THE RIGHT TO UNILATERAL SECESSION: A COMPARATIVE STUDY ON CANADA, ETHIOPIA, AND PAPUA NEW GUINEE/BOUGAINVILLEA

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Chapter One: Introduction

1.1.Background of the Study

After world war II several new states have been created as a result of secession. For instance, Bangladesh, Eritrea, Macedonia, Montenegro, Slovenia, Kosovo, South Sudan, Serbia, and so on.[1] Although, secession movements exist today in several countries like Zanzibar-Tanzania, Somaliland-Somalia, Casamance-Senegal, Catalonia-Spain, Kurdistan-Iraq.[2] So, secessionist movements still exist all around the globe, especially in multinational states.

The concept of secession intends to have both unilateral and consensual secessions. So, after briefly discussing to what extent unilateral and consensual secession distinguished, it scrutinized more specifically about the unilateral right of secession.

Thus, the paper identified and discussed how unilateral right (claim) of secession operates under a domestic legal framework, and it critically compared the effect of recognition or non/recognition of secession under domestic laws.

Therefore, this paper provided a comparative overview concerning the legal right to secession, the debates over domestication of secession, and to what extent domestic laws resolve secession within the general framework of rule of law.

[1] Antje Herrberg (ed), Conflict Resolution in Georgia: A Synthesis Analysis with a Legal Perspective. http://ssrn.com/abstract=2319198 last accessed May 27, 2020

[2] Xabier Arzoz and Markku Suksi, Comparing constitutional adjudication of self-determination claims. Maastricht Journal of European and Comparative Law 2018, Vol. 25(4) 452–475

1.2.Statement of the Problem

The 1995 Ethiopian Constitution promulgated unconditional right to self-determination including secession. The secession clause under the FDRE Constitution is the most controversial provision of the Constitution. Ethiopians are arguing in support of or against this article, those who oppose the recognition of the right to secession under the Constitution argued that it will have a danger against unity and territorial integrity of the state. On the other hand, proponents of secession argued that the inclusion of the secession right in a given Constitution guarantees to ethnic groups, and guaranteeing the right to secession is the only means to remain the state intact.

The researcher is interested to examine the debates on the domestication of secession under the national Constitution. Within this framework, the researcher tries to investigate other countries' legal systems about the recognition or non-recognition of the right to secession under the domestic Constitution. Both Canada and Papua New Guinee did not recognize the right to secession under their Constitution. But later in 2001 Bougainvillea Peace Agreement, the Papua New Guinee Constitution amended and recognized the deferred referendum, and the Canadian supreme court in its Quebec reference decision set conditions for future Quebec referendum (will discuss in detail in chapter two).

The other issue, the Ethiopian Constitution article 39 (1) promulgated that; the right to self-determination including secession is an unconditional right of nation, nationalities, and peoples of Ethiopia. Although Article 39/1 is an unconditional substantive right, yet, it does not escape from procedural limitation. And Article 39 (4) promulgated procedures to operate secession.

Though in Canada-Quebec secession, the Supreme court of Canada rejected the unilateral secession of Quebec, the court did not deny that the unilateral right to decide or to do a referendum on secession with a clear question and a clear majority. The Bougainvillea's two times voted

unilaterally to secede from Papua New Guinea, but it was unsuccessful, lastly in 2019 Bougainvillean voted for independency accordingly the peace agreement, but for its effect, needs to negotiation with the national government.

Based on the above-stated problems, the comparative question will be "How Unilateral right (claim) of secession operationalized in Ethiopia, Canada, and Papua new Guinee/Bougainville?" Within these general comparative questions, How the Canadian Supreme Court resolves a unilateral claim of Secession? How the Bougainvillea Unilateral claim of Secession implemented/executed? How unilateral (claim-)right to secede operate in Ethiopia? And What is the legal effect of Constitutional Recognition or non-recognition of secession?

1.3. The objective of the Study

The main objective of this paper is to assess the operation, recognition or non-recognition and implementation of Unilateral right to Secession in Ethiopia, Canada, and Papua New Guinee/Bougainville.

1.4. Hypothesis

Until now in Ethiopia, there is no question of secession legally from any regional governments or nation nationalities and peoples, but it doesn't mean that it will not happen soon.

1.5. Methodology

The study employed predominantly Qualitative desktop research. This research shall adopt a Critical Comparative analytic approach. The Primary sources were Laws and Cases. The Secondary data were reviewed from different Law Commentaries, Books, Articles.

1.6.Selection of the Jurisdiction

This thesis mainly focuses on, how "unilateral right to secession" operates. So, selecting Ethiopia, Canada and Papua New Guinee-Bougainville for this case study would be the most effective

choice. Of course, these three countries have so many differences in their political institutions, the cultural, legal system, and Constitutional legacies, economical aspects, and development of democracy.[3] Nevertheless, it would be easy to determine whether they have similarities in a unilateral claim of secession. For instance, in Ethiopian Constitution article 39 promulgated that; the right to self-determination including secession is an unconditional right of nation, nationalities, and peoples of Ethiopia.[4]Although, in Canada-Quebec secession, the supreme court of Canada decided against unilateral secession but set out pre-conditions of a possible future referendum. The Bougainvillea's made unsuccessful unilateral declaration two times, then, after the peace agreement, the Bougainvillean legally voted to secede from Papua New Guinea, but the secession of Bougainvillea's, not yet resolved.

Although, in both cases, the secessionist group (people who seek secession) has a unilateral right to decide whether or when to hold a referendum for secession.[5] The people who want to secede have the right to decide on the referendum without interference. Therefore, the secessionist people have a unilateral right to a referendum on their own.

Thus, both Ethiopia, Quebec, and Bougainvillea have similarities concerning the unilateral right to a referendum, yet, at the same time, they have differences concerning the consequences of the referendum. Therefore, comparison focuses on both differences and similarities.

1.7.Structure of the Paper

This paper comprises three chapters. The first chapter is an introductory chapter which includes; Background of the studies, Statement of the Studies, Objective of the Studies, Hypothesis, Methodology, Scope of the study, and Selection of the Jurisdiction. The second chapter deals with

[3] Ran Hirschl, The Question of Case Selection in Comparative Constitutional Law
[4] The Ethiopian Constitution Article 39
[5] Xabier Arzoz and Markku Suksi, supra note 2. p, 473

constitutional Recognition of secession and its practice. The last chapter critically analysis how unilateral secession operates on those countries and its Challenges, Prospects, and Lessons.

Chapter Two: Constitutional Recognition of Secession and its Practice

2.1. The Concept of Secession

Allen Buchanan defines Secession, "the attempt by a group inhabiting a portion of an independent state to create a new state through formal withdrawal or separation from the parent state."[6] Similarly, the Supreme court of Canada in Quebec Secession reference defines Secession as, "the effort of a group or section of a state to withdraw itself from the political and constitutional authority of that state, to achieve statehood for a new territorial unit on the international plane."[7]So we have a common understanding of secession, as a separation of the territory and population of a state an intention to create another new sovereign state.

Here to be noted, not all session aims to create a new independent state, some secessionist groups may aim to join another existing state. This kind of secession called irredentist secession,[8]for instance Crimea to Russia.

Therefore, the focus of this paper is secession which involves splitting away from an existing political union to create a new independent sovereign state. And this kind of secession challenges the sovereignty and territorial integrity of an existing State.

Secession might be consensual or unilateral, in the case of consensual secession, it occurs might be through constitutional recognition or political negotiation. But unilateral secession is the withdrawal of a territory and its population from the jurisdiction of a state by a unilateral decision of the people who seek secession.

Nevertheless, for this paper, unilateral secession includes the right to decide on the referendum without any interference. So, the referendum is only for the people who want it to be ripped apart.

[6] See Allen Buchanan, 'Secession' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Summer 2013 Edition) 2, <http://plato.stanford.edu/entries/secession> accessed 21 March 2020

[7] Canadian supreme court Decision, In the Matter of Section 53 of the *Supreme Court Act*, R.S.C., 1985, c. S-26; Reference Re The secession of Quebec File No.: 25506, 1998. Paragraph 83

[8] Buchanan, supra note 6

For instance, the Ethiopian Constitution Article 39(3)(c) says, “when the Demand for Secession is Supported by a Majority Vote in the Referendum."[9] The Ethiopian constitution granted the right to decide on referendum unilaterally to the Nation Nationalities who seek Secession. Even the demand for secession approved by only the council of legislation of nation nationalities and peoples concerned.[10]

The Supreme court of Canada has never denied the democratic right of Quebecers to hold a unilateral referendum without any interference. So, Quebec has a legal right to decide whether or when to hold a referendum for secession.[11] But after having a democratic referendum unilaterally, the supreme court imposes a duty to negotiate both the federal government and other federation including Quebec. Whereas in Bougainville, both the Bougainvillean Autonomous constitution, the Papua New Guinee Constitution, and the Peace Agreement stipulated the deferred referendum on Bougainville's future political status.[12] Like Canada, the Bougainvilleans also have a unilateral right to a referendum but subject to negotiation and parliament ratification. After the result of the referendum except for Ethiopia, both Canada and Bougainville enter to duty to negotiate.

