

ADDIS ABABA UNIVERSITY
SCHOOL OF LAW AND GOVERNANCE

LEGITIMACY OF THE MEMORENDUM OF UNDERSTANDING BETWEEN
ETHIOPIA AND SOMALILAND; SPECIAL EMPHASIS ON THE LEGALITY
OF ETHIOPIA'S RECOGNITION OF THE STATE OF SOMALILAND

THESIS SUBMITTED IN PARTIAL FULFILMENT FOR LL.M DEGREE IN
PUBLIC INTERNATIONAL LAW

BY

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UNDER THE SUPERVISION OF:

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June 2024

ADDIS ABABA, ETHIOPIA

Declaration

I, Teweldebrhan Mamo Mesfin, declare that this thesis is my original work and has never been submitted in any other institution. I also declare that all materials used have been duly acknowledged.

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The thesis titled " LEGTIMACY OF THE MEMORENDUM OF UNDERSTANDING BETWEEN ETHIOPIA AND SOMALILAND; SPECIAL EMPHASIS ON THE LEGALITY OF ETHIOPIA’S RECOGNITION OF THE STATE OF SOMALILAND” by Teweldebrhan Mamo is approved for the Degree of Master of Laws (LL.M) in public international Law.

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Acknowledgments

First and for most I wish to extend profound gratitude to the almighty God. Next, I extend heartfelt appreciation to ass. Professor Mohamed Habib, my esteemed supervisor, for his invaluable guidance and unwavering support throughout this journey.

Abstract

During the colonial era Somaliland has been under the rule of Britain. In June 1960 British colonizers left Somaliland and the latter proclaimed its independence. After the withdrawal of the colonial forces the state of Somaliland gained recognition of more than 35 countries including USA. But this sovereignty lasted only for five days until Somaliland consensually form a union with Italian Somalia to form the republic of Somalia. The union comes to an end in 1991 after the collapse of an oppressive regime of said bare who ruled the country for over 20 years. With the collapse of the said bare regime the republic of Somalia also collapsed of which the current state of Somaliland emerged through a unilateral declaration of independence. Although from that time on, Somaliland continued as a de facto state, no country dared to recognize it as an independent state and the state of Somalia even claims that Somaliland is still part of Somalia. Against this background, the government of Ethiopia signed a memorandum of understanding in 2024 with the state of Somaliland by which Ethiopia committed to recognize Somaliland and the latter committed to allow its coastline to Ethiopia. Immediately after the conclusion of this memorandum of understanding, the government of the state of Somalia issued a press release stating that the MOU violates the sovereignty and territorial integrity of the Federal Republic of Somalia. The republic of Somalia believes that the unilateral declaration of independence by Somaliland is illegal and Somaliland is still an integral part of the republic. This research has addressed if Ethiopia's recognition of the state of Somaliland is indeed in line with the principle of international law such as respect for the sovereignty and territorial integrity of states, uti possidetis and nonintervention in the internal affairs of state and I argue that it is.

Keywords: Recognition, Uti possidetis, Territorial integrity, Sovereignty, Statehood

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CHAPTER ONE

INTRODUCTION

Background of the study

The history of Somaliland before the beginning the 19th century is not clear.¹ According to the Encyclopedia Britannica, Somaliland was considered as an Arab Sultanate during the middle Ages. However, history does not clarify whether this Arab identity pertained to the rulers or the general population. Many contemporary Somali clans trace their paternal lineage to Arab ancestors, lending some credibility to these accounts. Britannica² also notes that this Sultanate was dismantled by foreign forces in the 17th century. Historical sources indicate that both the Ottoman Empire and Egyptian forces settled along Somaliland's coastline at different points in time.

The roots of British Somaliland can be traced to Britain's strategic interests in Aden, an essential outpost in maintaining control over its empire in India. By the late 19th century, Britain sought to prevent other powers from establishing influence in the Horn of Africa, thereby securing its dominance over the Gulf of Aden. In 1881, Britain signed treaties of protection with Somali coastal clans, leading to the eventual establishment of British Somaliland. The boundaries of this protectorate were defined through agreements with France in 1888 and Italy in 1894, with an additional Anglo-Ethiopian treaty in 1897 further solidifying British control. The British administration was relatively minimal, focused primarily on maintaining law and order. According to historian I.M. Lewis, the administration's objectives were limited, facilitated by the region's homogenous population, which was composed of three major Somali clans.³

By 1956, decolonization efforts accelerated following Britain's withdrawal from disputed Ethiopian territories. In 1958, Somali landers began assuming administrative roles previously held by British officials. In 1960, elections introduced a ministerial government in Somaliland,

¹ Somaliland British Protectorate

² Ahmed h Nur; Does Somaliland have a legal ground for seeking international recognition? At page 1

³ ibid

and on April 6 of that year, the Somaliland legislative council passed a resolution requesting independence. Shortly thereafter, Somaliland and Italian Somalia agreed in principle to unite upon achieving independence. Despite these plans, Britain concentrated on preparing Somaliland for independent statehood. On June 26, 1960, Somaliland gained independence, and its new constitution established its governmental structure. It gained recognition of some 35 countries.⁴

Italian Somalia also attained independence on the first July 1960. That same day, the two countries convened in Mogadishu to formalize their unification i.e. the formation of new Republic of Somalia. Each of them independently passed what is commonly called an Act of Union, merging the two distinct states into a single entity and granting all citizens of both former colonies Somali Republic citizenship. Additionally, the legislatures of both territories merged into a unified National Assembly⁵. Accordingly the new constitution designated Somalia as a unitary state.

In 1967, Abdirashid Ali Shermarke was elected president of Somalia. His tenure was cut short in 1969 when he was assassinated by a member of his personal guard.⁶ Following his death, General Mohamed Siad Barre took control of the country through a military coup. Initially, Barre garnered support from the North due to his advocacy for a Greater Somalia. However, discontent quickly arose when his administration displayed favoritism toward the Darod clan, to which he belonged, while marginalizing the Isaq clan, which comprised the majority of Somaliland's population. The oppressive nature of Barre's rule spurred the formation of the Somali National Movement (SNM), which sought to resist his government.

A civil war arose in 1988 between opponents and proponents of Siad Barre groups that ultimately resulted in the down fall of the oppressive government of Siad and even the collapse of Somalia in 1991. The northerners held a conference in which they declared the independence of the Somaliland state. During the conference, the SNM and Northern clan elders renounced the 1960 Act of Union and tasked SNM leaders with forming a transitional government for two years.⁷

⁴ I.M. LEWIS, THE MODERN HISTORY OF SOMALILAND 40–45 (1965)

⁵ *Id* at page 46

⁶ Anthony J Carroll and B Rajagopal, 'The Case for the Independent Statehood of Somaliland' (1993) 8 American University International Law Review 1, 1.

⁷ *Id* at page 4

Despite Somaliland's declaration of independence 34 years ago, its sovereignty is yet to be formally recognized by international organizations and states.

On January 1, 2024, Abiy Ahmed, the current prime minister of Ethiopia signed a Memorandum of Understanding (MoU) with Somaliland that has sparked considerable regional and international debate.⁸ According to Redwan Hussien, Abiy Ahmed's National Security Advisor, the agreement guarantees Ethiopia commercial maritime access and a leased military base. In return, Somaliland, a self-declared independent region, will receive either a share in Ethiopia Airlines or Ethio Telecom, Ethiopia's leading telecommunications company, pending Addis Ababa's thorough evaluation of potential official recognition of Somaliland. Additionally, Ethiopia has pledged to develop infrastructure connecting the base and the port, as well as to engage in further discussions on cooperation in education, health, and military matters.

During the signing ceremony, President Muse Bihi Abdi of Somaliland announced that the region would allow Ethiopia to access its coastline, while Addis Ababa would formally recognize Somaliland, which has sought international recognition for over three decades.⁹ The lease of coastal line is expected to last for 50 years, with the possibility of extension, though the extent of Ethiopia's commitment to recognize Somaliland as a sovereign state remains unclear. The Ministry of Foreign Affairs of Somaliland stated that Ethiopia would become the first country to officially recognize the de facto state. Addis Ababa has justified the agreement by asserting that it is not unlawful and pointing out that other entities have also engaged in similar deals with Somaliland.

