Barotseland status remains a hotly contested a matter of law

by Saleya Kwalombota

The question of Barotseland status remains a hotly contested issue which has seen violent police crackdowns, arrests and court convictions of those who have tried to implement the 2012 Barotse National Council (BNC) Resolutions. It is also a very thorny political question at the same time that has seen subsequent government administrations unable to face it since the signing and repudiation of the Agreement. Political players only raise the issue as a matter of concern mostly in election years.

The calls for the reinstatement of Barotseland sovereignty following the unilateral termination of The Barotseland Agreement 1964 by Zambia cannot be ignored. In fact, 2012 BNC Resolutions have never gone away but are somewhat kept from the public space because of the contentious status of Barotseland, which has been typically used for political mileage by competitors in the political market and at the same time thwarted once the political groups assume power, notwithstanding its legality.

It is therefore a necessity to discuss the subject matter in light of Public International Law in order to establish prospects for statehood as it pertains to the international community vis-à-vis the criteria of the 1933 Montevideo Convention and state recognition. This is also underlined by the fact that the 2012 BNC Resolutions affirmatively resolved for reinstatement of Barotseland statehood for the purpose of establishing an independent state.

In Public International Law, statehood remains a primary factor in establishing the ability to participate in the international community in a legal and legitimate manner. Statehood is what gives the primary entry point to engaging in international affairs. In discussing the case for statehood of Barotseland, it must best be done by considering Barotseland's historical facts and in contemporary terms. The reason for this is that the BA'64 should be considered as a bridge between two distinct conditions or statuses of Barotseland. Therefore, it is correct to state that the Barotseland question must be viewed from the declaratory pronouncements of the Montevideo Convention on statehood.

Article 1 of the Montevideo Convention on Rights and duties of the State (1933), gives the widely accepted criteria in International Public Law of statehood. It asserts that the state as an international person should possess the following qualifications: a permanent POPULATION, a defined TERRITORY, GOVERNMENT, and CAPACITY to enter relations with other states (Shaw, 2008). Therefore, even though using the Montevideo criteria may be considered ex post facto when applying it to the pre-agreement condition of Barotseland.

It must be understood that Barotseland territory was described by the Geographer (1973) wherein it was stated that, “The territory of the Barotse Kingdom was defined as that over which the King of Barotse was paramount ruler on 11th June 1891.” With regards to a permanent population, Barotseland is constituted of 38 ethnic groups. To this effect, it is undeniable fact that Barotseland has a permanent and considerable population.

As for the ability to enter relations with other states or entities, this can be confirmed, arguably, by the various Treaties that the Litunga was able to sign with the BSA Company. This is confirmed, for example, by the 1890 Frank Lochner Treaty which was signed between King Lewanika and the British South Africa Company, making Barotseland a British Protectorate (Mufalo, 2011). While the attempt here is not to cite all the treaties that the Barotseland King signed, it is important to view this Treaty-signing ability as

confirmation of the independent nature of Barotseland as a separate entity akin to statehood, and reflecting an effective control over the territory with relation to dealing with states or forces outside the territory of Barotseland. This confirms the characteristic of dealing with national (state) matters with foreign elements thereby underscoring the ability to engage in foreign relations.

It should be kept in mind that pre-colonial Barotseland was a self-governing entity—an independent entity. This is actually buttressed by the other three cited criteria for statehood vis-à-vis the Montevideo Convention on Statehood. It, therefore, can be concluded with sufficient surety that the pre-Agreement (1964) Barotseland was indeed a state in the classificatory criteria employed here. In fact, relation should be made to the fact that the BA'64 was entered into by Barotseland as a contracting party, conveying the independence of the Kingdom, and exhibiting its ability to relate with other nations/states, that is, Northern Rhodesia and Great Britain.

The calls for statehood by the Barotseland National Council (BNC) of 2012 in the contemporary or post-BA'64 can be said to be quite focused on how it corresponds to the classification criteria of the Montevideo Convention. It is imperative here to also apply the case for statehood under the methods or criteria employed for the pre-Agreement consideration. It is very relevant to place Barotseland under this criterion because of the alluded to dichotomous nature of the status of the state before independence of Northern Rhodesia (Zambia).

In conclusion, the nation of Zambia should start a genuine and meaningful process of reviewing the legality of Barotseland's right to self-determination because Barotseland is not in any union agreement with Zambia to remain part of Zambia. It, therefore, not in the interest of justice and the people of Barotseland to continue living as subjugated people in their own territory because of the cruel illegality and legacy left by Kaunda due to his large appetite for absolute power which left the people of Barotseland without fundamental rights to internal autonomy. This is the worst terrible atrocity against the people of Barotseland.