

THE BOUGAINVILLE SECESSION CRISIS IN PAPUA NEW GUINEA

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BACKGROUND

The ongoing Bougainville secession crisis is perhaps the most convulsive event that Papua New Guinea (PNG) has ever encountered since its independence in September 1975. Dissidents in Bougainville have demanded secession from the rest of the country, constituted their own armed forces and launched a guerrilla warfare against the National Government, which has been attempting to difuse the separatist sentiments.

Bougainville is one of the resource-rich provinces of PNG with the world's biggest copper-mines. The Bougainville Copper Limited (BCL) commissioned to exploit the deposits under an agreement in 1967, followed by a renegotiated agreement in 1974 with provisions for reviews after seven years to cope with upgraded claims for compensation and development. Mineside landowners were unhappy about the amount of compensation and the pace of development. Ona, the leader of the disgruntled landowners, tapped this deeply rooted economic grievances and announced in April 1988 that they would revolt unless the Government met their demands, *inter alia*, for 11.5 billion dollars compensation for environmental and social damages, the closure of the mines on their ancestral land and a referendum for the Bougainvillians to decide whether to secede from PNG. These demands went unheeded resulting in the closer of the mines on 15 May 1989 due to substantial damages to the mines by the rebel landowners. The Government declared a state of emergency in Bougainville on 26 June 1989 followed by police and troops reinforcements. The Bougainville Revolutionary Army (BRA) was organised. Difficult terrain and bushy hills were used as sanctuary to train, rest and organise the BRA to fight government troops in Bougainville, culminating into a full-scale civil war.

However, the Government withdrew all of its police and troops from Bougainville as a precondition of a cease-fire agreement in March 1990. Mutual mistrust, insecurity and no confidence reuslted in a deadlock in holding bilateral peace talks which eventually commenced in July 1990 on a navyship of New Zealand. In these talks, though the parties agreed to restore essential services of the National Government in the island, a peaceful resolution of the crisis is yet to be worked out. Since the complete withdrawal of police and troops, the entire province has been under the absolute control of the BRA, who has been running a parallel administration, if not a parallel government, in Bougainville. In respose to an economic blockade by the Government around the province, the BRA proclaimed the island a Republic with a new Interim Government on 17 May 1990. The National Government rejected the Unilateral Declaration of Independence (UDI) of Bougainville.

THE SECESSION OF BOUGAINVILLE IN INTERNATIONAL LAW

Claims to secession in independent states are growing alarmingly. Separation on the basis of incompatibility as a means of restoring security and peace has been pursued as an effective remedy to situations where two groups of people have shown there is little or no likelihood of their ever living together in harmony. Separation appears to be the ultimate remedy to restore security of a subservient group which confronts with an

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irretrievable discrepancy between itself and the dominant group.¹ It has been argued that secession does not 'automatically justify buttressing the existing order, for it may indicate a genuine associational desire and help transform an unstable situation into a more equitable new order'.² The post World War I peace settlement prescribed secession as a means of realising the right to self-determination and 'it is nonsense to concede the right to "all peoples" if secession is excluded'.³ Secession from an existing state either to constitute an independent state or to join another existing state is recognised as one of the modes of exercising self-determination in the 1970 UN Declaration on Friendly Relations.⁴ The new era of self-determination in post-colonial situation is exemplified by the independence of Bangladesh in 1971 from the Federation of Pakistan. Widespread international support for Bangladesh is indicative of the world community's willingness to recognise self-determination a continuing remedy ranging from internal freedom and equal rights of peoples to secession of groups as the ultimate remedy in extreme cases. This shift in the international legal status of secession and the influence of the Bangladesh precedent are easily discernible in the UN Secretary-General's statement in 1971.⁵

Secession is a form of self-determination, an international legal right. It may therefore be exercised within the existing legal system. Recognising the legitimacy of secession as a consequential right, Paragraph 7 of the Principle V of the 1970 UN Declaration on Friendly Relations circumscribes its scope by conditions and circumstances. It may be permissible as a last resort only in situations where such a choice becomes unavoidable due to practical impossibility of other means of realising self-determination. The first part of the Paragraph protects the inviolability of territorial integrity of a state - a protection that has not been extended to all states. Only states 'conducting themselves in compliance with the principle of equal rights and self-determination of peoples' are entitled to this protection. The final part explains what it means by the "compliance" clause in the second part. To be complied with the principle of equal rights and self-determination of peoples, a state must possess 'a government representing the whole people belonging to the territory without distinction as to race, creed or colour'.⁶