2.2. Domestication of Secession

2.2.1. Moral Right theories of Secession

Generally, there are two theories of the right to secede, which is understood as a unilateral claim right.[13] Those are Remedial Right Only (Just cause) Theories and Primary Right Theories of secession.[14] In the case of remedial right only theory, the secessionist group may claim the right

[9] The Ethiopian Constitution Article 39/4/c
[10] The Ethiopian Constitution article 39/4/b
[11] Xabier Arzoz and Markku Suksi, supra note 2 p, 473
[12] The Bougainvillea Peace Agreement, principle 309
[13] Buchanan, Allen, "Secession", *The Stanford Encyclopedia of Philosophy* (Fall 2017 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/fall2017/entries/secession/>,last accessed December 2019

[14] Ibid

to secession if there is a grave human right violation or injustice.[15] Indeed, unilateral secession is justified only as a remedy to avert substantial injustice.[16] Accordingly, Canadian supreme court Decision, paragraph 131-138, the court applies Just cause theory. Arguably, even if many factors contribute to the secessionist movement, the Bougainvillean unilateral secession comes closer to just cause or remedial theory of secession.

Primary Right Theories of the unilateral right to secede recognize that a group or a people may have a right to secede even they have not been subject to any injustice or without any cause. This type of theory holds that there is a right to unilateral secession just as a right. [17] There are two types of Primary Right: Nationalist theory of secession, and Choice theories of secession.

Nationalist theory of secession stressed that some groups of people belong to the same ethnic group or nation of their choice and they seek self-determination up to secession to have their independent state.[18] The Ethiopian constitution is a typical example of the Nationalist theory of secession.

While the Choice theory of secession holds that "if a majority residing in a portion of the state chooses to have their state there, regardless of whether or not they have any common characteristics, ascriptive or otherwise, other than the desire for independence"[19] The constitution of St Kitts and Nevis inspired by the choice theory.[20]

Certainly, there is also a contractual theory of secession, for instance, the EU's experience shows how the termination of a contractual relationship of member states and EU (example, UK and EU). The process for a member-state to secede from the European Union is enshrined in Article 50 of

[15] Buchanan, supra note 13
[16] Ibid p. 6
[17] Ibid
[18] Ibid
[19] Buchanan supra note 13. p.7
[20] Constitution of the Federation of Saint Kitts and Nevis of 1983, Article 113

The TEU (Treaty on European Union). Subsequently, in the case of EU secession, it is guaranteed by the contract, but this paper does not cover the contractual theory of secession.

2.2.2. Debates on Constitutional Recognition /non-recognition of Secession.

So far, the domestication of secession right under multinational states or federation has been controversial. There is no clear agreement among scholars whether its suitable or fit constitutions to have explicit provisions that deal with secession. For instance, Horowitz argued, the problem of 'Minorities' can't be solved by domesticating secession, rather it will create other 'new minority problem.'[21] Horowitz believed that the issue of secession should be the concern of international law rather than constitutional law, he is against primary right (Nationalistic and choice) theory of secession.[22] And he agrees with Buchanan's ideas of just cause theory, so whenever there is a grave human right violation and injustice, international law should recognized minorities right to secede.[23]

Buchanan also believed the secession of minority rights should be operated when there is 'genocide or grave violation of individual human rights,' in this case, international law recognized a unilateral right to secede as a remedy.[24] Buchanan did not deny the need to move from 'theory to practice',[25] he asserted that if there were victims of systematic injustice, it is necessary to have a Constitutional clause that gives a right to secede for minorities, but it should be for a remedial purpose, otherwise, he opposed the need to recognized secession under domestic Constitutions.[26]

[21] Horowitz, D. 'Self-Determination: Politics, Philosophy, and Law', in M. Moore (ed.) (1998), pp. 181–214. As cited in Wayne Norman, Negotiating Nationalism: Nation-building, Federalism, and Secession in the Multinational State. 2006.p. 185

[22] Wayne Norman, Negotiating Nationalism: Nation-building, Federalism, and Secession in the Multinational State. 2006.p. 185

[23] Ibid

[24] Buchanan, A. Justice, Legitimacy, and Self-Determination. Oxford: Oxford University Press. 2004. P. 370. As cited in Wayne Norman, Negotiating Nationalism: Nation-building, Federalism, and Secession in the Multinational State. 2006.p.172 and 173

[25] Buchanan.

[26] Allen Buchanan's, Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec (1991).

On the other side, Norman argued that the domestication of the secession clause would have the advantage to answer secessionist questions based on the rule of law and democracy. Norman accentuates that Constitutions recognized secession or not, there might be the possibility of the secessionist movement in multinational states.[27] In this case, he asserted, it's better to handle secessionist politics and secessionist controversy within the scope of rule of law rather than as a political issue. Although, the outcome might be different if the secessionist question handles within the prescribed Constitutional clause.[28] But Norman believed that under domestication of secession right, the procedures for seceding should have to be stringent. He asserted that, rather than denying constitutional recognition of secession, it's better to acknowledge and have a stringent procedure for secession. For instance, by making a "rigorous secession clause"[29] which will make secession less likely or costly for the secessionist and requiring a supermajority.[30]

This might discourage secessionist leaders.[31] Unlike the Ethiopian Constitution which demands simple majority support, he preferred St Kitts and Nevis, which is two-thirds of majorities. [32]

The Ethiopian Constitution is the most explicit constitution concerning secession rights. Under this Constitution (Article 39/1) "Nation Nationalities and Peoples of Ethiopia" entitled "unconditional" right to self-determination including secession.[33] Of course, the Constitution of the Federation of Saint Kitts and Nevis of 1983 stipulates the right to secede of the Island of Nevis.[34]Saint Kitts and Nevis Constitution grant unilateral right to secede for Nevis.

[27] Wayne Norman, Negotiating Nationalism: Nation-building, Federalism, and Secession in the Multinational State. 2006.p. 191
[28] Wayne Norman's. p. 191
[29] Ibid
[30] Wayne Norman, supra note 27
[31] Wayne Norman, supra note 27. p. 180
[32] Ibid. p. 179
[33] The Ethiopian Constitution Article 39/1
[34] Constitution of the Federation of Saint Kitts and Nevis of 1983, Article 113

The writers of the Ethiopian Constitution believed the incorporation of the right to secession is to solve the historical unjust relationship between ethno-nationals. And the secession clause considered as a security for nation nationalities to live together. On the other way, many argued, recognizing secession right is against the concept of federalism and the territorial integrity of the country. Besides, others agree on the recognition of secession but dis-agree with the justification.[35]Because Secession right might be recognized whenever there is a grave violation of human rights and injustice, so it should be conditional rather than unconditional and it should be for actual violation of individual rights but not for past injustice.

The researcher does not agree that recognizing secession will encourage secessionist movement and non-recognizing will discourage. Because when we assess countries, who do not have a constitutional clause of secession, still factually there is secessionist movement. For instance, Spain- Catalonian case, the question of unilateral secession supported by the majority of Catalonian referendums was rejected by the Spanish government. The Spanish Constitutional Court also denied the right to decide on Catalonian secession.[36]

The Canadian Constitution is silent concerning secession issues, and Canada lacked any legal recognition of the right to secede until the Canadian Supreme Court decision, but before the reference in the absence of any law or the absence of recognition, Quebec secessionist has not prevented from two times referendum.[37] Indeed, there is clear secession provision in Ethiopia that permits the unconditional right to secession, but until the new reform 2018, the Oromo Liberation Front (OLF) and the Ogadenian National Liberation Front (ONLF) was struggling for secession.