Statement of the problem

With the signing of the memorandum of understanding between the government of Ethiopia and the state of Somaliland Ethiopia will be the first country to officially recognize Somaliland as an independent state. On the other hand the government of Somalia has released a issued a press release and rejected the memorandum of understanding between the two states arguing that it clearly violates international law specifically the constitutive act of the AU and charter of the united nations. The press release states that Ethiopia's act is a clear violation of the territorial integrity of Somalia republic and accordingly the latter is ready to protect its sovereignty,

⁸ Available at <https://www.ispionline.it/en/publication/on-the-edge-the-ethiopia-somaliland-mou-162032>

⁹ id

territorial integrity, dignity and social unity¹⁰. The problem I have tried to address in this research, hence, is Whether Ethiopia's recognition of Somaliland indeed is in violation of the territorial integrity and sovereignty of Somalia. In doing so I will try to address the relevance and scope such related concepts as statehood, uti possidetis, self-determination, territorial integrity and premature recognition. In addition I will try to elaborate on the past and current status of the state of Somaliland specifically whether Somaliland was an independent state before the merger, whether the treaty that brought the two countries together was valid under international law, whether the termination of the act of the union was justified and whether Somaliland as things stand now fulfills the criteria of statehood under international law and hence is worth of recognition.

Objective of the study

General objective of the study: the general objective of this research is to determine the legality of Ethiopia's recognition of the state of Somaliland under international law. In doing so the research will focus on the following specific objectives;

- To determine the validity of the international treaty known as act of the union that brought Somalia and Somaliland together,
- To determine the scope of territorial integrity and sovereignty of the state of Somalia under international law.
- To clarify the scope of the concept of self-determination specifically remedial secession vis a vis territorial integrity.
- To clarify the relevance of the concept of the so called uti possidetis to the determination of the state of Somaliland's secession.
- To determine the past and present status of the state of Somaliland i.e. the fulfillment of the traditional criteria for the attainment of the status of statehood.
- To examine the validity of the legal arguments frequently rose against recognition of the state Somaliland specially to determine if the recognition of Somaliland will be a bad lesson for secessionist movements in Africa.

¹⁰ <https://www.voanews.com/a/somalia-rejects-ethiopia-sea-access-deal-with-somaliland-/7421519.html>

Research questions

- ❖ Was the treaty known as the act of the union that brought Somaliland and Somalia together valid in the first place and was the termination of it by Somaliland justified?
- ❖ What is the scope of the concept of territorial integrity and sovereignty of the state of Somalia under international law?
- ❖ Is Somaliland still considered to be part of Somalia republic and was the unilateral declaration of independence unlawful?
- ❖ When is a unilateral secession of a territorial unit considered to be in line with international law?
- ❖ What is the scope and relevance of the principle of uti possidetis? Can the state of Somalia validly claim that the unilateral secession and the recognition thereof of the state of Somaliland is contrary to the principle of uti possidetis?
- ❖ What are the basic criteria of statehood under international law and does Somaliland fulfill all this criteria currently?
- ❖ What other risks and arguments are raised against recognizing such secessionist movements as Somaliland?

Scope of the study

The research tries to address the validity of the memorandum of understanding signed between the government of Ethiopia and Somaliland. However the study is not meant to address the whole contents of the agreement. It is rather limited to the recognition clause i.e. the legality of recognizing Somaliland under international law. It is recalled that recognition is a mixture of legal, political and moral decisions. But this research will not delve in to the political and moral considerations in determining the legality of recognizing Somaliland. It is limited solely to the legal arguments under public international law.

Research Limitations

One of the problems that may be encountered in doing this research is the nature of the memorandum of understanding itself being hidden between the governments .i.e. the full content of the agreement is yet to be disclosed officially. What has been made public is that the governments of the two states reached an agreement to the effect that Somaliland agreed to give Ethiopia a sea access and in return Ethiopia committed itself recognize Somaliland as an independent state. So no one knows the details of the agreement and the conditions under which

the respective obligations are to be performed. The second problem has to do with the nature of the concept of recognition itself being a mixture of international law, politics and even municipal law. So in determining whether or not the recognition of a certain entity is valid, the law is not the only factor we have to consider. There was no consistent state practice on the recognition of new states.

Significance of the study

- ✓ Shed light on the legal criteria for statehood and the extent to which Somaliland fulfills them. This could contribute to a clearer understanding of Somaliland's status as a de facto independent state and its prospects for wider international recognition.
- ✓ Offer legal and diplomatic recommendations for Ethiopia, Somaliland, Somalia, and international bodies on the validity of the memorandum of understanding.
- ✓ Suggest a framework for handling **state recognition** disputes while maintaining regional stability.
- ✓ Offer a legal framework for how African states and the international community might approach similar cases.
- ✓ Provide insight into how regional and international actors interpret recognition in cases of breakaway regions.
- ✓ Contribute to the ongoing debate on **state recognition**, a crucial aspect of **Public International Law**.

Research methodology

Research methodology in any type of research is basically determined by the kind of research to be undertaken. Accordingly, the research method adopted for this study is international law research method. It employs a standard of international law methodology. As such, it primarily relies on the sources of international law laid out in Article 38(1) of the ICJ statute. Accordingly, this is a qualitative types of research method primarily based on analysis of a wide range of non-numerical data (text data). Primary and secondary sources including customary international law, treaty laws, general principles, soft laws, decisions of National and International Tribunals, books, journals and other literatures are used. Media sources, relevant reports and statements by government and national and international non-governmental organizations are also reviewed.

Organization of the study

This research is divided into three chapters. Chapter one is an introductory chapter in which background of the study, statement of the problem, general and specific objectives of the study, research questions, scope of the research, significance of the research, methodology and literature review are addressed. Chapter two has to do with the main body of the research which includes the main arguments whether the recognition of Somaliland as a state and hence whether Ethiopia's recognition of the state of Somaliland is in line with international law principles. Finally I will put this research to an end by concluding the main findings of the research and recommending the possible ways forward.

Literature review

Much has been said about the legal status of the state of Somaliland and if it actually deserves to be recognized. There are also a few international court decisions involving issues of unilateral declaration of independence, territorial integrity and recognition. Besides court decisions we also have UN Security Council resolutions on the international and state practice of the reaction to secessionist movements. According to Peggy Hoyle¹¹ Somali land deserves recognition because it fulfills all the traditional criteria for being a state under international law. He goes on to argue that if one accepts that Somalia is a failed state for it ceased to function as a state and first handicap of the international community not to recognize Somaliland is removed.¹² So his argument is that if the traditional criteria of statehood are strictly applied, Somaliland can surely pass the statehood test i.e. it has a defined territory, a relatively permanent population, and an effective government.¹³

Matt Bryden¹⁴ employs a logical analogy to argue for Somaliland's statehood, suggesting that if an entity resembles, functions, and operates like a state, it should be recognized as one, much like identifying a banana by its appearance, smell, and taste. He asserts that the self-proclaimed Republic of Somaliland easily meets this "banana test" by satisfying the core criteria for statehood outlined in the 1933 Montevideo Convention: clearly defined borders established by international law, a permanent population, and an effective government that actively engages in

¹¹ Peggy Hoyle SOMALILAND: PASSING THE STATEHOOD TEST?

¹² Id at page 4

¹³ Id at page 12.

¹⁴ Matt Bryden, 'The "Banana Test": Is Somaliland Ready for Recognition?' (2003) 19 *Annales d'Ethiopie* 341

diplomatic relations with other states and international bodies¹⁵. Therefore, Bryden concludes that recognizing Somaliland is both warranted and beneficial.

Aaron¹⁶ Has tried to analyze Somaliland's assertion of independence in light of international norms and theories of self-determination and secession and argues that that under the current international standards, Somaliland lacks a sufficient legal basis to separate and become an independent, sovereign nation. However he come up with a leeway for Somaliland to be recognized under international law. Accordingly he argues that ¹⁷considering the catastrophic consequences of state failure on populations, secession laws should permit regions to break away when the original state has persistently failed to ensure security, maintain a functional political system, and delivers essential public services over an extended period—provided the seceding group has demonstrably upheld these functions. This approach according to him refines existing legal frameworks by enabling communities in collapsed states, such as Somalia, to free themselves from chronic governance voids, while safeguarding the principle of sovereignty by restricting secession to extreme cases of irreversible state breakdown.

Peter Roethke¹⁸, analyzing whether the act of secession realized a positive right of external self-determination under international law, provides three reasons why Somaliland should be recognized as an independent state under international law. Somaliland's claim to self-determination rests on several arguments. First, its people consider themselves a distinct group, a view reinforced by past discriminatory treatment. Secondly, since a formal reunification with Somalia via treaty is unlikely, Somaliland may be able to reclaim the independence it held briefly during decolonization. Third, they might argue for "remedial secession" due to the denial of their self-determination rights within Somalia. Hence their secession could be considered legitimate under international law, which, while neither explicitly permitting nor forbidding it, may recognize it if certain procedural requirements are met.

¹⁵ *ibid*

¹⁶ Aaron Kreuter, 'Self-Determination, Sovereignty, and the Failure of States: Somaliland and the Case for Justified Secession' (2010) 19 *Minnesota Journal of International Law* 1, 1.

¹⁷ *Id* at page 397

¹⁸ Peter Roethke, 'The Right to Secede Under International Law: The Case of Somaliland' (2011) 20 *Journal of International Service* 1, 1.