In order to insulate the territorial integrity under this Paragraph, the government of a state must derive its legitimacy from the will of the people. Equal rights and self-determination of its peoples cannot be construed to sanction any action that impairs the territorial integrity of that state. Peoples within that state is deemed to have been enjoying self-determination and as such there would be no further exercise of the right. The people is debarred from any attempt aimed at the dismemberment of territorial integrity and political unity of the state to which they belong. Implicit in this protection

1. See T. Gurr, *Why Men Rebel* (Princeton U.Press, 1970), 22-59.
2. For an excellent analysis of rationales of secession, see 'The Logic of Secession' (1980) 89 *Yale L.J.* 820.
3. See R. Emerson, 'Self-Determination' (1971) 65 *Am.J.I.L.* 464; also C. Eagleton, 'Excesses of Self-Determination' (1952-53) 31 *For.Aff.* 593.
4. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the UN, GA Res. 2625 (XXV) of 1970, Principle V: The Principle of Equal Rights and Self-Determination of Peoples, for the text, see (1970) 9 *Int'l. Leg. Mat.* 1296.
5. See (1970) 7(2) *UN Monthly Chronicle* 36,39 for a statement after the Biafra crisis and the 1971 Annual Report to the GA, (1971) 26 GAOR sup.(no.1A) 1, p.18 for a statement after the Bangladesh crisis.
6. Quoted from the source cited in above note 4.

is the corollary that if a state violates its duty owed to its people, that people may not be prevented from resorting to any means of realising their equal rights and self-determination even if such action infringes the territorial integrity of that state. The validity of such an action seems to flow from non-compliance with the principle of equal rights and self-determination of peoples by the state concerned. The justified end of the people purports to act as a mitigating factor in turning the prohibited means into a permissible one. The formulation tends to pose threats to the territorial integrity of a state having scanty regard for the aggregate wishes of its peoples and their rights and to the people who wish to contravene the political unity a state without having adequate reasons for so doing. Hence, the right of people in an independent state to secession is not a natural or inherent, but a consequential, right. It becomes permissible only following the denial of equal rights and self-determination of peoples by the state concerned. In other words, respect for equal rights and self-determination of peoples by state precludes the right of peoples to secession.

Bougainville, being an integral part of PNG under the colonial administration, attained self-government in December 1973. All Bougainvillean members of the then Constituent Assembly were included in the 1972 Somare coalition self-government which administered PNG until independence.⁷ Bougainville proclaimed independence on 1 September 1975 though, the promise of political and fiscal autonomy by the National Government captured the imagination of the Bougainvilleans to remain within PNG. The Bougainville Agreement of August 1976 conceded to their aspirations by the creation of Bougainville Province with its provincial government.⁸ Bougainville thus gained independence along with PNG through the exercise of self-determination.

The PNG Constitution envisages a quasi-federal system of government with provisions for power decentralisation. It establishes 19 provinces and their governments enjoying autonomy in all matters except defence, foreign affairs and currency. Bougainville is represented on the National Government and Parliament through its elected representatives. Its provincial government is composed of the elected representatives of the Bougainvilleans who also enjoy the benefits of a local government council consists of community leaders. Bougainville has been governed by representative governments both at the national and provincial levels ever since the independence. The legitimacy of these governments is based on the will of the people expressed in free and periodic elections of all segments of the population within PNG.

In view of the constitutional and governmental structures of PNG, it is difficult to establish that the National Governments lack popular base and representative character and is as such in violation of equal rights and self-determination of its peoples. Instead, a strong case may be made out for saying that PNG has persistently been possessing democratic governments representing all sections of its population without any distinction whatsoever. And it is conducting itself 'in accordance with the principle of equal rights and self-determination of peoples'. PNG is as such entitled to the protection of its territorial integrity under Paragraph 7. Since it is possible for the Bougainvilleans to realise their equal rights and self-determination in a constitutional manner within PNG, no further exercise of self-determination by way of secession may be permissible under Paragraph 7. The UDI of Bougainville which undermines the territorial integrity of PNG is arduous to subsume appropriately under, but rather appears to be a violation of, Paragraph 7.