[35] From classroom lectures, debates on constitutional law class and public lectures and debate on medias
[36] Joaquín Tornos Mas, Secession, and Federalism. The Spanish Case
[37] Wayne Norman, supra note 27

Though, regardless of prohibition or constitutionally recognized or not, secessionist politics and questions to secede are inevitable in a multinational federation of state.[38]

In Canada-Quebec secession, the supreme court of Canada did not deny the right to the secession of Quebec, rather the court demonstrates that the Canadian law does not provide that Quebec can unilaterally secede,[39] but the court asserted, the democratic decisions made by a clear majority vote by Quebecer on a clear question in favor secession would grant Quebec independence.[40] So, it's possible to say in Canada-Quebec secession politics was under the rule of law and democratic state.[41]The supreme court of Canada made secession legal issue, and the court on the legality of Quebec's unilateral secession, arguably, create 'a quasi-constitutional right.'[42]

Although there has been a question of secessions in Bougainvilleas for many years. Papua New Guinee government did not recognize secession before the 2001 Bougainville Peace Agreement. The Papua New Guinee government refused to negotiate with secessionists and respond with the harsh military expedition against the secessionist group of Bougainville, but this would not stop secession.[43] Although the immediate cause of the second Bougainvillea unilateral declaration of independence was the harsh measure taken by the Papua New Guinee defense force. After the Bougainvillean Peace Agreement 2001, the Bougainvillean question of secession got Constitutional recognition and in 2019 they voted peacefully for their independence, then 98.31% of Bougainvillean vote for independence.

[38] Wayne Norman, supra note 27
[39] Reference Re Secession of Quebec 1998. P.219-220
[40] Reference Re Secession of Quebec, 1998, paragraph 87-93
[41] Wayne Norman, supra note 27.p. 199
[42] Daniel Weinstock, On Some Advantages of Constitutionalizing the Right to Secede
[43] Wayne Norman, supra note 27, P.174

In a similar situation, Eritreans fought for independency more than 30 years from the era of Emperor to the military government (Derge) of Ethiopia. And they got their independence from Ethiopia in April 1993 after a bloody war. So, in a multinational state, the non-recognition of secession is not preventing secessionists.

In other words, if the non-recognition of secession does not protect the secessionist movement, it's better to establish the right to secession with the stringent procedure. Because if it is per the 'norms of democracy', 'justice' and the 'rule of law'[44] the consequences would be settled with the scope of law rather than politics. But we should have to be careful attention concerning the requirements of the secession clause. For instance, rather than making a simple majority vote like the Ethiopian constitution, it's better to apply a well-articulated secession clause with the stringent procedure (two-third majority) like St Kitts and Nevis constitution.[45]

Although, even in the absence of constitutional recognition, we can take a lesson from Quebec-Canada secession how the court settled within the rule of law for a democratic state.[46]

2.3. Secession under Domestic Legal Framework

2.3.1. General Overview

In early Canadian history, France and Great Britain were rivals for the full control of Canada.[47] Before the war broke out between French and England, Quebec was under the control of France, and the other parts of Canada become English-speaking portion of the country.[48] As a result of France and England conquest, Canada divided as Francophones and English Canadians.[49] Even

[44] Wayne Norman, supra note 27, p. 196
[45] Ibid. p.205
[46] Wayne Norman, supra note 27, p. 191
[47] Philip Resnick, Toward a Canada-Quebec Union, Montréal: McGill-Queen's University Press, 1991.
[48] Ibid
[49] Ibid

so, after France lose control over Canada, Quebec has remained and continued to exercise the custom and Language of France.[50]

Quebecers adapted themselves as a member of French-Canadian nationalism and also Catholicism emerged as a center of their identity and culture.[51] So, the majority of Quebecers see themselves as a family of a French-Canadian nation and as being a distinct nation in terms of culture, religion, and identity.[52]

Bougainville islands located about 957 kilometers from Papua New Guinee Capita (Port Moresby).[53] In many things like cultural, linguistic, and geographic perspectives, Bougainville societies close to their neighbor Solomon Islands archipelago.[54] Most Bougainvilleans are very dark skin color, indifferent from people elsewhere in Papua New Guinee.[55] The people of Bougainvillean "commonly refer to mainland Papua new Guineans as redskins."[56] Though, this distinctive, "Dark Black Skin Color"[57] of Bougainvilleans contribute to behave a sense of uniqueness of identity from the rest of Papua New Guinee.[58]

After the downfall of the military government in 1991, The transitional Government opts to incorporate an unconditional right to secession. The justification given by the writers of 1995 Ethiopian constitution for the incorporation of secession right was, one because the Oromo

[50] Guy Laforest, The Historical and Legal Origins of Asymmetrical Federalism in Canada's Founding Debates.

[51] Ibid
[52] Ibid
[53] Google Map, but most scholars stated different kilometers, some said 900 and the others 1000
[54] See, Anthony J. Regan, Light intervention: Lessons from Bougainville <http://dx.doi.org/10.1080/00664677.2012.717026>, 2012, last accessed January 30, 2020, and "Morality and Legality of Secession": A Theory of National Self-Determination. written by Pau Bossacoma Busquets.
[55] Yash Ghai & Anthony J. Regan (2006) Unitary state, devolution, autonomy, secession: State building and nation-building in Bougainville, Papua New Guinea:< https://doi.org/10.1080/00358530600931178> p. 590
[56] Anthony J. Regan, Light intervention: Lessons from Bougainville. <http://dx.doi.org/10.1080/00664677.2012.717026> , 2012, last accessed January 30, 2020
[57] Hugh L. Davies, 'The Geology of Bougainville' in Regan and Griffin, *Bougainville before the Conflict*, pp. 27-8;
[58] Ibid

Liberation Front (OLF) and Ogadenian National Liberation Front (ONLF)[59] struggle for secession, even Tigray People Liberation Front (TPLF) later the ruling party EPRDF(Ethiopian People Revolutionary Front) strongly manifest the incorporation of secession right under the new 1995 constitution.[60] Secondly, the independence of Eritrea from Ethiopia after 30 years of a bloody civil war. Lastly, the incumbent regime believed, guaranteeing the right to secession is the only means to rectify the past injustice.

2.3.2. Secession Under Canada Law

Quebec nationalism has an old history, it has come forth in a context where the province's French-speaking majority was alienating both in Canada as a whole and in the province's economic sphere.[61] Though, the precarious condition combined with the unique "linguistic and religious" characteristics of that group, led to the development of nationalism.[62]

The issue of secession movement more emerged in Quebec after the *Parti Qu´eb´ecois* was elected into office in the Province of Quebec for the first time.[63] The referendum held on 20 May 1980, but it was not successful the "sovereignty-association" option was defeated in the referendum with "59.6 percent of the vote against."[64] For the second time, in 1994 the *Parti Qu´eb´ecois* was re-

[59]) Present Somalia regional state of Ethiopia
[60]OLF political organization established in 1973 by Oromo nationalists to lead the national liberation struggle of the Oromo people. OLF believed the Oromo people's quest for their right to self-determination is just and legitimate. ONLF founded in 1984, the ONLF is fighting for the autonomy of Ogaden. TPLF according to its official history, was established on 18 February 1975 in Dedebit, northwestern Tigray. All those parties favored having secession right under the 1995 constitution. Though, the drafters of the 1995 FDRE Constitution take into consideration all the above ideologies that the right to unconditional self-determination up to secession is granted for every Nation's nationalities and peoples of Ethiopia.
[61] Jean-François Gaudreault-Desbiens, The Law and Politics of Secession: From the Political Contingency of Secession to a "Right to Decide"? Can Lessons Be Learned from the Quebec Case? In Giacomo Delledonne and Giuseppe Martinico (eds), The Canadian Contribution to a Comparative Law of Secession Legacies of the Quebec Secession Reference (2019)
[62] Errol P. Mendes, The Legacy of the Quebec Secession Reference Ruling in Canada and Internationally. In Giacomo Delledonne and Giuseppe Martinico (eds), The Canadian Contribution to a Comparative Law of Secession Legacies of the Quebec Secession Reference (2019)
[63] Patrick Dumberry, Lessons learned from the Quebec Secession Reference before the Supreme Court of Canada
[64] Patrick Dumberry, supra note 63

elected.[65] Immediately after election *Parti Qu´eb´ecois* introduced a draft bill to the National Assembly concerning the process of Quebec's accession to sovereignty.[66]

The draft bill promulgated that Quebec was a sovereign country, and an authorization of the Quebec government to agree with an "economic association" with Canada.[67]

A referendum was held in Quebec on 30 October 1995 and was defeated with "50.58[68] percent of the population voting 'no' for the second time and 49.42 percent"[69] voting for the move towards.

But here some questions might be raised like, the referendum was nationally accepted or not? What if the majority of Quebec voted for independence? The Canadian Constitution is silent concerning referendum and secession, but accordingly the supreme court opinion it's possible to say the referendum will be accepted. Because the supreme court asserted that the right to decide whether or when to hold a referendum is the democratic right of federations or peoples.[70] But it doesn't mean the national government will accept the outcome of the referendum.