Allison¹⁹ on the other hand explores the legal conception of statehood, from the Montevideo Convention. He then concludes that Somaliland's bid for international recognition is blocked primarily by the international community's rigid adherence to the principle of preserving existing borders. While this concern is understandable, Alison argues, given the numerous separatist movements globally, Somaliland's case presents no real threat to international stability.²⁰ Although Somalia is making progress, it still lags significantly behind Somaliland in terms of security and prosperity. Requiring Somaliland to gamble its future on Somalia's uncertain path to recovery is precisely what prompted its initial push for independence. Having functioned as an independent state for 15 years and fulfilling the legal criteria for statehood, Alison concludes, Somaliland is a state in practice. Formal recognition by other nations is the only missing piece, and granting it would allow Somaliland to participate fully in the international community and serve as a positive example for other regions struggling with internal conflict.

¹⁹ Alison K Eggers, 'When is a State a State? The Case for Recognition of Somaliland' (2007) 30 Boston College International and Comparative Law Review 211, 211., <http://lawdigitalcommons.bc.edu/iclr/vol30/iss1/12>

²⁰ Id at page 222

CHAPTER TWO

LEGALITY OF THE RECOGNITION OF SOMALILAND

2.1 Arguments against recognizing Somaliland

Around 35 years have elapsed since the Somaliland unilateral declared its independence from the republic of Somalia and no single country has dared to officially recognize its status as a state before the signing of the MOU with Ethiopia. Several reasons are frequently raised against granting recognition of Somaliland.

2.1.1 uti possidetis : The principle of uti possidetis, a well-established tenet of international law, mandates that the borders of newly independent states should align with the boundaries established during colonial rule. This principle was incorporated into the OAU Charter²¹, which emphasizes respect for the sovereignty, territorial integrity, and the inherent right of each state to exist independently²². The same is also provided in the Cairo Resolution which stated that the signatory states committed to respect colonial boundaries that existed at the time of independence.²³ Through time, the principle of uti possidetis become an internationally accepted principle and developed in to what is called as the concept of territorial integrity. Accordingly The United Nations forbids any threat or use of force that undermines a state's territorial integrity²⁴. Generally the argument frequently raised is that recognition of Somaliland violates the territorial integrity of the republic of Somalia because borders shall remain intact.

2.1.2 The fear of balkanization of Africa; There are scholars with the argument that Granting recognition to Somaliland could unsettle certain African states, as they worry that its precedent might embolden secessionist movements within their own territories. The idea is that if recognition is granted to unilaterally declared territorial units without the consent of the parent state, it would encourage would be states to declare their independence unilaterally and would be a bad precedent. This may in turn result in dismemberment of several sovereign states. These

²¹ Charter of the Organization of African Unity (adopted 25 May 1963, Addis Ababa) 479 UNTS 74, art 3.

²² ibid

²³ OAU, 'Resolutions Adopted by the First Session of the Assembly of Heads of State and Government held in Cairo, O.A.U Res. AHG/16(I)' (21 July 1964).

²⁴ U.N. Charter art. 2, para. 4.

scholars argue that even within the state of Somalia some regions like the state of Punt land may follow the footsteps of Somaliland, if the latter is to be granted recognition.

2.1.3 African solutions for African problems: Many European countries and even the UN itself are well aware of the fact that Somaliland meets the conventional requirements for statehood, including having a population, a clearly defined territory, an effective government, and the ability to engage in relations with other nations. But their argument is that other African countries and the African union shall deliberate on the issue first. If the AU accepts and recognizes Somaliland as an independent state other countries outside Africa have would have no problem with recognizing Somaliland, but no one is willing to take the initial risk as doing so may mean intervening in the internal affair of the continent in general and Somalia in particular.

In addition to the above arguments there are also several other reasons why Somaliland is yet to be recognized. In the following section I have tried to refute how all the above arguments are weak. I have provided a series of arguments why the recognition of the state of Somaliland is justified under international law and how the recognition cloth inserted in the MOU between Ethiopia and Somaliland is in line with international law.

2.2 Arguments for recognizing Somaliland

2.2.1 The 1960 treaty was invalid under international law

The act of the union that brought the two countries together was invalid for two reasons. Firstly, the purpose for which it was concluded i.e. formation of greater Somalia is in violation of the principle of *uti possidetis*. Before 1960 Somalia and Somaliland land were two distinct and different countries under the colonial rule of two different European powers. Immediately after their respective colonial powers withdraw, both states enjoyed sovereignty however succinct it was. It was the 1960 act of union that brought the two countries together. The two territories were distinct in their institutions, language, and history, resulting in their qualification as separate nations.²⁵ The main factor that inspired the formation of the union between the two countries is said to be the formation of greater Somalia. This proposal of forming a greater Somalia has to do with the idea of uniting five distinct Somali regions—Italian Somaliland, British Somaliland, Kenyan Somaliland (NFD under British control), French Somaliland (now

²⁵ Yilma Makonnen, *International Law and the New States of Africa: A Study of the International Legal Problems of State Succession in the Newly Independent States of Eastern Africa* (Ethiopian National Agency for UNESCO 1983)

Djibouti), and Ethiopian Somaliland (Ogden region under Ethiopian governance)—into a single Somali state governing the entire Somali nation.²⁶ as I have mentioned earlier in this chapter the principle of *uti possidetis* requires that new States will come to independence with the same borders that they had immediately after colonialism. But the idea of forming greater Somalia violates this principle as requires the five star republic of Somalia to take control of at least three territories from three sovereign states i.e. Ethiopia, Kenya and Djibouti. This means the 1960 act of union is not valid because the purpose for which it is formed is in violation of international law. According to the Vienna convention on the law of treaty a treaty is invalid if, when it was concluded, it violates a fundamental principle of international law.²⁷

Secondly Although Somaliland was the main drive-engine of the greater Somalia concept; there were defects in the formation of the treaty i.e. the act of the union. On June 27, 1960, the Somaliland Parliament enacted legislation aimed at establishing the legal framework for the political union between Somaliland and Somalia. But the representatives of Somalia failed to sign this document and hence it remained without effect in Somalia. On July 1 1960 Somalia's legislature rather approved a completely different document known as *Atto di Unione* (Act of Union) without even the knowledge of Somaliland. There was thus no bending and valid act of union between these two countries. The Act of Union of the July 1960 was repealed in 1961 when the National Assembly of the Republic of Somalia enacted a new Act of Union. But this one too was drafted by Somalia officials in negotiation with Italian lawyers. In a referendum on this new act of union northerners (Somaliland) overwhelmingly rejected²⁸ the new act because the national assembly of the south had no jurisdiction in the state of Somaliland. Hence, the attempt to unify the two states did not meet the legal standards mandated by domestic and international law.²⁹ The Vienna Convention on the Law of Treaties³⁰ provides that in order for a treaty to take effect, states must explicitly agree to be bound by it. The Law of Union between Somaliland and Somalia, drafted by Somaliland, was intended to take effect upon signing by the

²⁶ Somali irredentism: the pursuit of greater Somalia at page 75

²⁷ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 53.

²⁸ In Somaliland, political leaders, particularly those from the Somali National League (SNL), which holds the majority of seats in the National Assembly, actively opposed the proposed unitary constitution. As a result, only 100,000 ballots were cast in the region, with over 63% voting against the proposal.

²⁹ Somaliland: demand for international recognition, a policy document of the government of Somaliland 1991 at page 4

³⁰ See Article 24(2) of the convention

duly authorized representatives of the peoples of Somaliland and Somalia. In relation to this a British judge presiding over a treason case decided in 1963 that there was no valid union between Somaliland and Somalia. Accordingly the accused was acquitted on the ground that the south has no jurisdiction on Somaliland peoples, the crime being committed in Somaliland.³¹

2.2.2 Somaliland had a reason to terminate the treaty even if the treaty said to be valid:

assuming that the treaty between Somalia and Somaliland i.e. the act of union is valid Somaliland still had a reason to unilaterally terminate it on grounds of material breach of the treaty. Both the Law of Union and the Act of Union established the new Somali state within a constitutional framework. Article 1 of the union declares that the State of Somaliland and the State of Somalia unite to form a new, independent, democratic, unitary republic named the Somali Republic. However, in 1969, this constitutional order was overthrown, and a military dictatorship was established.³². Hence Somaliland can revoke this as a material breach and violation of the purpose for which the union was formed. According to the Vienna convention on the law of treaties³³ a significant violation of a bilateral treaty by one party allows the other party to revoke the breach as a reason to terminate the treaty or suspend its implementation, either fully or partially.

2) Forgetting about invalidity of the treaty or the material breaches by the government of Somalia, there is no rule under international law that prohibits the dissolution of a union formed between two or more independent states. Thomas Franck³⁴ has the following to say about this:

International law clearly permits successful secession, and Somaliland is not the first African state to voluntarily enter a union with another state and later withdraw while retaining its original status. Egypt and Syria, Cape Verde and Guinea-Bissau, Senegal and Mali, and Senegal and Gambia have all followed similar paths in their histories without impacting their independent status.