7. For a historical evolution of the political status of Bougainville, see R. West, *River of Tears The Rise of the Rio Tinto-Zinc Mining Corporation* (London: Earth Island Ltd. 1972), ch.4; *Sunday Times Magazine*, London, 10 June 1973, pp. 32,41-52; A. Mamak and R. Bedford, *Bougainville Nationalism* (NZ: Christchurch: Special publication no.1, 1974).

8. See J. Griffin, 'Bougainvilleans: A People Apart', *Pacific Islands Monthly*, Aug. 1989, pp. 26-27; *The Times of PNG*, 24 May 1990, p.4.

EFFECTS OF SECESSION OF BOUGAINVILLE ON REST OF PNG

The effect of secession, in particular the economic and strategic significance of the seceding part, on the parent state has assumed and will continue to assume paramount importance in weighing the legitimacy of a secession. Secession exposing the latter to a vulnerable position or to the aggression of a hostile neighbour is unlikely to draw sympathy and support from the world community. The viability of the remainder must be taken into account and a secession that places too grievous an economic burden on the remaining area may not be permissible. It has strongly been asserted that 'the remaining state cannot be deprived of its economic base' in case of secession.⁹ The fear that their separation would inflict disastrous impacts on the remainder of the parent states was one of the factors that militated against the secession claims of Katanga from the Republic of Congo and of Biafra from the Federation of Nigeria, in 1960s.¹⁰ In contrast, such ramifications were not surfaced during the secession of Bangladesh in 1971 presumably because of its subordinate position in the wealth and political process of Pakistan.¹¹

The enormous concentration of wealth in Bougainville has obvious politico-economic implications. There was a great deal of concern even at the time of independence that the very economic survival of the new state would be at risk without Bougainville. This explains why the National Government, which has been relying heavily on the Bougainville mines to support its economy, quickly granted the island provincial status in 1976. Over the years since independence, there has been an established flow of goods and services between Bougainville and other parts of PNG which has made them interdependent in the economic sector. Since 1972, the Bougainville mine has been providing 17% of the national revenues i.e. over a million US dollar a day for the national treasury, and 45% of the national exports. Two-thirds of the 2950 national workers were from the rest of PNG who are now unemployed.¹²

Given the nature and features of the PNG economy, it would extremely be difficult to demonstrate that the separation of Bougainville would not produce any adverse consequences on the remainder of PNG. The national economy has already received a serious set back as a result of the closure of Bougainville mines. The economy is now largely dependent on additional borrowing, loans and grants from various donor countries and financial institutions.¹³ Further, secession by Bougainville is likely to create an unhealthy precedent for other regions to seek secession in an attempt to resolve their economic frustrations. The prevailing political climate seems to contain symptoms of

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9. See D.W. Bowett, 'Self-Determination and Political Rights in the Developing Countries' (1966) 60 *Am.S.I.L. Procd.* 131; E. Suzuki, 'Self-Determination and World Public Order: Community Response to Territorial Separation' (1975-76) 16 *Virginia J.I.L.* 824-26.
 10. See L.C. Buchheit, *Secession: The Legitimacy of Self-Determination* (London: Yale U.Press, 1978), 148; C.R. Nixon, 'Self-Determination: The Nigeria/Biafra Case' (1971-72) 24 *World Pol.* 490.
 11. See M.R. Islam, 'Secessionist Self-Determination: Some Lessons From Katanga, Biafra and Bangladesh' (1985) 22 *J. Peace Research*, 214.
 12. See *Pacific Islands Monthly*, Nov.1989, p.14; *Islands Business*, Aug. 1989, p.29; *Time*, Aust. 22 Jan.1990, p.24.
 13. For additional Australian aid and the Consultative Group's loan to PNG, see *Post Courier*, PNG, 9 and 17 May 1990, p.3.

being further beset by similar claims should Bougainville succeed.¹⁴ These economic and political concerns for the future of PNG appear to be influential factors which are likely to challenge the wisdom and reasonableness of the Bougainville secession claim.