So, what if the outcome of the referendum in favor of secession? From two perspectives, Quebec might have a possibility of seceding from Canada or not. One, the National Assembly of Quebec planned to negotiate with Canada about "economic and political partnership"[71] and then if the negotiation fruitless or not, the National Assembly of Quebec was planned to declare the sovereignty of Quebec,[72] but I don't think this might be accepted by the national government. Secondly, from the present supreme court decision, Quebec didn't secede from Canada even if the

[65] Patrick Dumberry, supra note 63
[66] Ibid
[67] Errol P. Mendes, supra note 62
[68] Patrick Dumberry, supra note 63
[69] Ibid
[70] Reference Re Secession of Quebec, Paragraph 87
[71] Patrick Dumberry, supra note 63
[72] Errol P. Mendes. Supra note 62

majority voted in favor of independence unless an agreement reached with the national government and other federations. Because the supreme court imposes the duty to negotiate with a clear majority and questions.[73]

Notwithstanding, the Federal government intervene and referred the case to the Supreme Court of Canada for an advisory opinion, contending that "neither Canadian nor international law gave Quebec the right to unilateral independence."[74] The federal cabinet acting as Governor-in-Council presented the following questions to the Court:[75]

Then the Supreme court of Canada assess; 'Whether the unilateral secession of Quebec was constitutionally possible, whether such right of unilateral secession could be invoked under the international law of self-determination and whether international law would take precedence over domestic law.'?[76]

The Supreme Court first decided on jurisdictional issues raised by the Quebec secession leaders and argued by the amicus curiae that the court has no jurisdiction to adjudicate the case because of political and democratic rights of Quebecers to determine their fate.[77] The court declares the reference question will be interpreted in the strictly legal base and the asserted that all three questions are "important question of law or fact concerning any matter,"[78] so the court denied jurisdictional issues. The court also rejected that the argument the application of international law

[73] Reference Re Secession of Quebec, 1998, paragraph 87-93
[74] See Canadian supreme court Decision, In the Matter of Section 53 of the *Supreme Court Act*, R.S.C., 1985, c. S-26; Reference Re The secession of Quebec File No.: 25506, 1998. P. 218
[75] Reference Re The secession of Quebec, p.218
[76] Reference Re The secession of Quebec, p.218
[77] Reference Re The secession of Quebec, p. 218
[78] Reference Re The secession of Quebec. P.219

must be adjudicated by international tribunals. It also asserted that "the court is not exceeding its jurisdiction" but just providing an 'advisory opinion to the governor in council.'[79]

After deciding on the preliminary objection on jurisdictional issues, the court proceeds to the first question. The Court asserted that the written part of the Canadian Constitution was silent on the issue of unilateral secession.[80] Though the court accentuates that the reference of Quebec unilateral secession would need an amendment to the constitution because unilateral secession would require to alter the governance of the Canadian territory,[81] so it would be contradicting with Canada's Constitution. Then the court professes unilateral secession was unconstitutional.[82]

The court further clarifies the written constitution with what it would term its unwritten principles.[83] The court emphasized that the Constitution is more than a written text.[84] And focused on unwritten principles of the constitution like; the principles of 'federalism', 'democracy,' 'constitutionalism and the rule of law,' and 'respect for minorities.'[85]

Based on the unwritten principle of democracy, the court reasoned out there must be a clear expression by Quebecers for their demand for secession.[86] The court emphasized that there was a lack of democratic legitimacy which presented by the Quebec secessionist government on the way of designing of the referendum question.[87] Those framed questions for the referendum was aimed to manipulate voters to support secession. So, there should be "a clear expression of a clear

[79] Reference Re The secession of Quebec. p. 219
[80] Reference Re The secession of Quebec, p. 220
[81] Reference Re The secession of Quebec, p. 220
[82] Reference Re The secession of Quebec, p. 220
[83] See Reference Re Secession of Quebec, paragraph 148
[84] Reference Re The secession of Quebec, paragraph 148
[85] Reference Re The secession of Quebec, paragraph 148
[86] Reference Re The secession of Quebec, paragraph 150
[87] Reference Re Secession of Quebec, 1998, paragraph 87-93

majority"[88] of the population of Quebec on a clear question to capture secession. Although the referendum must not be vague and ambiguous.[89]

Then the court issued the necessary negotiation by all the parties to confederation.[90] The court asserts that the duty to negotiate would need the participation of all relevant government and minorities in the national or territory of the state within the framework of the constitution and rule of law.[91]

The court proceeds to the second question, "on whether international law gave Quebec the right to effect of secession from Canada and whether the asserted right of the self- determination under international law gave the right to effect the secession of Quebec from Canada unilaterally."[92] the Court articulate that international law did not give a definite positive or negative answer on the unilateral right of secession, and that right would depend on the right of self-determination, which has been widely recognized under international law.[93]

However, its application has been consistently held to be exercised "within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those sovereign states" [94] The court in analyzing international authoritative documents on the right to self-determination, primarily this right as internal right for existing states or internal autonomy rather than external right to secession.[95] The Court then makes the exception where there may well be a right to external self-determination in most extreme cases, such as in claims of colonial

[88] Reference Re The secession of Quebec, paragraph 87-93
[89] See also Reference Re Secession of Quebec, paragraph 87-93
[90] Reference Re The secession of Quebec, paragraph 87 & 88
[91] Reference Re The secession of Quebec, paragraph 96
[92] Reference Re The secession of Quebec paragraph 109, p. 276
[93] Errol P. Mendes, The Legacy of the Quebec Secession Reference Ruling in Canada and Internationally
[94] Reference Re Secession of Quebec, paragraph 122
[95] Reference Re The secession of Quebec, paragraph 122

peoples or where a people is subject to alien subjugation, dominance, or exploitation.[96] Though, the court argued that an external right leading to secession could not possibly apply to Quebec, because; *"The population of Quebec cannot plausibly be said to be denied access to government…."*[97]

Finally, the Court also repudiate the argument of the amicus curiae relating to the right of Quebec to effect de facto secession.[98] This argument was based on international law concepts having sovereignty based on recognition by other states. The Court strongly argued that these contested concepts have "no constitutional or legal status in the sense that it did not provide an ex-ante explanation or justification for an act"[99]

To sum up, the Supreme Court's opinion in the Secession Reference does not deny the possibility of holding a future referendum for independence,[100] and made an advisory opinion on the need for 'clear majority on clear question' expressed by Quebec's.[101] And this clear majority on a clear question about secession would lead them the "duty to negotiate"[102] between the federal government and other federations including Quebec.[103] Following this decision, in 2000, the federal government enacted a law which is called "An act to Give Effect to the Requirement for Clarity"[104] or "Clarity Act", a mechanism to implement Opinion of the Supreme Court of Canada

[96] The Friendly Relations Declaration was adopted by the UN General Assembly in October 1970
[97] Reference Re Secession of Quebec, paragraph 136
[98] Reference Re Secession of Quebec, paragraph 107
[99] Reference Re Secession of Quebec, paragraph 107
[100] Reference Re The secession of Quebec paragraph 69
[101] Reference Re The secession of Quebec paragraph 69
[102] Jean-François Gaudreault-Desbiens, The Law and Politics of Secession: From the Political Contingency of Secession to a "Right to Decide"? Can Lessons Be Learned from the Quebec Case? In Giacomo Delledonne and Giuseppe Martinico (eds), The Canadian Contribution to a Comparative Law of Secession Legacies of the Quebec Secession Reference (2019)
[103] Reference Re The secession of Quebec Paragraph 88-90
[104] Jean-François Gaudreault-Desbiens supra note 102, P.43

in the Quebec Secession Reference. This Clarity Act will access any issues "relating to the secession of that province from Canada" and to determine whether or not it is clear.[105]

2.3.3. Secession under Papua New Guinea/ Bougainville Law

This part will be emphasized on the unilateral secession of Bougainvillea, specifically, the cause and its legal consequences of unilateral secession, and somehow on Bougainvillean peace agreement.

I. The first Bougainvillean Unilateral Declaration of Independence

Papua New Guinee established independence from Australia after the first Bougainvillea unilateral independence in 1975.[106] When the movement of a pan-Bougainvillean identity emerged, Papua New Guinee was under the colony of Australia.[107] In the early $1970_{s.}$ remarked as the beginning of Bougainvilleans secessionist movement.