³¹ Government of Somaliland, Somaliland: Demand for International Recognition, A Policy Document of the Government of the Republic of Somaliland (Ministry of Information 1991) 4.

³² "Ibrahim Hashi Jama, 'Somaliland and Somalia: The 1960 Act of Union—An Early Lesson for Somaliland' (Somaliland Law, 31 January 2020)

³³ Vienna treaty article 60(1)

³⁴ Thomas M Franck, 'Opinion Directed at Question 2 of the Reference' in Anne F Bayefsky (ed), Self-determination in International Law: Quebec and Lessons Learned (Kluwer Law International 2000) 84.

Mali Federation³⁵, for instance, was a brief union between the autonomous territories of the Sudanese Republic and Senegal in West Africa. Established on April 4, 1959, it gained full independence on June 20, 1960, while remaining part of the French Community. The federation dissolved on August 20, 1960, following Senegal's secession. Subsequently, both nations became independent republics, with Senegal staying in the French Community and the Sudanese Republic becoming the Republic of Mali.³⁶ There is nothing different when it comes to the case of Somaliland as it only gained its previous sovereignty.

2.2.3 Somaliland had the right to Remedial secession

The right to external self-determination may be exercised through four ways. It can be achieved through the peaceful dissolution of a state, a consensual merger or (re)union with another state, consensual or constitutionally authorized secession, or unilateral secession without the parent state's consent or constitutional backing.³⁷

Unilateral secession is often viewed as conflicting with core international law principles, particularly the territorial integrity of the parent state, leading the international community to be highly cautious in recognizing such claims. Nevertheless, it is widely argued that unilateral secession represents an exercise of a people's right to self-determination.³⁸ Despite international law's emphasis on sovereignty and territorial integrity, unilateral secession as a form of external self-determination is not entirely ruled out. It is particularly justified when central authorities systematically and severely violate fundamental human rights, and when opportunities for a peaceful resolution within the existing state are either blocked or fully exhausted. This form of secession is known as remedial secession. Van den Driest has defined remedial secession as follow³⁹

The creation of a new independent state through the secession of a portion of an existing state's territory, undertaken by the resident population of that territory without

³⁵ Available at <https://www.britannica.com/topic/Mali-Federation>

³⁶ *ibid*

³⁷ See Committee on the Elimination of Racial Discrimination, General Recommendation No 21: Right to Self-Determination, UN Doc A/51/18 (1996), Annex VIII, para 4.

³⁸ S F van den Driest, Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices? (Intersentia 2013).

³⁹ *Ibid* at page 7

the parent state's consent or domestic constitutional approval, but as a final remedy for severe injustices inflicted by the parent state's authorities on that population.

Although there is no international legal instrument that directly confers the right to remedial secession, the existence of the right can be inferred from several international treaties, judicial decisions and even customary laws. For instance The Preamble to the Universal Declaration of Human Rights acknowledges the right to resist a government that commits severe and systematic violations of human rights. Nanda argues that if the political authorities perpetrate widespread human rights violations on a genocidal level, the affected population may assert a right to self-determination through secession.⁴⁰ The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) provides the following recommendation on the area.

*In accordance with the Declaration of the General Assembly on Friendly Relations, none of the Committee's actions shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples and possessing a government representing the whole people belonging to the territory without distinction as to race, creed or color*⁴¹.

The reverse reading of this recommendation is stating that in order for certain sovereign state to claim the rights to its sovereignty and territorial integrity, it has to comply with the principles of self-determination and equal rights of peoples and it has to represent the whole people belonging to the territory without distinction. In other words the claims of territorial integrity and sovereignty are not available to those parent states that have violated the principles of self-determination and equal rights of people.

⁴⁰ Ved P. Nanda, 'Self-Determination under International Law: Validity of Claims to Secede' (1981) 13 Case W Res J Int'l L 257

⁴¹ Committee on the Elimination of Racial Discrimination, General Recommendation No 21: Right to Self-Determination, UN Doc A/51/18 (1996), Annex VIII.

The Friendly Relations Declaration offers the most authoritative articulation of international law principles concerning self-determination and territorial integrity. This doctrine Establishes a protective framework to balance the right to self-determination with the territorial integrity of a sovereign state. After having stated that all peoples have a right to self-determination, it stipulates as follow

*Nothing in the preceding paragraphs should be interpreted as permitting or promoting actions that would wholly or partially dismantle or undermine the territorial integrity or political unity of sovereign, independent states that adhere to the principle of equal rights and self-determination of peoples, as outlined above, and have a government representing all people within the territory without discrimination based on race, creed, or color.*⁴²

The content and meaning of this provision is very similar to the recommendation in the instance the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD above. Almost the same phrase with a little alteration has also been provided in the Vienna Declaration and Programme of Action which states that

*According to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the UN Charter, the right to self-determination should not be interpreted as endorsing or promoting any action that would wholly or partially disrupt or undermine the territorial integrity or political unity of sovereign and independent states that uphold the principle of equal rights and self-determination of peoples and have a government representing all people within the territory without any form of discrimination.*⁴³.

What all the above paragraphs have in common is that a sovereign state has the right to safeguard its territorial integrity as long as its government is capable and willing to represent all people within its territory without any discrimination. The reverse reasoning of this indicates that lack of such representative, non-discriminatory government would negate a

⁴² UN General Assembly, 'Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations', GA Res 2625 (XXV), UN Doc A/Res/2625 (XXV) (24 October 1970) Principle V, para 7..

⁴³ World Conference on Human Rights, Vienna Declaration and Programme of Action (adopted 25 June 1993, UN Doc A/CONF.157/23, 12 July 1993) Part I, para 2..

State's right to territorial integrity. In other words the above principles oblige sovereign states to respect equality and self-determination of their respective peoples which would otherwise result in the loss of their claim of territorial integrity in case the oppressed people unilaterally secede. If a state consistently and severely breaches the right to internal self-determination, it loses its claim to territorial integrity, thereby allowing the exercise of external self-determination through unilateral secession.⁴⁴ Severe and blatant violations of fundamental human rights of a specific group may constitute a denial of internal self-determination, potentially justifying unilateral secession.⁴⁵ This is especially relevant in cases of widespread violations of the right to life, such as genocide or ethnic cleansing, though less extreme circumstances may also apply. For instance, the widespread and arbitrary use of armed force against a group could threaten its existence and collective identity, thereby supporting a claim for secession.⁴⁶ But one thing we have to notice here is that the declaration of unilateral secession in the form of remedial secession has to be a last resort i.e. the seceding entity has to make sure that the parent state is unable or unwilling to give effective and realistic remedy and it is futile to request further negotiations with the parent state. A claim for unilateral secession may be considered legitimate only if it is proven that all legal and political avenues for securing the right to internal self-determination have been either exhausted or rejected by the majority of the parent state's population.⁴⁷

In addition to the above principles we also have international and regional court decisions that directly or indirectly have addressed the case at hand i.e. the existence of the rights to remedial secession. In 1992 a political organization known as the Katangese Peoples' Congress representing the people of Katanga has attempted to secede from the democratic republic of Congo or Zaire. The president of the group filed a complaint with the African Commission on Human and Peoples' Rights (ACHPR), alleging that the Katanga people were deprived of their right to self-determination. The African Commission responded by stating that the right to self-determination, as outlined in Article 20(1) of the African Charter

⁴⁴ Van Den Driest *supra* note 47 at page 107.

⁴⁵ David Raič, *Statehood and the Law of Self-Determination* (Martinus Nijhoff Publishers 2002) 368

⁴⁶ *Ibid* at page 369.

⁴⁷ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press 1995) 119

on Human and Peoples' Rights, was indeed relevant to the situation in question.⁴⁸ The African Commission stated that the right to self-determination could be exercised through various means, such as "independence, self-government, federalism, confederalism, unitarism, or any other form of relations that aligns with the people's wishes. The African Commission also expressed its awareness of the principles of State sovereignty and territorial integrity, and observed that it had a duty to support the territorial integrity and sovereignty of Zaire. In rejecting the claims of the peoples of Katanga the commission concluded the following statement.

*Without clear evidence of human rights violations severe enough to challenge Zaire's territorial integrity, or proof that Katanga's people are denied their right to participate in government as protected by Article 13(1) of the African Charter, the Commission believes Katanga must pursue a form of self-determination that respects Zaire's sovereignty and territorial integrity..*⁴⁹

Although the question of the Katanga people to secede from Zaire is rejected the above decision has not ruled out the existence of the right to remedial secession. The contrario reading of the above decision shows that Katangese people would have been allowed to exercise their right self-determination and the territorial integrity of Zaire would have been infringed by means of unilateral secession had there been severe human rights violations and of denial of internal self-determination. So the reasoning of the court is that since evidence for severe human rights violations is not presented The people of Katanga were required to exercise their right to self-determination within the structure of the state to which they belonged, meaning internally..⁵⁰

The case of *Loizidou v. Turkey* was not directly related with the issues of unilateral secession as it was related to the rights of refugees to return to their homelands. But the European Court of Human Rights (ECHR) incidentally touched up on the issue as follow.