DEGREE OF DEPRIVATION OF HUMAN RIGHTS IN BOUGAINVILLE

Concern for present and future security appears to be the main aim of the Bougainvilleans' bid for secession. The UDI overtly reflects a number of such convictions. In the main these include that PNG (a) in 1989 'declared and fought a war against the people of Bougainville', (b) 'has begun imposing an economic embargo against Bougainville', (c) 'has again declared its intention to invade Bougainville and subjugate its people', and (d) 'has refused to recognise the democratic rights of the people of Bougainville'.¹⁵ Inherent in these convictions is the assertion that numerous human rights violations and torture of civilians were being committed by PNG troops stationed in Bougainville. The BRA is convinced that the security of livelihood, properties and very lives of the Bougainvilleans cannot be assured if they are subject to the control of PNG. Confronted with such an insecure situation, they have asserted secession as a last resort to restoring security.

The sustenance of minimum conditions for peoples' survival as dignified human beings is the common concern of all communities. The protection and promotion of, and respect for, human rights in providing justice to the people has become a pre-eminent task of international law. As exemplified by the Bangladesh precedent, a claim to secession based on gross transgression of human rights and lack of physical security may be undeniable in international law. The plight of the Bengalees, the principal target of a planned mass massacre, generated worldwide sympathy and support for their cause and antipathy towards Pakistan's authoritarian military rule that mistreated its own people in a way falling so short of the minimum standard to 'shock the conscience of mankind'.

PNG troops abused human rights of innocent and unarmed Bougainvilleans during the emergency. There occurred indiscriminate killing of civilians by members of the defence force who alienated many Bougainvilleans by beating up suspected rebel sympathisers and conducting Vietnam style search and clear operations in villages near the mine, turning thousands of villagers into refugees.¹⁶ This plight of the Bougainvilleans drew regional concern and attention. But this humanitarian deprivation is far less than that of the Bengalees in terms of gravity and intensity of suffering. There is no question of a planned economic exploitation and political subjugation of the Bougainvilleans by the National Government. The Bengalees suffered a prolonged internal colonialism which cannot be said of the Bougainvilleans. Moreover, it is not only the defence force members but also the BRA who were responsible for the violation of human rights in Bougainville.¹⁷

14. Similar threats of secession by Southern Highlands Premier Mr Koromba and New Guinea Islands Premier Mr. Pokawin are reported in *Post Courier*, PNG, 2 May 1990, p.5; 7 May 1990, p.1; *The Australian*, 16 Mar. 1990, p.13.

15. For the text, see the *Times of PNG*, 17 May 1990, pp.1,4.

16. For atrocities and human rights violation claims, see *Islands Business*, Aug. 1989, p.25; *Post Courier*, PNG, 30 Jan. 1990, pp.1,2; 9 and 12 Feb. 1990, p.3; 15 Mar. 1990, p.2; the *Asian Wall Street Journal*, weekly, 8 Jan. 1990, p.15; the *Australian*, 6 Feb. 1990, p.11; the *Times of PNG*, 17 May 1990, p.14.

17. The killing of a provincial government minister, John Bika, in front of his family is just one of many similar instances, the *Times of PNG*, 17 May 1990, p.3; 24 May 1990, p.12; *Islands Business*, Nov. 189, p.20.

The factors referred to are likely to influence the decision-making of many members of the world community in responding to the UDI of Bougainville. They may consider that the physical insecurity of the Bougainvilleans and their humanitarian deprivation within PNG are not grave enough to warrant secession. They may be inclined to remedy the grievances of the Bougainvilleans by any negotiated political or constitutional means short of outright secession.

WORLD ORDER AND SECESSION OF BOUGAINVILLE

The maintenance of a minimum world order in terms of providing peace and security is one of the cardinal objectives of the world community, which seems to admit only those changes in the *status quo* that least threaten world order. A claim to secession is fraught with it disruptive impacts on a stable world order. The secession of Bougainville involves a redelimitation of existing territorial boundaries of PNG. The reasonableness of secession of Bougainville and that of the unity of PNG therefore ought to be viewed in terms of basic community policy of minimisation of disruption and disorder. Can Bougainville achieve independent statehood in any meaningful sense which is promising for optimum and enduring world order? This question leads to examine the prospect of the proposed Republic of Bougainville of becoming a viable entity in terms of its internal stability and external ability to function as a responsible member of the world community. It is conceded that an absolute answer cannot be given, as arguments both for and against are so convincing that they often lead to confusion. Nevertheless, a comparison of arguments is attempted here.