The draft independence constitution of The Papua New Guinee, July 1974, removes the constitutional arrangement of provincial governments.[108] This rejection of constitutionally protected devolution resulted in the first unilateral secession of Bougainvillean.[109] Therefore, besides unequal economic benefit distribution, the feeling of unique identity and other mining-related issues was the immediate cause for the unilateral declaration of independence for Bougainvilleans on 1 September 1975.[110]

Notwithstanding, failure to secure international recognition, "Unilateral Declaration of Independence of the Republic of North Solomons (Bougainvilleans)"[111] was unsuccessful.

[105] Jean-François Gaudreault-Desbiens supra note 102, P. 44
[106] Yash Ghai & Anthony J. Regan, Unitary state, devolution, autonomy, secession: State building and nation-building in Bougainville, Papua New Guinea
[107] Ibid
[108] Ibid
[109] Ibid
[110] Anthony J. Regan, The Bougainville Referendum: Law, Administration, and Politics, July 2019
[111] John Lawrence Momis, 'Shaping leadership through Bougainville indigenous values and Catholic seminary training – a personal journey' in Regan and Griffin, *Bougainville before the Conflict*, pp. 312-6;

Soon after failed external self-determination because of non-recognition of the international community,[112] the Bougainvilleans had no choice other than negotiating with Papua New Guinee government to avert violence and destruction.[113] Indeed, both Bougainville and Papua New Guinee government reached an agreement, in August 1976, on devolution. Consequently, Bougainville was renamed as "North Solomons Province,"[114] including recognition of its geography, increased self-governance powers, and they reached an agreement on constitutionally recognized province for Bougainville.[115] But also the 1975 and 1991 amendment Papua New Guinee constitution did not recognize secession.[116]

II. The Second Unilateral Declaration of Independence

The widespread plantation, mining, and cocoa and copper production made Bougainville the wealthiest province in Papua New Guinee.[117] Panguna 'was the major mining project in Papua New Guinee and located in Bougainvillea. It's the world's largest Copper and Gold mines,[118] and the most important economic asset for Papua New Guinee.[119]

Panguna Copper Mine Project operated by Bougainville Copper Limited, the mine generated 44 percent of PNG's foreign currency.[120] So, Bougainville served as an "economic lifeline"[121] for the Papua New Guinee Government.

[112] John Lawrence Momis, Supra note 111
[113] Yash Ghai & Anthony J. Regan, (2006) supra note 55
[114] Yash Ghai & Anthony J. Regan, (2006) supra note 55
[115] Jo Woodbury, The Bougainville independence referendum: Assessing the risks and challenges before, during, and after the referendum. January 2015
[116] Ibid
[117] Simon Kenema, an analysis of Post-conflict explanation of indigenous dissent relating to the Bougainville copper mining conflict, Papua New Guinee. eJournal of the Australian Association for the Advancement of Pacific studies issues 1.2 and 2.1, April 2010.
[118] See, Hugh L. Davies, 'The Geology of Bougainville' in Regan and Griffin, *Bougainville before the Conflict,* pp. 27-8; Wilson-Roberts, 'The Bougainville Conflict', p. 25; Ghai and Regan, 'Unitary State, Devolution, Autonomy, Secession', p. 592.
[119] Ibid
[120] Hugh Laracy, 'Bougainville secessionism', *Journal de la Societe des oceanistes,* Vols. 92-93, 1991-92, p. 54
[121] Ibid

From 1988 up to 2001(until the Bougainvillean Peace agreement was signed in 2002),[122] there was a grave crisis in Bougainville, the main was conflict within the Panguna Copper Mine Project. But the origins of the conflict do not only rely on the Panguna mining-related grievances,[123] rather it was the combination of many factors. For instance, there was a disagreement between the landlords and the mining company, the existence of intergenerational differences between the elderly and young landowners, environmental destruction, economic injustice, and social displacement, was one of the crucial issues.[124] But the immediate aggravating circumstance of the crisis was a Human Right violation by Papua New Guinee Government force. "Bougainville civilians were subjected to massacres, torture, murder, arbitrary arrests, forcible evictions, destruction of houses and villages, disappearances, and mass rapes"[125] by Papua New Guinee Defense force. Then, the crisis changed to a generalized uprising and transform from mining-related grievance to Secession.[126] The existence of such a violation of human rights by Papua New Guinee police and defense force from 1988-1990, secession become the main demand of the Bougainvillean under Bougainvillea Revolutionary Army Leadership (under the leadership of Francis Ona).

In May 1990, after the departure of Papua New Guinee Defense Force, Francis Ona (Bougainvillean Revolutionary Army Leader) made the second Bougainville's Unilateral Declaration of Independence.[127] However, it was unsuccessful for the second time because they were not able to win international recognition[128] (the Bougainvillean crisis and conflict is very complicated and there was an external intervention, but this issue is not the focus of this paper).

[122] Anthony J. Regan, The Bougainville Referendum: Law, Administration, and Politics, July 2019
[123] Simon Kenema, supra note 117
[124] Ibid
[125] Jo Woodbury, The Bougainville independence referendum: Assessing the risks and challenges before, during and after the referendum. January 2015
[126] Ibid
[127] Jo Woodbury, supra note 125
[128] Ibid

Soon after the internal division amongst Bougainvillea's increased and the conflict also intensified within Bougainvilleans and Papua New Guinee forces. This resulted in a "nine years destructive secessionist war" against Papua New Guinee.[129]

III. The Bougainvillean Peace Agreement

The Bougainvillea crisis resulted in both civil war among Bougainvilleans, and conflict between the pro-secessionist Bougainvillean and the national government which ended with a grave loss of life and property.[130] After nine years of conflict 1988-1997,[131] Papua New Guinee and Bougainville signed The Bougainvillea Peace Agreement on 30 August 2001.[132] The Bougainvillean Peace Agreement was the most crucial document for Bougainvilleans which somehow changed the political aspects to legal or constitutional status.[133] Unlike the previous two unsuccessful unilateral declarations of independence, the Peace Agreement signed in 2001, end a secession war and resulted in constitutionally guaranteed asymmetrical autonomy (Autonomous Bougainville Government, established in 2005), and a right to hold a deferred referendum which will have an impact on independence for Bougainville.[134]

The Peace Agreement provided, the formation of an Autonomous Bougainville Government, which will be achieved in 2005, Demilitarization and weapons disposal through United Nations supervision, and a guaranteed referendum within 10- 15 years.[135] So, this agreement opens the

[129]Regan and Griffin, *Bougainville before the Conflict*, p. xxvii. And also see, <www.dfat.gov.au/geo/png/bougainville_peace_process.html> Last accessed March 2020
[130] Anthony J. Regan, supra note 122
[131] Ibid
[132] See Bougainville Peace Agreement, 30 August 2001
[133] Anthony J. Regan, supra note 122
[134] Anthony J. Regan, supra note 122
[135] Ibid

possibility of secession through the deferred referendum. The legality of the 2001 Peace Agreement has been implemented through the constitutional and an organic law[136] amendment.

The Bougainvillea Peace Agreement stipulated, *"The National Government will move amendments to the National Constitution to guarantee a referendum on Bougainville's future political status."*[137] Accordingly, as specified in the Peace Agreement, the Papua New Guinee government provided an amendment to the constitution and insert new some provisions which dealing with autonomy and referendum.[138] The national government under its constitution provided provisions from 338-343, and on these provisions set out the central principle of the referendum and authorized the detailed law to be enacted in the organic law.[139] Thirty pages added in the XIV part of the constitution for the direct implementation of the Bougainvillea Peace Agreement. Further, specifically, the constitution stipulated what the referendum should include, like the requirement how the referendum will be held, the date of the referendum, specify the only circumstances to hold the referendum, deciding questions to be asked in the referendum, a requirement for the referendum to be free and fair; and the manner of dealing with the results and implementation of the referendum.[140]

Additionally, the Bougainville constitution which is authorized by the national constitution deals with the structure and process of Autonomous Bougainville Government, and it has its referendum-related provisions in its preamble and section 193 and 194. For instance, We the

[136] In Papua New Guinee Organic Law is above all statutes except the constitution
[137] The Bougainvillea Peace Agreement, principle 309
[138] Ibid
[139] Ibid
[140] The Papua New Guinee Constitution provisions relevant to the referendum, from section 338- 345

People of Bougainville…, "to provide for the self-determination of the People through both autonomy arrangements and the referendum on independence."[141]

The Prohibition of an amendment of both the national Constitution and the Organic law, which deals with Bougainvillea Referendum, without the consent of the bougainvillea is the most important legal protection for the Bougainvillea deferred referendum."[142] During the Bougainville Peace Agreement negotiation these sections known as the 'double entrenchment' provisions'(a very strong and high level of constitutional protection method).[143]

So, the Bougainvillea Peace Agreement is not only the source of those laws but it also a source of interpretation of the constitutional laws.[144] For instance, The Bougainville Peace Agreement stipulated that the "Referendum will be free and fair" (paragraph 317), then, the new amended Papua New Government Constitution (section 341) requires "The National Government and the Bougainville Government shall co-operate to ensure that the Referendum is free and fair."