In recent years, it has been widely agreed that peoples can pursue external self-determination when their human rights are persistently and grossly violated, or when they

⁴⁸ Katangese Peoples' Congress v Zaire, Comm No 75/92 (ACHPR, 1995) para 4.

⁴⁹ Ibid at paragraph 6

⁵⁰ See Raič, *Statehood and the Law of Self-Determination* at p. 330

*lack any representation or are significantly underrepresented in an undemocratic and discriminatory manner. If accurate, this means the right to self-determination serves as a mechanism to restore international standards of human rights and democracy.*⁵¹

The reading of this decision implies that the right to self-determination, particularly its external aspect through secession, should be understood as a solution for a people whose rights have been systematically and severely violated by the state.⁵²

In yet another influential court decision involving the secession of Quebec, The Canadian Supreme Court ruled that a right to secession may emerge under the principle of self-determination in international law when a people is prevented from meaningfully exercising its right to self-determination within the state it is part of.⁵³

Another importance international case related to unilateral declaration of secession is the case of Kosovo. Kosovo had been an autonomous province of the Republic of Serbia within the Former Socialist Federal Republic of Yugoslavia.⁵⁴ in February 2008, Kosovo's elected leaders declared the Republic of Kosovo an independent and sovereign state. Kosovo gained recognition from many countries, but some, including Serbia, refused to recognize it, claiming the unilateral declaration was illegal. Serbia subsequently requested an advisory opinion from the International Court of Justice (ICJ) on whether Kosovo's Provisional Institutions of Self-Government's unilateral declaration of independence complied with international law. In addressing this issue the court stated the following:

For centuries, declarations of independence have been made, resulting in international recognition and true independence in only some cases. However, state practice does not indicate that issuing such declarations violates international law. In the latter half of the twentieth century, the right to self-determination developed into a right to independence for peoples in colonial and non-self-governing territories. While many new states emerged

⁵¹ Loizidou v Turkey (Merits) (1996) 23 EHRR 513, Concurring opinion of Judge Wildhaber joined by Judge Ryssdal, para 2.

⁵² Van Den Driest supra note 47 at page 131.

⁵³ Reference re Secession of Quebec, 2 S.C.R. 217

⁵⁴ Ibid at page 141

*through this right, states have also been created outside the decolonization context. State practice does not suggest a prohibition on declarations of independence,*⁵⁵

What makes the decision of the ICJ on Kosovo different from the above decisions is that it didn't provide the conditions under which a particular territory can secede from its parent state. The ICJ did not make unilateral declaration of secession conditional on grave human rights violations or restriction of internal self-determination. It rather outlined that "International law does not prohibit declarations of independence, and the principle of territorial integrity applies only to relations between states."⁵⁶ This statement by the ICJ show that so long as a declaration of independence is not in violation of a clear peremptory international law it remains legal and other countries who recognize the seceding entity can't be considered to have violated the territorial integrity of the parent state because the territorial integrity is confined to the relation between states.

The fundamental principle of a state's territorial integrity, according to the above decision of the ICJ, primarily governs relationships between states and does not directly address a state's relationship with an entity seeking self-determination. Declarations of independence by such entities are generally considered internal matters for the state in question. However, these declarations become relevant under international law if they are accompanied by separate violations of international law. Specifically, if the methods used to achieve secession involve illegal uses of force, breaches of international agreements, or racial discrimination, then international law may address these particular declarations. Essentially, secession itself is neither explicitly legal nor illegal under international law. International law only intervenes in specific cases of declarations of independence when they are linked to unlawful actions that violate established international norms.

Coming back to the case of Somaliland my argument is that the process by which it becomes a state is an extension of its right to remedial secession. The union between Somalia and Somaliland was meant to form a democratic state that both states are equally represented and human rights of the respective peoples respected. But the Siad bare regime involved in gross

⁵⁵ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ICJ Reports 2010, 403.,

⁵⁶ Ibid at paragraph 84.

human rights violations throughout his power span. Anthony and Rajagopal described the human rights violations of the regime as follow:

Siad Barre's regime was responsible for the killing, torture, and imprisonment of thousands of Somalis over the years. With support from the former German Democratic Republic and the KGB, his government established a security apparatus that looted and destroyed private property. Barre's regime targeted the wealthier and independent Isaq clan in Somaliland with severe brutality, committing human rights abuses such as summary executions, rape, and torture, arbitrary detention without charges or trials, and property theft. The violence escalated into a genocidal campaign against the Isaq, marked by military bombings and shelling of northern cities like Hargeisa and Burao, as well as the deliberate destruction of Isaq towns. During the 1988 civil war, approximately 50,000 people were killed, and 500,000 others were forced to flee to Ethiopia..⁵⁷

There was nothing new even with the collapse of the Siad Bare regime because the political institutions were also collapsed with him.

In addition to the human right violations the people of Somaliland were unable to exercise their rights of self-determination internally. The ongoing chaos in Somalia prevents the people of Somaliland from exercising their right to self-determination within the state, as Somalia is widely regarded as nearly a failed state. To start with there is no and hasn't been any effective government whom Somaliland can claim their rights of self-determination from. The measure of unilateral declaration of secession that Somaliland took in 1991 was a last resort because there was no government in Somalia whom Somaliland can discuss with. So the secession of Somaliland from Somalia is justified and the latter can't claim that its territorial integrity is impaired. Because such claim as, I have mentioned above, is only available to states that respect human rights and comply with the principle of equal rights and self-determination of peoples. Not only is the secession of Somaliland valid but the recognition of such lawfully seceded entity is valid under international law.

⁵⁷ Anthony J Carroll and B Rajagopal, 'The Case for the Independent Statehood of Somaliland' (1993) 8 Am U Int'l L Rev 665.

2.2.4 The secession of Somaliland is in line with the principle of uti possidetis

The principle of uti possidetis is a longstanding principle of international law that is very much related to the preservation of territorial integrity of states. Uti possidetis juris (UPJ), a principle of customary international law, was initially used to define the boundaries of decolonized territories in Latin America and functions to maintain the borders of colonies as they transition into independent states.⁵⁸ The international court of justice (ICJ) has explained the rationale behind this principle in the Burkina Faso vs. Mali frontier dispute as follow.

*Uti possidetis is a general principle tied to the process of gaining independence, applicable wherever it takes place. Its primary aim is to safeguard the independence and stability of new states by preventing internal conflicts over borders triggered by challenges to frontiers after the withdrawal of the colonial power. At the time of independence for the former Spanish colonies in America, its purpose was to thwart any ambitions of non-American colonial powers over regions allocated by the former metropolitan state to specific divisions, particularly those that remained uninhabited or unexplored.*⁵⁹

Uti possidetis therefore has to do with the concept of respect of colonial borders at the time of independence i.e. not allowing any changes or alterations except where the concerned parties have mutually agreed up on. So states remain with the boundaries that they had at the time of decolonization. The principle of using colonial boundaries to establish independent states was endorsed by the Organization of African Unity, now known as the African Union. The African Union upholds the stance that its member states should respect the borders they had at the time of independence.⁶⁰ The Cairo Resolution further stipulates that all states commit to respecting the boundaries that existed when they gained independence. Coming back to the case of Somaliland the main argument that the state of Somalia is claiming is that recognition of Somaliland violates the principle of territorial integrity and uti possidetis in that boundaries shouldn't be altered without the consent of the concerned state. But examining the past and present situation of

⁵⁸ Available at

[https://www.law.cornell.edu/wex/uti_possidetis_juris#:~:text=Uti%20possidetis%20juris%20\(UPJ\)%20is,wider%20application%2C%20notably%20in%20Africa.](https://www.law.cornell.edu/wex/uti_possidetis_juris#:~:text=Uti%20possidetis%20juris%20(UPJ)%20is,wider%20application%2C%20notably%20in%20Africa.)

⁵⁹ Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, ICJ Reports 1986, 554

⁶⁰ T Beyene, 'Declaration of Statehood by Somaliland and the Effects of Non-Recognition under International Law' (2019) 10 Beijing L Rev 196, 200.