Ironically, bigness of developing states is not necessarily an advantage for political stability and economic prosperity. Existing record does not show that all big states have done economically better than smaller states. Nor does the former have a greater development potential over the latter. Factually, some of the world's most populous and vast states are among the poorest. Whilst some small states have a Gross National Product either equal to, or even more than, certain big states.¹⁸ Bougainville would be smaller than only three states: PNG, the Solomon Islands and Fiji, in the South Pacific. Its population would be bigger than Guam, New Caledonia, Vanuatu, Kiribati, Nauru, American Samoa, the Cook Islands, Tonga, Tuvalu, Niue and French Polynesia.¹⁹ Its economic viability cannot be questioned beyond doubt in view of its big copper mine once reopened. However, long-term closer of the mine may mean that it would have to rely on subsistence economy. Whether such a state of economy would be better or worse off is arguable in view of the indigenous life style and living standard (expectations).

It may also be argued that the disintegration of PNG may exert an easing effect on continuous political unrest in Bougainville - the root cause of the crisis. There is no reason to believe that the proclaimed Republic of Bougainville would be incapable of managing its own affairs, at least with as much effectiveness as are found in other small island states of the South Pacific. Being a good foreign exchange earner, the potential of Bougainville economy for a diversified scheme of industrialisation may not be gainsaid. Although the crisis inflicts adverse impacts on regional order at this juncture, the prospects are promising that the Republic of Bougainville would be friendly towards other nations of the region, thereby promoting lasting regional peace and stability.

18. For these examples, see N.H. Leff, 'Bengal, Biafra and the Bigness Bias' (1971) No.3-4 *Foreign Policy* 130.

19. 9000 sq.Km. area of Bougainville with over 140,000 population may be compared with the states referred to in terms of data cited in *Pacific Islands Year Book* (Sydney: Pacific Publ. 1984), 348-51.

The underlying assumptions used to counter secession are also impressive. The viability of many mini and micro states has been the concern of the international community. Secession is generally opposed because it will lead to further fragmentation of existing states. The secession of Bougainville would result in the proliferation of yet another independent entity in the region too small to be politically stable. Being a fragmented part of PNG and constrained by small national income and limited markets, independent Bougainville would be economically in a disadvantage position to function effectively. Similar African examples tend to support the apprehension that political independence does not essentially ensure freedom from outside control. Many black African states, due to their poverty and inefficient management ability, have had to pawn their natural resources to rich white countries, such as South Africa, France and the UK.²⁰ The same may well be said of Bougainville which appears to be ill-prepared for outright independence.

Indeed, these factors are likely to influence many members of the world community to think that the proposed Republic of Bougainville would provide a poor case for future economic viability without massive international aid. The political knowledge and experience of the Bougainvilleans are not adequate enough to conduct the affairs of an independent state. And a support for the UDI of Bougainville may in turn contribute to the emergence of a non-viable entity at the expense of regional order. Frosty response to the UDI of Bougainville by some members of the regional community may be viewed as indicative of these underlying presumptions.

CONCLUSION

The UDI of Bougainville cannot be contained and subsumed as an act of secessionist self-determination permissible in international law. Paragraph 7 of the Principle V of the 1970 UN Declaration on Friendly Relations, which recognises the legitimacy of secession under certain circumstances, does not furnish any degree of strength and sanction that may be relied on to justify the secession of Bougainville. The international community, with *prima facie* respect for the existing state-centre order, is likely to find that the grounds invoked in support of the secession of Bougainville are not sufficiently supportive of the cause.

This is not to argue that the UDI of Bougainville is illegal in international law. A UDI is usually viewed as a revolutionary act. Neither international law nor the UN Charter forbids the acquisition of independence through revolutionary means. The right of people to revolution exists quite independently in international law. As such, international law does not prevent the BRA from proclaiming their UDI as a revolutionary act. Concurrently, international law does not deny the right of a state to suppress any rebellion in its territory and to compel obedience thereto by individuals. Such police action is permissible in order to maintain law and order - an essential task of a state. Hence international law does not forbid the PNG Government from pacifying the UDI of Bougainville to restore law and order. International law will merely endorse the final outcome of the conflict emanated from the UDI of Bougainville which, like a revolution, will be an international legal act following its success. The UDI of Bougainville is yet to be successful or crushed. Therefore its current status in international law is neither legal nor illegal but extra-legal.

20. There are also lessons to learn from such smaller African states as Kenya, Uganda, Zambia and Sierra Leone where tribal rivalries have been frustrating the efforts of independent governments.