has the *duty* to abstain from intervening in the affairs of another State. However, according to Joseph Omeregbe,

> The concepts of right, duty, justice and law are all linked together, with law being at the centre. In the first place, rights and duties are correlative terms, since one implies the other. They both derive from law which imposes duties and at the same time grants rights. For example, if the law grants me the right to do anything, it at the same time imposes on you the obligation to respect that right and to do nothing to prevent me from exercising it. Thus, everybody has a duty to respect the rights of other people. There are no rights without duties, and no duties without rights.[29]

In other words, unlike the opinion of other scholars, Omeregbe is strongly of the position that right and duty are like Siamese twins which cannot be separated. This position is akin to our earlier submission that right and duty

[23] *Ibid151.*
[24] *Ibid151-152.*
[25] JC Gray, *The Nature and Sources of the Law* 8-9 (2d ed.1921), cited in *Black's Law Dictionary*, 9th edition, at p.1436.
[26] *Ibid.*
[27] E Allen Farnsworth, Contracts 3.4, n.3 (3d ed., 1999), at 114, quoted in *Black's Law Dictionary, supra*, at p.1436.
[28] O Nwebo, *Law & Social Justice in a Developing Society: A Critical Approach*, (Owerri: International Universities Press Ltd, 1995) p.142.
[29] J I Omeregbe, *An Introduction to Philosophical Jurisprudence*, (Lagos: Joja Press Ltd, 1997), at p.95.

are like two sides of the same coin- none can exist without the other. In other words, just as right cannot exist without duty, in the same way, duty cannot exist without right. This in fact makes a better sense as a duty without a corresponding right will have no meaningful significance in practical application.

4. Does the Right to Self-Determination Create a Correlative of Duty?

One common feature of the foregoing discussions on the relationship between right and duty is that once there is a right, there is bound to be a duty. But is this assertion always manifest in all circumstances? For instance, does the right to self-determination always create duty on the part of States to recognize, respect and enforce such right or is the right created by self-determination like that of privilege/liberty, power or immunity in the Hohfeldian postulation discussed above? To answer this question, we must have recourse to the legal instruments on self-determination To start with, it is no longer in doubt that self-determination is now recognized as a form of international human right. Although some authors see human rights from the perspectives of claims which have now found expressions in objective positive law either at national or international levels, it must be noted that a cursory look at major international human rights instruments will readily reveal the recognition and acknowledgement by the nations of the world of the fact that human rights are inalienable rights of man which are not merely conferred on him by any positive or man-made law but rather by natural law by virtue of his being born a human being. In other words, human right does not belong to anybody but belongs to everybody. That being the case, it can neither be given nor be taken away. It is rather a natural gift inherent in every human being. For instance, in adopting and proclaiming the *Universal Declaration of Human Rights*, the United Nations General Assembly recognized the *inherent dignity* and of the equal and *inalienable rights of all members of the human society* as the foundation of freedom, justice and peace in the world. Earlier on, the General Assembly had in the UN Charter reaffirmed their faith in *fundamental human rights*, in the dignity and worth of the human person and in the equal rights of men and women…[30]

With respect to self-determination, the United Nations has long ago determined that it is a form of human right which can be enforced like every other human right. Thus, in its *Resolution 637* adopted on the 16th day of December, 1952 and known as *The Right of Peoples and Nations to Self-determination,* the *United Nations General Assembly* declared in the opening paragraph of the preamble to the Resolution that [t]he right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights.

Indeed, the two major international covenants on human rights namely the International Covenant on Civil and Political Rights (ICCPR), 1966 as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, clearly provided in their common article 1 that:

> 1. All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
> 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
> 3. The States Parties to the present Covenant, including those having responsibility for the administration of non-self-governing and Trust Territories shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

In its General Comment No. 12 on Article 1 of the International Covenant on Civil and Political Rights, adopted in its Twenty-first Session on 13th March, 1984, the UN Human Rights Committee declared as follows:

> In accordance with the purposes and principles of the Charter of the United Nations, article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants.

Furthermore, in the year 1972, following the adoption and ratification of the International Human Rights Covenants by many Member States of the United Nations, the International Commission of Jurists had cause to observe that the principle of the right of a people to self-determination seems self-evident.[31] Moreover, at the

[30] Preamble to the United Nations Charter of 1945.

[31] The Events in East Pakistan: A Legal Study by the Secretariat of the International Commission of Jurists (Geneva, 1972) at p.65.

African regional level, Articles 19 and 20 the African Charter of Human and Peoples' Rights, 1981, also recognizes self-determination as a form of human right.

It is worthy to note that most Member States of the United Nations and African Union have adopted and ratified the International Human Rights Covenants and the African Charter respectively. That being the case, the Covenants and the Charter now have binding effects on all those States who ratified them including Nigeria. Consequently, in view of the above-mentioned legal instruments, it can be readily argued that self-determination is no longer a mere human rights principle but rather a fundamental right which forms the prerequisite for the enjoyment of all the fundamental human rights thereby creating a claimable right with duty as a correlative of the right so created. Therefore, it is no longer a surprise why many learned authors have described self-determination as a critical human right. Thus, according to Falkowski, Self-determination is a critical human right because it is widely regarded as an absolute prerequisite for the enjoyment of all individual human rights, be they civil or political or economic, social and cultural rights…[32] And in agreement with the above position of Falkowski, James Anaya has declared that, The concept of self-determination arises within international law's expanding lexicon of human rights, rooted in the idea that all human beings should be equally free to translate their impulses and desires into action.[33] In the same vein, Okoronkwo has also submitted that, Customarily, international law has acknowledged self-determination as an inalienable fundamental human right and that it is now …characterized as the 'condition and the cornerstone of exercising all the other rights and enjoying all other human rights'.[34]