Somaliland shows that its secession indeed is in line with the principle of *uti possidetis*. If states are required to attain the original territory at the time of decolonization or at the time where European powers left, Somaliland was a sovereign state immediately after Britain left it in 1960. In relation to the situation after decolonization Temesgen sisay argue that;

*During colonial rule, northern Somalia, now Somaliland was administered separately from southern Somalia. Like other African nations, Somaliland gained independence from Britain in 1960. Upon declaring independence, Somaliland received recognition from various countries, including members of the UN Security Council, becoming the first Somali territory to achieve recognized independence. Southern Somalia, encompassing the Somali Republic and Punt land, gained independence later. Despite Somaliland's initial recognition as an independent state by the UN, its statehood lasted only five days before it agreed to unite with southern Somalia to form the Somali Republic.*⁶¹

Supporting this claim the Ministry of Foreign Affairs of Somaliland has stated that Somaliland respects the colonial boundaries of the former British Protectorate of Somaliland, in line with the principles of the OAU Charter and the African Union's Constitutive Act, which mandate the preservation of colonial borders upon achieving independence.⁶² So if the principle of *uti possidetis* is construed strictly in such a way that colonial boundaries remain intact the claim of Somaliland for secession is valid. The Somaliland government's policy document on international recognition states that Somaliland and its people were a sovereign nation until the Act of Union, when Somaliland chose to unite with Southern Somalia.⁶³ Despite lasting only four or five days, Somaliland was a sovereign, independent state recognized by thirty-five countries, including the US and UK. By seceding from Somalia and seeking recognition of its original colonial borders, Somaliland upheld Somalia's territorial integrity and the borders established at independence, aligning with Article 4 of the African Union's Constitutive Act.⁶⁴ The point is that Somaliland's present boundary coincides with the colonial boundary in 1960. In such a case the claim of the state of Somalia that recognition of Somaliland violates the principle of *uti possidetis* is not valid. Ethiopia, hence, has a valid reason under international law

⁶¹ Ibid at page 202

⁶² Ministry of Foreign Affairs and International Cooperation, Somaliland Foreign Policy 2016, <http://www.slforeign.com/foreign-policy.html>.

⁶³ Somaliland Government policy 2001, p. 48.

⁶⁴ Nikola pijovic supra note 20, at page 21

to recognize a former sovereign state whose current territory coincides with the territory that was available at the time of decolonization.

2.2.5 Somaliland fulfills the criteria's of statehood

While there is no universally accepted definition of a state, the 1933 Montevideo Convention on the Rights and Duties of States is frequently referenced as the key international legal framework for defining statehood. It describes a state as an entity under international law that must have a permanent population, a defined territory, a government, and the ability to engage in relations with other states.⁶⁵ The convention goes on to state that the political existence of a state is independent of recognition by other states. We can safely say that the Montevideo convention adopts a declaratory theory of recognition.

When we say permanent population we mean a certain number of people that identify themselves as belonging to the political community or to the territory that they are living. It is not necessary the people or the population to leave in a certain place without moving here and there. What is required is just a stable community that has some sort of attachment to the land they live. There is no minimum requirement or threshold of population for a given entity to be considered a state. Nor is it a requirement that the whole people be indigenous.

The second requirement has to do with the physical existence that makes a state clearly defined and distinguishable from its neighbor. By defined territory we mean A specific geographic region where a state exercises sole authority to implement legal and practical measures, while preventing foreign governments from exerting authority in that area without permission. There must be some territorial base up on which to operate. Under international law it is not a requirement that the territory be undisputable. A state's territory should be defined, but not all boundaries need to be precisely demarcated. For instance, Ethiopia has a defined territory despite unresolved border issues with Sudan. Likewise, if an existing or emerging state's territory is absorbed by another state, it does not necessarily result in the loss of its statehood status.

The third requirement of statehood according to the Montevideo convention is the presence of an effective and functioning government. An effective government is one with the authority and capability to govern at least a portion of its territory and perform essential governmental

⁶⁵ Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19, art 1.

functions. It must manage the country's affairs independently on the international stage without external interference. Internally, this entails the ability to establish and uphold a legal order with constitutional autonomy. Externally, it involves acting independently in the international arena without legal reliance on other states within the global legal framework.⁶⁶

Finally an entity must possess the authority within its constitutional framework to engage in international relations with other states, along with the political, technical, and financial capacity.⁶⁷ This is generally understood to imply independence. When a country is independent, it has the ability to interact with other states. This refers to legal independence, not factual independence, meaning that economic dependence or receiving aid does not negate a country's status as a state. Thus, a state requires the competence within its constitutional system to conduct international relations and the political, technical, and financial capabilities to support such interactions.⁶⁸

Somaliland is a home of over 6.2 million people as of 2024. Despite the nomadic nature of some of Somaliland's population, who move in and out of the territory, this does not undermine the 'permanent population' criterion, as there are sufficient permanent residents. When Somaliland declared independence, its people supported statehood through a referendum. For instance, in the 2001 Constitutional Referendum, there was strong backing for sovereignty, and a decade later, another referendum demonstrated that ninety-seven percent of the population supported independence.⁶⁹ The people of Somaliland have peculiar traits to identify themselves as Somali landers. Peggy Hoyle argues that Somaliland meets the Montevideo Convention's first criterion (a permanent population) because its people share a distinct dialect, linguistic identity, clan-based social unity, and unique economic interests, setting them apart from Somalia.⁷⁰

Somaliland's territory, boundaries, and population are those of the former British Somaliland Protectorate, whose borders were established by three international treaties: the 1888 Anglo-French Treaty, the 1894 Anglo-Italian Protocol, and the 1897 Anglo-Ethiopian Treaty.

⁶⁶ Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (7th revised edn, Routledge 1997) 77.

⁶⁷ *Ibid* at page 79

⁶⁸ Michael Schoiswohl, *Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: The Case of 'Somaliland'* (Martinus Nijhoff Publishers 2004) 13.

⁶⁹ Beyene *supra* note 68 at page 106

⁷⁰ Peggy Hoyle, 'Somaliland: Passing the Statehood Test?' (Autumn 2000) IBRU Boundary and Security Bulletin, <http://mbali.info/doc437.htm> accessed march 29, 2025

Somaliland's present boundary coincides with the colonial boundary in 1960. As I have mentioned above it is not a requirement that the boundaries of a state fully clear, defined and precise. There might be border issues and a similar situation can be found with Somaliland and Punt land. Territorial disputes over Somaliland's eastern regions of Sool and Sanaag have persisted since the formation of the neighboring Punt land administration in 1998.⁷¹ International law does not require definitively-drawn boundaries. In this respect Somaliland fulfills the second requirement according to the convention.

So far as the third requirement is concerned the state of Somaliland maintains control over most of its territory by levying customs duties on ships arriving at its Berbera port, monitoring its territorial waters to combat piracy, and safeguarding its borders with its military forces. It stands out as one of the few African countries with a democratically elected government, which includes a two-chamber parliament, an independent judiciary, a permanent electoral commission, and a range of security forces such as the army, police, and custodial services, all underpinned by a constitution approved by its citizens.⁷² As outlined in its Constitution, Somaliland is governed by a democratically-elected administration that encompasses three main branches: the executive, the legislative, and the judiciary. The executive branch comprises the President, the Vice President, and the Council of Ministers, with the latter being appointed by the President.⁷³ Under the Constitution, the Parliament—made up of the House of Representatives and the House of Elders—exclusively holds legislative authority. Somaliland established a democratic government by forming governing bodies based on traditional Somali governance principles, achieved through clan-based conferences starting in the late 1990s.⁷⁴ In addition to this Somaliland has managed to conduct peacefully transferred presidential elections which are rare events in Africa. To ensure both internal and external security, Somaliland has established a standard police force alongside a national military, which includes roughly 12,800 personnel. These security forces are frequently viewed as more respected, efficient, and disciplined compared to their counterparts in

⁷¹ Harriet Gorka *supra* note 22 at page 87

⁷² "nternational Crisis Group, 'Somaliland: Time for African Union Leadership', Africa Report N°110 (23 May 2006)

11.

⁷³ Constitution of the Republic of Somaliland (2001) art 81.

⁷⁴ Michael Walls, *State-building in the Somali Horn: Compromise, Competition and Representation* (Africa Research Institute 2014) 4.

other regions of the eastern horn.⁷⁵ Even with the prevalence of terrorist groups such as alshabab in the region Somaliland's government have managed to effectively defend its people from terrorist attacks.