[141] The Constitution of the Autonomous Region of Bougainvillea Preamble /C
[142] Sections 345 and 346 of the Papua New Guinee constitution
[143] Anthony J. Regan, Ibid 2019
[144] Anthony Regan, The Bougainville Referendum an Overview of the Arrangements. 3 rd. Draft 21 March 2016

2.3.4. Secession under Ethiopian Law

After 17 years of bitter struggle, Tigrayan People's Liberation Front (TPLF) and its allies (later EPRDF, a coalition of four-party)[145] in 1991 established the new Transitional Government of Ethiopia.[146] The Transitional Government was ruled and dominated by the Ethiopian People's Revolutionary Democratic Front (EPRDF).

The winners (EPRDF), and other some liberation fronts, in July 1991, in their meeting approved the Transitional Charter. This charter somehow forecasts the content of the new constitution of Ethiopia.

After three and a half years under the transitional charter, Ethiopia enacted the new Constitution. The new constitution was ratified on 8 December 1994 and entered into force on 21 August 1995 which is called the Constitution of the Federal Democratic Republic of Ethiopia (hereinafter FDRE Constitution).[147] There are so many contentious issues on this constitution both political, socio-economic and legal issues,[148] however, this paper focused on only legal issues concerning self-determination up to secession.

Unlike other federal systems, the choice of the Ethiopian Constitution is Ethnic Federal arrangements.[149] The 1995 FDRE constitution stipulated the new ethnic federal structure of

[145] EPRDF was the coalition of four-party, Tigray Liberation Front (TPLF), Amhara Liberation Front, Oromo Liberation Front and Southern Nation Nationalities. Currently, after the 2018 reformation, EPRDF is changed its name to Prosperity Party, and the founder (TPLF) is not a member of this new party.

[146] It should be noted, not only TPLF struggle to over through the Military and socialist government of Ethiopia (Derge), but there are so many armed groups fought against the military Government, Although, TPLF and its allies were taking the Lion share, including the Eritrean People Liberation Front (EPLF).

[147] Proclamation No. 1/1995, and Proclamation of the Constitution of Federal Democratic Republic of Ethiopia, Federal Nigarit Gazeta, 1st Year No. 1, and Addis Ababa-21st August 1995,

[148] many argued against the composition of the constituent assembly, the member of constituent assemblies was elected based on their political affiliation with EPRDF, because of misrepresentation, some ethnic groups also arguing concerning its legitimacy.

[149] See, Christophe Van der Beken, Federalism and the Accommodation of Ethnic Diversity: The Case of Ethiopia. Ethnic federalism was introduced by the Ethiopian People's Revolutionary Democratic Front (EPRDF), the ethnic-based structure was their party manifestation.

regional states (a member state of the federation) based on the settlement patterns, language, identity, and consent of the people concerned.[150] Besides the two city administration cities Addis Ababa (Capital City) and Dire Dawa (Under Federal Administrative), the nine regional states arranged practically based on language patterns, for instance, Tigray, Afar, Amhara, Oromia, Somalia, Benishangul Gumuz, Gambelia, Harari, and the Southern Nations, Nationalities, and Peoples Region (SNNPR, not based on language, this regional state composed of more than 56 nation nationalities).[151]

Further Ethiopian federalism does not limit the number of states, "every nation, nationality, and people within the States enumerated in 'sub-Article 1 (article 47) of this article has the right to establish, at any time, their States."[152] And the procedures laid down under Article 47/3 for every nation nationalities to form their state. So, the Ethiopian constitution is set out how internal-self-determination is operated.

Therefore, Article 39 of the Ethiopian constitution grants an' unconditional' right to self-determination, including secession. "Every Nation, Nationality, and People in Ethiopia has an unconditional right to self-determination, including the right to secession."[153] And Article 39/4 of the Constitution promulgated how nation nationalities and peoples of Ethiopia exercise their right to secession. So, the researcher argues that the Ethiopian constitution incorporated the unilateral right to secession.

[150] Constitution of Federal Democratic Republic of Ethiopia Article 46/2
[151] FDRE Constitution Article 47/1, except Benishangul Gumuz, Gambelia, and SNNPR, the other regional state demarcated or named based on their language.
[152] The Ethiopian Constitution Article 47/ 2
[153] The Ethiopian Constitution Article 39/1

Chapter Three: Operation of the right to Secession

3.1. Operation of a unilateral right to secession

3.1.1. Introduction

Before proceeding to discuss how unilateral secession operates it would be better to look at how secession right handled. The Ethiopian Constitution justifies on its preamble why self-determination up to secession become the core parts of the Constitution.

The preamble in its paragraph four justifies *"fully cognizant that our common destiny can best be served by rectifying historically unjust relationships and by further promoting our shared interests,"*[154] Indeed, as per the preamble, the unconditional right of secession promulgated as a primary right of secession (Nationalist right to secession) to correct or to compensate past injustices.

Here, the Ethiopian Constitution recognized unconditional right to secession for past injustices or for 'rectifying historically unjust relationship'[155] but not for actual or current injustice, or present violation of human right as a remedy. Of course, it's open for argument, because the Constitution seems to incorporate Primary right to secession, so no need of justification, whatever the cause, Nation Nationalities will have a right to secede unconditionally.

Although the Canadian-Quebec controversies on unilateral secession are different from Ethiopia. The Supreme Court of Canada in Quebec secession reference in its opinion, in the case of absence of constitutional recognition, the court refer international customary law and find that no possibility for Quebec to secede unilaterally from Canada.[156] But the court set pre-conditions that might be possible for Quebec's future referendum. Similarly, after the 2001 peace agreement, both

[154] Proclamation No. 1/1995 Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia Preamble Paragraph 4
[155] The preamble of the Ethiopian Constitution
[156] Reference Re Secession of Quebec, 1998, paragraph 136

the Bougainvillean Autonomous Province Constitution and the Papua New Guinee Constitution recognized the deferred referendum for Bougainvillean with some Pre-conditions before and after the Referendum.[157]

3.1.2. Who is the bearer of Right

Let us proceed to discuss how unilateral secession operationalized both in Ethiopia, Canada, and Papua New Guinee/Bougainvillea. Without any doubt, the Ethiopian Constitution grant secession right only for Nation, Nationalities, and Peoples of Ethiopia. Article 39/5 of the constitution stipulated who are Nation nationalities or peoples. As per this article; *"Nation, Nationality or People for this Constitution, is a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identity, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory."*[158] It's not the scope of this paper to discuss who are 'people'? of course, Canadian Supreme court also considered Quebec as a right holder,[159] and it's true for Bougainvilleans also. But the Ethiopian Constitution gives its definition who will exercise the right to self-determination including secession.

Of course, article 39/1 is an unconditional non-derogation substantive right but it does not escape from procedural limitation. Though to operationalized, it needs to follow those procedures stated under article 39/4 of the constitution. Unlike Canada and Bougainville, the practical applicability of secession right to "Nation, Nationalities, and Peoples of Ethiopia" is problematic. Accordingly, 39/4 the right to secession, of every Nation, Nationality, and People shall come into effect:[160]

[157] The Bougainvillea Peace Agreement, principle 309, The Papua New Guinee Constitution provisions relevant to the referendum, from section 338- 345, and The Constitution of Autonomous region of Bougainvillea Preamble /C
[158] See FDRE Constitution Article 39/5
[159] Reference Re Secession of Quebec, 1998, paragraph, 138
[160] The Ethiopian Constitution article 39/4

"When a demand for secession has been approved by a two-thirds majority of the members of the Legislative Council of the Nation, Nationality or People concerned"[161] To operate Article 39/4/a, need two-third legislative Council approval of Nation, Nationality, or people concerned. So, it's clear having Legislative council for Nation, Nationalities, or peoples is mandatory to exercise their right to secession.