Additionally, in his explanation of self-determination not only as a right inhering to human beings as *human beings* rather than sovereign entities but as well as having universal application like every other human rights, James Anaya has also opined that:

> Extending from core values of human freedom and equality, expressly associated with peoples instead of states, and affirmed in a number of international human rights instruments, the international norm of self-determination is properly understood to benefit human beings as *human beings* and not sovereign entities as such. Like all human rights norms, moreover, self-determination is presumptively universal in scope and thus must be assumed to benefit all segments of humanity.[35]

In agreement with the above reasoning that self-determination is universal in scope, Burns H. Weston has asserted that, If a right is determined to be a human right it is quintessentially general or universal in character, in some sense equally possessed by all human beings everywhere, including in certain instances even the unborn.[36] On his part, Matthew Saul in tracing the emergence of self-determination as human right, has equally submitted that it was not, until 1966, with the two UN human rights covenants, that self-determination was articulated as a 'human right' in a UN instrument.[37] Thus, in the opinion of Saul, it was in 1966 that self-determination gained the status of a human right. But, like Nickel and Reidy who posited that human rights are not generally absolute[38], Saul also believed that self-determination, like every other human rights, is not an absolute right when he argued that, …as a non-absolute human right, the exercise of self-determination must be subject to limitations.[39] He then opined that the solutions that may arise from this balancing with other human rights will not necessarily be secession for a group within a state claiming a right to self-determination. Rather, in light of the need to accommodate the individual rights of inhabitants within a territory, other options, such as the creation of a federation, might be deemed more appropriate.[40] He reasoned that in the light of such balancing, …the articulation of self-determination as a human right can be seen as a part of the explanation for the development of the concept of internal self-determination as an alternative to external self-determination.[41]

From all that we have discussed above, therefore, self-determination is a form of human rights or fundamental human rights (as employed by the UN Charter and the African Human Rights Charter) which inheres in every

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[32]J Falkowski, SECESSIONARY SELF-DETERMINATION: A JEFFERSONIAN PERSPECTIVE, *Boston University International Law Journal, Vol.9 (1991) 209*, at pp. 210-211.

[33]S J Anaya, A Contemporary Definition of the International Norm of Self-Determination, *Transnational Law & Contemporary Problems, Vol.3, Spring, 1993*, 131, at p.134.

[34]P I Okoronkwo, Self-Determination and the Legality of Biafra's Secession under International Law, *25 Loy. L.A. Int'l & Comp. L. Rev.63 (2002)*, at p.75. Available at: http://digitalcommons.lmu.edu/ilr/vol25/iss1/3 and accessed last on 3rd February, 2023.

[35]S J Anaya, A Contemporary Definition of the International Norm of Self-Determination, *op. cit.*, at pp.135-136.

[36]R P Claude and B H Weston, eds. *Human Rights in the World Community: Issues and Action*, 2nd Ed. (1992) 12 at 17.

[37] M Saul, The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right? *op. cit.,* at p. 626.

[38]Nickel and Reidy, *op. cit.*

[39]*Ibid., at p. 627.*

[40] *Ibid.*

[41]*Ibid.*

man and so distinguishes him from the lower animals. That being the case, such rights can and is capable of being enforced against another person and so makes it a claimable right with the correlative of duty. In other words, our humble submission is that, to the extent that self-determination is now a part and parcel of human rights norm protected by international legal instruments, it can be readily argued that self-determination falls under the Hohfeldian first *jural postulate* as a claimable right. This is in line with the international legal instruments which have made ample provisions on self-determination as a claimable right as we have shown above.

Finally, although generally speaking, self-determination has both group and individual aspects, for the purpose of this study, the term refers to the right of a people to freely decide their political, economic, social or cultural future or to generally decide their fate without any external interference. However, the only remaining question is as to the enforcement of such right. In this respect, experience shows that international legal instruments have been vague on the enforcement of right to self-determination. Indeed, a review of the legal instruments as well as the interpretation of the provisions by the international judicial tribunals shows that there has not been any precise and concrete pronouncement on the methodology for the enforcement of the right to self-determination. This has remained the greatest challenge facing the development of the concept under the contemporary international law. That being the case, what remains to be done is for the international community to have a second serious look on the concept with a view to finding a lasting solution to this lingering challenge.

5. Conclusion

In summary, therefore, it is our humble submission that self-determination is now globally recognized as a type of human right under international law. Although the concept of state sovereignty can sometimes be a threat to the exercise of the right to self-determination, it is still a fact that the concept of popular sovereignty is an expression of human right which self-determination represents. Thus, according to Araujo,

> Even though exercises of sovereignty can be the source of violation of fundamental human rights, they can also be equivalent to expressions of fundamental human rights. Therefore, in some instances sovereignty and its exercise can be crucial to the protection of human rights because it can be an expression of how individuals and the communities that they form put into practice those elements of self-determination that are constitutive of human rights.[42]

From all our discussions above, it is our firm conclusion that the concept of right in the norm of self-determination implies that there is a duty attaching to that right which duty needs to be observed by state actors if the essence of that right is to be realized just as is the case with the rest of the other forms of human rights. However, it was observed that, although self-determination is now recognized as a type of human right under international law which creates a correlative duty, what remains a major challenge is the means of enforcing that duty created by the right. That being the case, it is recommended that the international community must as a matter of urgency devise a clear, precise and specific means of enforcement of the right to ensure its effective application and operation.

[42]R Araujo, Sovereignty, Human Rights and Self-Determination: The Meaning of International Law, *Fordham International Law Journal*, Vol.24, Issue 5, 2001, 1477-1532, , at p.1484.