Regarding the fourth requirement which has to deal with capacity to enter it to international relations, the constitution of Somaliland is documented and serves as the legal foundation for entering into both official and unofficial agreements with other parties.⁷⁶ The Somaliland constitution mandates its government to strive for improved relations and mutual understanding with nations in the Horn of Africa, seeking to overcome deep-rooted regional tensions. In keeping with this directive, Somaliland has forged treaties and cultivated strong diplomatic links with multiple countries. Even though it lacks official recognition as a sovereign state, Somaliland has successfully developed both unofficial and official ties with various nations and earned practical acknowledgment from many countries worldwide. Its passport is accepted for travel to nations including South Africa, Kenya, Djibouti, Ethiopia, Uganda, the UK, Sweden, and the USA, reflecting a degree of global acceptance. Furthermore, Somaliland operates representative offices in countries such as the Kenya, Norway, UK, Sweden, Belgium, Canada, France (Paris), Yemen, Djibouti, Ghana, USA, South Sudan, and Ethiopia, highlighting its active role on the international stage..⁷⁷

It follows, then, that if a given entity fulfills all the criteria under the Montevideo convention i.e. have a population, definite territory, effective government and the capacity to enter in to international relations, other countries have the right, though not obliged, to recognize that entity. When a seceding entity fulfills the necessary conditions to be considered a state, other nations may choose, but are not required⁷⁸, to accept its pursuit of external self-determination by officially recognizing it as a sovereign state. Accordingly Ethiopia's recognition of the state of Somaliland is just recognizing the facts on the ground that the latter fulfills the required criteria and by no means can it be construed as infringement of sovereignty of the state of Somalia. Not only is the recognition valid but Ethiopia can also validly conclude an international treaty with

⁷⁵ Ken Menkhaus, 'State Failure, State-Building, and Prospect for a "Functional Failed State" in Somalia' (2014) 656 *Annals Am Acad Pol & Soc Sci* 154, 164.

⁷⁶ Harriet gorka supra note 22 at page 88

⁷⁷ Abdillahi Mohamed Bile, 'A Legal Analysis of Somaliland's Quest for Statehood under International Law' (2024) 4(1) *J Modern L & Policy* 1, 8.

⁷⁸ No state has a substantive right to be recognized as a state

Somaliland because if an entity successfully secedes from a parent state and fulfills the criteria of statehood, the seceding entity began to claim its own sovereignty and territorial integrity.

2.2.6 Duty of non-recognition?

As I have mentioned above recognition is a mixture of law and politics and hence no sovereign state is obliged to recognize another state that fulfills the criteria of statehood. However there are situations in which a country may be obliged not to recognize a state. The first one has to do with the nonfulfillment of substantive requirements of statehood i.e. non recognition of a state before it fulfills the four substantive requirements. However even if a certain state fully meets these substantive requirements other states may still be required not to recognize it if the process through which it become a state is in violation of international law such as use of force.

In international law we have this concept called premature recognition which refers to recognition of certain seceding entity before it fulfills the criteria of statehood and while the parent state is still struggling to recover back the seceding entity. While each state has the authority to decide whether to recognize another state, it is generally agreed that recognizing an entity as a state before it meets the requirements for statehood is not permitted under international law."⁷⁹ Premature recognition may take the form of supporting the seceding entity financially or militarily while still struggling to secede from its parent state. William Hall⁸⁰, argued that, "Until independence is fully achieved to the extent that it can be anticipated to be lasting, insurgents continue to be legally bound to the state from which they seek to detach themselves." Premature recognition ignores the criteria developed under international law for being a state and hence unlawfully complicates the management of international relations within the global community, adversely affecting all other states.⁸¹ The community seeking recognition must meet specific criteria of stability and political unity; notably, the parent State must have genuinely ceased any attempts that could successfully restore its authority. A state that prematurely recognizes a seceding entity before such entity fulfills the precondition of statehood is often considered to have interfered with the internal affairs of another state (the parent state).

⁷⁹ Liselotte Kasse B'nicco, Recognition of Governments in International Law: A Case Study of the Venezuelan Presidential Crisis (Master's thesis, Ghent University 2019).

⁸⁰ William Edward Hall, A Treatise on International Law (8th edn, A Pearce Higgins ed, Oxford University Press 1924) 105.

⁸¹ Patrick C R Terry, 'The Recognition of New States in Times of Secession: Is State Recognition Turning into Another Means of Intervention?' (2014) 20 Asian YB Int'l L 53.

This prohibition of intervention in the domestic affairs of a state is part of customary international law, included in article 2(7) of the UN Charter⁸² and reflected in various declarations.

In this respect the recognition of Somaliland by Ethiopia is not premature because firstly, the former undoubtedly fulfills, as mentioned above, the requirements of statehood. Secondly the state of Somalia has practically ceased its struggle to reclaim or to reassert control on Somaliland. Although Somalia claims that Somaliland still is part of the Somalia republic, it can't effectively assert effective control on its own territory, let alone on Somaliland. When an independence movement achieves significant success with a reasonable likelihood of lasting stability, international law permits other states to recognize the emerging community, effectively declaring that the original state's sovereignty over it has ended.⁸³ Thirdly The people of Somaliland have a strong emotional connection to their reclaimed independence and are resolute in their determination to avoid returning to the unsuccessful union with Somalia, regardless of whether recognition is granted.⁸⁴ It has been more than 30 years since the unilateral declaration of independence was declared and most of the people of Somaliland have no attachment to the Somali republic.

There has been a consistent practice of resolutions and international decisions of international organizations and states stating that De facto entities established in breach of fundamental international law principles, such as the prohibition on the use of force, the right to self-determination, or other jus cogens norms, should not be recognized. For instance, the League of Nations Assembly advised member states not to recognize the regime in Manchuria, which was created in violation of Article 10 of the Covenant, banning the use of force against another state's territorial integrity.⁸⁵ The United Nations General Assembly and Security Council issued a similar ruling regarding Southern Rhodesia, where the Security Council denounced the illegal declaration of a Republic by the racist Rhodesian regime. It called on all member states to withhold recognition of this regime and urged them to implement suitable measures at the national level to ensure that no actions by officials or institutions of the illegal regime in

⁸² Article 2(7) UN Charter.

⁸³ H Lauterpacht, 'Recognition of States in International Law' (1944) 53 Yale LJ 385, 396.

⁸⁴ African Union Fact-Finding Mission, Report of the AU Fact-Finding Mission to Somaliland (30 April – 4 May 2005))

⁸⁵ League of Nations, Official Journal, Special Supplement No 112 (1933) 76.

Southern Rhodesia would receive any form of recognition, official or otherwise, including judicial acknowledgment, by their state's competent authorities.⁸⁶

The principle of non-recognition of territorial acquisitions brought about by force or aggression or in any way in breach of peremptory norms has also been included in many regional and international conventions. Article 11 of the 1933 Montevideo Convention on the Rights and Duties of States, for instance, provides that

*The contracting states definitely establish as the rule of their conduct the precise obligation not to recognize territorial acquisitions or special advantages which have been obtained by force whether this consists in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure.*⁸⁷

The same is also provided in the Bogota Charter (under article 17) ' founding the Organization of American States which explicitly states that No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized.⁸⁸ Article 41(2) of the Draft Articles on State Responsibility for Internationally Wrongful Acts implies an obligation of non-recognition, stating that no state shall acknowledge as lawful a situation resulting from a serious violation of international law, nor provide aid or assistance to sustain that situation.”⁸⁹

Having already said that Somaliland has violated no international norm in unilaterally declaring its independence and so long as Somaliland fulfills the established criteria for being a state, there is no law prohibiting sovereign states from recognizing Somaliland as a state. Because it has been established in the case of Kosovo that A unilateral declaration of independence does not inherently violate international law. Such a declaration is primarily a factual occurrence, which, combined with other elements like a defined territory and a permanent population, may lead,

⁸⁶ Res. 288 (1970) of 17 November 1970; 328 (1973) of 10 March 1973

⁸⁷ Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19, art 11.

⁸⁸ 119 UNTS 50, 57.

⁸⁹ Responsibility of States for Internationally Wrongful Acts, GA Res 56/83, UN Doc A/RES/56/83 (12 December 2001), Annex.

either immediately or gradually, to the establishment of a new state.⁹⁰ When an entity separates from its parent state and aims to gain recognition as a new state, the key legal issue is whether it meets the international legal criteria for statehood outlined in the Montevideo Convention.⁹¹ In such a case Ethiopia has a valid ground to recognize the state of Somaliland. In the Lotus Case (France vs. Turkey) it has been decided that sovereign states may act in a way that they want so long as they don't infringe a clear international law.⁹² In fact this case has been decided on a totally different issue of international law i.e. if Turkey has violate international law when Turkish courts exercised jurisdiction over a crime committed by a French national, outside Turkey?. But the general finding of the court provides that⁹³

International law regulates relationships between sovereign states. The binding legal rules for states stem from their voluntary consent, as expressed through treaties or widely accepted customary practices that reflect legal principles. These rules are established to govern interactions among these independent entities or to pursue shared objectives. Consequently, limitations on state sovereignty cannot be presumed.

The idea here is that so far as there is no clear law prohibiting Ethiopia not to recognize Somaliland, the validity of Ethiopia's recognition of Somaliland can't be questioned and hence, is in line with the principles of international law.