Unconditional secession right is given for the Nation, Nationalities, and people of Ethiopia, not for Regional state or Provinces. Another important thing Ethiopia is a museum of above 80 ethnic groups or Nation, Nationalities, but this more than 80 ethnic groups lives within Nine regional states (currently one additional new regional state is on coming) and two Federal administration cities.[162] Composed of more than 56 ethnic groups or Nation Nationalities incorporated under one regional state (Southern Nation, Nationalities Regional state)

As per Article 39/4/a of the constitution, to operationalized secession right, the concerned Nation, Nationalities should have a regional state with Legislative council. Though, this article only operationalized for those who established their regional state. Having a regional legislative council is a pre-condition for secession, so how those nations, Nationalities without Legislative Council exercise their unconditional right to secession?

All Nation, Nationalities, and Peoples didn't establish their state council of legislative. So, nation, nationalities, and peoples before achieving a sovereign state or before exercising their unconditional right to secession, first they should be a regional state.

The researcher argued that the Ethiopian federal structure is not in conformity with an unconditional right to secession. Because nation, nationalities, and people first they should be

[161]The Ethiopian Constitution article 39/4/a
[162] The Ethiopian Constitution Article, 47/1

regional state accordingly Article 47/3, then after satisfying this Article they will proceed for the next steps. So, the federal arrangement is not suitable for the direct applicability of Article 39/1 of the Ethiopian Constitution.

Arguably, it's possible to say article 39/4/a set a precondition for the unconditional right of Nation, Nationalities, and Peoples of Ethiopia. Although practically, this provision makes difficult the applicability of unconditional right and changed the spirit of unconditional right to Conditional right to secession.

Despite minority rights, both in Bougainville and Quebec not complicated like Ethiopia, Autonomous Bougainville and Quebec Province are the bearer of the right to secession in Papua New Guinee and Canada, respectively. Although the supreme court of Canada didn't want to scrutinize controversial issue of 'people' for Quebec as well as Aboriginal's who live in Quebec,[163] just made an opinion concerning unilateral rights from an international perspective. And the court advised in what manner Quebecers might exercise their right to referendum.

3.1.3. Unilateral right to Secession

A. How unilateral right operationalized?

Concerning Unilateral Secession, Both Quebec and Bougainville tried but it was unsuccessful, Quebec didn't win a majority vote, Bougainville had a majority vote, but they were not winning international recognition. In the Canadian constitution, secession is neither authorized nor prohibited expressly, the same to Papua New Guinee before the Bougainvillea Peace agreement. In 2001, the Bougainvillean Peace Agreement, by the way of Constitutional Amendment, introduced the deferred referendum which will have the effect of independency for Bougainvillea. Though, the Bougainvillean Peace Agreement and the Canadian Supreme Court advisory opinion

[163] Reference Re Secession of Quebec, 1998, paragraph, 125

on reference to Quebec secession transformed both Bougainvillea and Quebec from unilateral secession to Consensual secession, which will affect the negotiation.

The Papua New Guinee Constitution expressly provided under section 338/1 the deferred referendum or the possibility of secession. Whereas in Canada, no explicit constitutional provision which governs secession. Therefore, the Canada Supreme Court in its opinion, not expressly recognized, but set preconditions for a future referendum, like concerning the clarity of both question and majority vote,[164] and allotting the obligation of negotiation on both parties. So, possible to argue that, the Supreme Court of Canada permitted consensual secession based on the fundamental principles of Constitutionalism[165] but rejected an attempt at Quebec's unilateral secession. Unlike the Ethiopian Constitution, the Canadian Supreme Court and Papua New Guinee Constitution set a conditional Secession based on negotiation.[166]The outcome of the deferred referendum for Bougainvillean in Papua New Guinee constitution will not have a binding effect on both parties.

As indicated above, the Ethiopian Constitution granted for the Nation, Nationalities, and Peoples unconditional Unilateral right to Secession. Some authors argued that the Ethiopian constitution incorporated consensual secession. The researcher strongly disagrees, because having Constitutional recognition of secession is not mean only it's consensual secession.

Of course, Consensual secession occurs might be through 'constitutional recognition' or 'political negotiation.'[167] However, this is not mean "Recognition" alone imply to Consensual secession, because it's better to scrutinize How this "recognized" right could be operationalized.

[164] Reference Re Secession of Quebec, at 92 and 93
[165] Wayne Norman, supra note 27
[166] Reference Re Secession of Quebec, 1998, paragraphs 87–88 and Papua New Guinee Constitution
[167] Canadian supreme court definition of unilateral secession seems narrowly from the perspective of negotiation.

So, now the issue in the debate is, first, 'Constitutional Recognition and its operation', second "political negotiation." In the Ethiopia constitution, there is no place for negotiation like Canada and Bougainville. Why negotiation missed? It's not clear, but the enactors domesticated secession right to rectify past injustices, and for this reason, they gave the absolute right to secession for nation, nationalities, and peoples of Ethiopia.[168] Therefore, Article 39/1 of the constitution expressly promulgated secession right as an Unconditional. It's possible to argue, the writers of the Ethiopian Constitution intentionally excluded negotiation from the secession clause.

Although, unilateral secession is the withdrawal of a territory and its population from the jurisdiction of a mother state, by a unilateral decision of the people who seek secession.

It's important to stress that, "unilateral decision of the people who seek secession." When Quebecers voted unilaterally for their independence, the Supreme Court of Canada asserted that Quebec can't unilaterally secede from Canada,[169] because one, there is no explicit rule under the constitution which govern secession right, two, from an international perspective, Quebec to secede from Canada, first there should be the denial of internal self-determination, second, there should be Grave violation of human right, then the court concluded Quebec did not satisfy both international and domestic laws to secede unilaterally from Canada.[170] But the Supreme Court of Canada did not deny the unilateral right to decided to do referendum for secession with a clear question and a clear majority.

But the justification stated by the writers of the Ethiopian Constitution for recognition of secession was because of human right violation in the past.[171] So, to 'rectifying historically unjust

[168] The Ethiopian Constitution Preamble paragraph 4
[169] Reference Re The secession of Quebec 1998. Paragraph.219
[170] Ibid
[171] The minute of Constituent assembly and Paragraph four of the Ethiopian constitution Preamble

relationship' recognized secession as unconditionally as a guarantee. No need for reason/cause to brought by Nation, Nationalities, and peoples to secede from Ethiopia. Therefore, the enactors intentionally granted unconditional right which is operationalized unilaterally without any interruption from any organ of government. And it is non-derogation Constitutional right, can't be suspended even in case of emergency.[172].

The closer scrutiny of Article 39/1 "unconditional right", the preamble paragraph 4, and Article 39/4/a clearly show the unilateral secession. Article 39/4/a/, of this provision needs the approval of the legislative council of Nation, Nationalities, and Peoples Concerned. The initiation of secession can be triggered only by their local legislative assembly. So, excludes intervention from outside, the decision will be made unilaterally by the people who seek secession.

Then Article 39/4/b/ says, "When the Federal Government organized referendum with three years from the time it received…", and Article 39/4/c/ "when secession is supported by the majority vote".[173] Some argued here, one, an authoritarian regime, the federal government might not be willing to organized referendum (Hope democratic government will respect the rule of law and constitutionalism), two, the wording of the provision is not seeming mandatory rather it seems to depend on the commitment of the federal government, because it says, "When the Federal Government Organized Referendum."[174]

But the Ethiopian Constitution accordingly Article 8, "All sovereign power resides in the Nation, Nationalities, and Peoples of Ethiopia."[175]Not for the federal government.

[172] The Ethiopian Constitution Article 93/4/c
[173] The Ethiopian Constitution article 39/4
[174] The Ethiopian Constitution Article 39/4/b
[175] The Ethiopian Constitution Article 8

For this reason, it's better to look the Cumulative reading of Article 8, Article 39/4, Article 62/3 of the Constitution (Article 63, give power for House of Federation to decide matter relating to self-determination) and Proclamation No.251/2001, Consolidation of the House of Federation, Article 19/2/. The cumulative reading of all, clearly shows that the House of Federation mandated to organizing referendum within a specified time, it's obligatory.[176]The Ethiopian Constitution granted secession right for Nation, Nationalities, and peoples as a unilateral privilege as per Article 39 Constitution.

Nevertheless, both the Canadian Supreme Court decision and the Papua New Guinee Constitution granted a unilateral right to decide whether or when it called for a referendum on the secession.[177]

B. Duty to Negotiation

The Canada Supreme Court after rejecting the unilateral secession of Quebec set preconditions on how future referendum might be respected within the scope of, Federalism, Democracy, Constitutionalism, and Rule of Law, and Minority Rights.[178] The negotiation should focus on issues of 'a clear majority and a clear question.'[179] Although, based on this principle of democracy and federalism, the court advised an obligation to negotiate both the federal government and all federations,[180] and no exception to refuse to negotiate.