Finally the recommendation of the African Union fact finding mission to Somaliland is worth of discussion. In April 2005, the African Union dispatched a fact-finding mission, headed by H.E. Patrick Mazimhaka, Deputy Chairperson of the African Union Commission, to assess the political, socio-economic, security, and humanitarian conditions in Somaliland and to listen to the concerns of its people. Accordingly the mission held a series of discussions and consultations with members of the Cabinet members of the Somaliland Parliament. It also visited some remote towns, educational centers, berbera sea port, and some rural areas. It has been reported that the The primary concern of people across Somaliland was the permanent establishment of

⁹⁰ ñigo Urrutia Libarona, 'Territorial Integrity and Self-Determination: The Approach of the International Court of Justice in the Advisory Opinion on Kosovo' (October 2012) 16 REAF 107, 107-140.

⁹¹ Ibid at p.122

⁹² Available at <https://ruwanthikagunaratne.wordpress.com/2012/07/27/lotus-case-summary/>.

⁹³ ibid

Somaliland's independence and sovereignty, a firm rejection of reunification with Somalia, and the pursuit of recognition from the African Union and the international community".⁹⁴

The mission on its stay in Somaliland has learned the vivid attitude of the people of Somaliland that their country possesses all the characteristics of an independent, sovereign state, which they believe the international community should impartially evaluate. But this is not just the feeling and emotion of the people. The mission has learned by its self that⁹⁵

- ❖ There has been an accelerated state building process since the disintegration of the republic of Somalia. Somaliland has a Constitution developed through grassroots participation, serving as the fundamental law of the land. It establishes the key branches of government and ensures an effective separation of powers. Somaliland has been diligently building the foundations of a democratic state, equipped with the essential characteristics of a modern state".
- ❖ Somaliland has a defined territory inherited from the British colonial rule bordered by the red sea in the north, the state of Puntland on the east, Djibouti on the north west and Ethiopia on the west.
- ❖ Somaliland has a population of over 3.5 million that feel to belong to the country the majority of which speak Somali language.
- ❖ Somaliland has attained peace and stability and maintains a standing army, constitutionally tasked with safeguarding the nation's independence and territorial integrity".

Given the above facts and considering the fact that The absence of international recognition has hindered Somaliland's ability to engage in global political, social, economic, and other essential activities, limiting its capacity to effectively and sustainably interact with the international community to achieve its reconstruction and development objectives, the mission has come up with the following recommendation:

Based on the compelling arguments and clear demands from Somaliland's authorities and people regarding their political, social, and economic history, Somaliland has been

⁹⁴ African Union Commission, 'Resume: AU Fact-Finding Mission to Somaliland (30 April to 4 May 2005)' (2005) 2. April to 4 May 2005) p.2

⁹⁵ Ibid at p.4

unjustly marginalized as a "pariah region." The 1960 union with Somalia caused significant injustice and suffering for the people of Somaliland. The fact that this union was never formally ratified and proved dysfunctional from 1960 to 1990 underscores Somaliland's historically unique and self-justified pursuit of recognition within African political history. Objectively, this case should not be dismissed as risking a "Pandora's box" scenario. Therefore, the African Union should adopt a tailored approach to address this exceptional case.⁹⁶

This recommendation of the AU fact finding mission that calls for the recognition of Somaliland is an argument for those who have the fear that recognition of Somaliland may encourage other seceding regions in Africa to secede from their parent states. Considering all the above facts and the recommendation of the AU fact finding mission itself Ethiopia's recognition of the state of Somaliland is justified and violated no international law principle.

CHAPTER THREE

CONCLUSION AND RECOMMENDATIONS

Somaliland's history before the arrival of European powers to Africa is mostly unknown. During the colonial partition of Africa it was the Great Britain that colonized the state of Somaliland. On the other hand the state of Somalia was under the colony of Italy until the withdrawal of the latter. In June 1960 the two countries proclaimed their independence and become sovereign independent states. After a short period of time, the two countries agreed to merge together to form Somalia republic. The union comes to an end in 1991 after the collapse of an oppressive regime of said bare who ruled the country for over 20 years. With the collapse of the said bare regime and the Somalia republic the state of Somaliland unilaterally declared its independence and claims its former sovereignty while Somalia is struggling to install an effective government.

⁹⁶ IBID at p.5

For the past 30 years Somaliland remained as a de facto state with no recognition from any country or international organization.

in January 2024, President Muse Bihi Abdi of Somaliland and Prime Minister Dr. Abiy Ahmed Ali of Ethiopia signed a Memorandum of Understanding (MoU) in Addis Ababa, granting Ethiopia naval access to the sea in exchange for Ethiopia's formal recognition of the Republic of Somaliland. In response, the Somali government swiftly condemned Ethiopia's actions, denouncing the agreement as a breach of international law, particularly violating Somalia's sovereignty and territorial integrity. In this research I have addressed the arguments for and against the legality of recognizing the state of Somaliland if it violates the general principles of international law such as territorial integrity, sovereignty, uti possidetis and non-intervention in the internal affairs of states. Accordingly I have provided a series of arguments how Ethiopia's recognition of Somaliland is in line with international law.

- ❖ Although Somalia republic was the product of an agreement between two independent states, the agreement was invalid in the first place for two reasons. Firstly the purpose for the formation of the union between the two countries was the formation of greater Somalia which violates the principle of uti possidetis as it requires the five star republic of Somalia to take control of at least three territories from three sovereign states i.e. Ethiopia, Kenya and Djibouti. Secondly the act of the union was never signed by the authorized representatives of the peoples of Somaliland and hence was without effect in the country.
- ❖ Even if the act of union is said to be valid Somaliland still had a reason to unilaterally terminate it on grounds of material breach of the treaty according to article 60(1) of the Vienna convention on the law of treaty. The Law of Union and the Act of Union established the constitutional framework for the new Somali state. However, this constitutional system was dismantled by Siad Barre and replaced with a dictatorial regime.
- ❖ Considering the gross human rights violations on the people of Somaliland under the government of said bare, Somaliland still had a valid ground to unilaterally declare secession. Because several international conventions and international decisions provide

that if a government of a certain country is involved in violation of human rights specifically if it is either unable or unwilling to respect the right of self-determination of a certain group internally, such oppressed people can exercise their right of self-determination externally i.e. through secession.

- ❖ The unilateral declaration of secession of Somaliland is in line with the long standing principle of *uti possidetis*. This principle has to do with the concept of respect of colonial borders at the time of independence i.e. not allowing any changes or alterations except where the concerned parties have mutually agreed up on. If colonial borders are meant not to be altered Somaliland adheres with the colonial boundaries of the former British Protectorate of Somaliland, aligning with the principles of the OAU Charter and the African Union's Constitutive Act, which mandate the preservation of colonial borders upon achieving independence. So the secession of Somaliland has not violated the principle of *uti possidetis* or the territorial integrity of Somalia. The secession of Somaliland was just a reclaiming of its original sovereignty.
- ❖ Somaliland meets the Montevideo Convention's statehood criteria, including a permanent population, a defined territory, an effective government, and the ability to engage in relations with other states. Somaliland have a population of about 6.2 million living in a territory that was once used to be British Somaliland and defined by different international treaties. Somaliland also has an effective government that exerts control over most of the country by collecting taxes, defends its borders through its armed forces and patrolling its territorial waters to prevent piracy. Somaliland has a written constitution that provides the legal foundation for entering into both formal and informal agreements with other entities.
- ❖ The general practice International law shows us that recognition is only prohibited in two scenarios i.e. if the process through which it becomes a state is in violation of international law such as use of force and if the state does not fulfill the pre-defined criteria of statehood. In other words if the process by which a state seceded is in line with international law and if it fulfills the criteria for being a state states are allowed, though not obliged to recognize that state. Hence Ethiopia's recognition of the state of Somaliland is valid under international law.

Because of the above reasons the signing of the memorandum of understanding between Ethiopia and Somaliland and the recognition of the latter by Ethiopia is in line with the general principles of international law specifically with the principle of respect for the territorial integrity and sovereignty of states, non-intervention in the internal affairs of states and uti possidets. Depending on this finding I have provided the following recommendations.

- Ethiopia can legitimately get the long awaited sea access through the signed memorandum of understanding by granting Somaliland the deserved recognition. The MOU would be mutually advantageous to both signatory states without its validity being questioned.
- Since the MOU as things stand now is just a preliminary agreement, the two countries has to work on transforming it to a full-fledged international treaty, without its questioning its validity
- Other states in Africa and elsewhere should follow the footsteps of Ethiopia to recognize the state of Somaliland; a stable state in unstable horn of Africa who managed to install an effective and legitimate government, as there is no legal ground under international law that justifies an otherwise position.
- The African union should deliberate on the issue to find some way for the state of Somaliland to get recognized and be Member of the union. Because non recognition has hindered Somaliland its ability to engage in global political, social, economic, and other essential activities, limiting its capacity to effectively and sustainably interact with the international community to achieve its reconstruction and development objectives

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