[176] Proclamation No.251/2001, Consolidation of the House of Federation, and the Definition of its power and responsibility.
[177] Xabier Arzoz and Markku Suksi, Comparing constitutional adjudication of self-determination claims. Maastricht Journal of European and Comparative Law 2018, Vol. 25(4) 452–475
[178] An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference preamble paragraph 6
[179] Reference Re Secession of Quebec, 1998, paragraph 87-93
[180]. Francisco Javier Romero Caro, The Spanish vision of Canada's Clarity Act: from idealization to myth

Following the Supreme Court's opinion, the federal government introduced the "Clarity Act" in 2000.[181] The purpose of the clarity act is to set rules under which circumstances the government of Canada would enter into negotiation and preconditions enter to negotiation.[182] Though, the federal government on clarity acts, focus on what situations obliged to negotiate, the clarity of referendum question, and determining the role of the House of Commons in deciding clear expression of the will of the population of a province.[183]

Although, the Clarity act makes it clear under paragraph 1(4) a & b, circumstances that would prevent a duty to negotiate and which prevent any provincial secession. These two preconditions set to protect confusing wording like in 1995 referendum. So, no negotiation if questions are not clear.[184] But as per the supreme court decision in Quebec reference, if the "clear expression of a clear majority of Quebecers for no longer wishes to remain in Canada" will make Quebec an independent state.[185]

As it is indicated in chapter two, the Bougainvillean situation is different from Ethiopia and Canada. After the second unilateral declaration of independence, the Bougainvillean was in civil war for nine years (1988-1997), between themselves and with Papua New Guinee. But after a bloody civil war, lastly, they signed the Bougainvillean Peace Agreement in 2001, this agreement guaranteed Bougainvillea's referendum which granted them an option of Independency.[186] This agreement implemented by amending both the Papua New Guinee Constitution and the Organic

[181] An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference. 2000

[182] An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference in its preamble. As cited in Francisco Javier Romero Caro, The Spanish vision of Canada's Clarity Act: from idealization to myth

[183] Clarity Act, Paragraph 1(3)

[184] Clarity Act, Paragraph 1(6)

[185] Reference Re Secession of Quebec, paragraph 92

[186] See US Institute of Peace, 'Bougainville Peace Agreement', signed at Arawa, Bougainville, 30 August available at http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/bougain_20010830.pdf accessed 21 March 2020.

law of national government. And the newly inserted and amended constitutional provisions may not be amended unilaterally by the Papua New Guinee without the consent of the Bougainvilleans.[187] So, unlike the Canada-Quebec, the Bougainvilleans secured a Constitutionally recognized deferred referendum which would affect their independency but the same with Canada-Quebec, the result of the referendum subject to negotiation.[188]

However, after going through all these processes, the result of the referendum is not mandatory on both Bougainville and Papua New Guinee Government, rather it is to be an advisory or a matter of negotiation.[189] Besides the negotiation, accordingly, the national constitution 342/2 the National Parliament of Papua New Guinee has the ultimate decision-making power concerning the referendum.

Therefore, still, it is a contentious issue, why the referendum outcome should not be binding? Why it would become a matter for consultation between the parties?[190] Here, the difference between Bougainvillean and Canada-Quebec duty to negotiation case, in Canada, one, the supreme court set out what criteria's will be tabled for negotiation and then secondly, the federal government enact the clarity act and clearly what will be negotiated and who will be the responsible organ to check the clarity of questions and referendum. But in Bougainvillea, first, from the very beginning, the outcome of the referendum is not mandatory within the parties. Secondly, if the referendum outcome in favor of the Bougainvilleans, one, Bougainvilleans will have to negotiate with the

[187] Papua New Guinee constitution Sections 345 and 346
[188] Reference
[189] Papua new Guinee Constitution under section 342
[190] When the negotiation was conducted, it was difficult to reach both parties to the agreement, especially on referendum so later when Australia come to as a negotiator, the Australian proposal was intended to remove the immediate sources of tension over the question of a referendum, so they create a middle ground, and they tabled the referendum with deferred 10-15 years without binding effect. See Anthony Regan.

national government but there are no requirements for negotiation set out like Canada, two, even the referendum would be subject to the national government ratification.[191]

The Bougainvilleans were not happy on the non-binding effect of the referendum, but as Anthony Regan noted, the Bougainvillean belief that if they could unify Bougainvilleans they will achieve winner vote for independent, then, hopefully, the international community will have attention what is happening in Papua New Guinee.[192] Of course, in their third consensual referendum for independence, the UN was an observer.

Lastly, in 2019, as part of a peace agreement, the third, not unilateral, but consensual and non-binding independence referendum was held in Bougainville between 23 November and 7 December 2019. The Bougainvillean voted, 98.31% for independence. The vote for independence will need to be negotiated between Bougainville and Papua New Guinea, and finally, it would be present to the Papua New Guinea Parliament.

The Ethiopian Constitution apart from its recognition of secession right nothing says about negotiation. But in my opinion, to operationalized Article 39/4/e/ it needs negotiation with federal governments and other regional governments. Even some scholars argued that secession rights might contradict Article 40/3 of the constitution because this article provided that "Land and Natural Resources are Common Property of Nation, Nationalities, and Peoples."[193]

The land is under public ownership in the Ethiopian constitution, so every nation, nationality, and peoples of Ethiopia has an interest in every part of the country. I do not buy this argument, because secession means separation of territory and population from the parent state to create another new state, is clear secession challenges the sovereignty and territorial integrity of an existing state.

[191] Papua new Guinee Constitution under section 342/2
[192] Anthony Regan, The Bougainvillean Referendum an Overview of the Arrangements, 3rd 21 March 2016
[193] The Ethiopian Constitution Article 40/3

But it is not an easy task settling the territorial issues, especially in Ethiopia. In my opinion, the issue of Land (Article 40) needs negotiation. In Ethiopia, there is a border dispute between regional states. For instance, The Amhara's longstanding claim to the territories that are currently part of Tigray regional state and The Oromo claim that their ancestral land from that the Somali regional states.… almost every regional state has a claim.

So, Article 39/4/e/ requires that all assets be divided between the federal government and the new state accordingly to the law.[194] As per the constitution, "assets are affected in a manner prescribed by law."[195] What kinds of law? Not clear. Here negotiation should be taken as a lesson from Canada at least concerning Article 39/4/e/. Because border and land issues cannot be resolved only by law.

[194] Erika Arban, The Reference and Ethiopian Constitutionalism. Giacomo Delledonne · Giuseppe Martinico (eds), The Canadian Contribution to a Comparative Law of Secession Legacies of the Quebec Secession Reference
[195] The Ethiopian Constitution Article 39/4/e/

3.2. Concluding Remarks

As Norman noted, rather than denying constitutional recognition of secession in a multinational state, it's better to acknowledge and have a stringent procedure for secession.[196] which will make secession less likely or costly for the secessionist and requiring super-majority which might discourage secessionist.

On the operation of unilateral secession, both Canada-Quebec, Ethiopian, and Bougainvillean has the right to decide on the referendum unilaterally without any interference. But after the referendum, the Bougainvillean Constitution, and the Canadian Supreme Court opinion, transformed both Bougainvillea and Quebec from unilateral secession to Consensual secession.

The Ethiopian constitution does not provide negotiation for actual controversies[197]which is suggested by the reference and in Papua New Guinee Constitution, so secession is not only as 'Conditional' but also as a 'unilateral privilege' for Nation, Nationalities, and peoples of Ethiopia.[198] Although, there is a gap between Article 39/1/ of the Ethiopian constitution and the federal arrangements of federations.[199]

Indeed, the Reference openly discusses the possibility for Quebec to secede from Canada federation, while the Papua New Guinee Constitution expressly permitted for Bougainville deferred referendum which will have an effect of independency, and the Ethiopian Constitution abruptly established the conditional unilateral right for all Nation, Nationalities, and Peoples.[200]Therefore, the Canadian Reference, the Ethiopian, and Papua New Guinee Constitution

[196] Wayne Norman, supra note 27
[197] Erika Arban, The Reference, and Ethiopian Constitutionalism. Giacomo Delledonne · Giuseppe Martinico (eds), The Canadian Contribution to a Comparative Law of Secession Legacies of the Quebec Secession Reference
[198] Ibid
[199] Article 39/4/a/ made unconditional secession to conditional by putting the requirement of legislative council approval while all nation nationalities do not have a legislative council.
[200] Erika Arban, supra note 197

were both the beginning of the gradual departure from the idea or theory of secession as a Constitutional 'taboo.'[201]

[201] Ibid

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