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SELF DETERMINATION IN AFRICA: A CASE STUDY OF SOMALILAND

(1991-2011) //

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Nairobi

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DECLARATION

I declare that this research is my original work and has not been submitted in any university or institution for the award of a degree or diploma

Signature

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The project has been submitted with my approval as university supervisor.

Signature Date

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DEDICATION

I dedicate this research project to Almighty God. my creator. I give all glory, honor and praise to God for this wonderful opportunity. I am extremely grateful to my husband and children who have been so patient with me. This work would not have been possible without your support and prayers. I thank you for your love and understanding.

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ABSTRACT

This study explores the reasons behind the non recognition of Somaliland. It investigates the obstacles that prevent the international community to grant Somaliland an official recognition. The study assumes that most of these obstacles are political more than legal. However, the political factors are mixed with legal arguments. The study will be conducted with a specific reference to the principles of self determination and territorial integrity within the African continent. The study investigates the rationale for the non-recognition/ recognition of Somaliland. It also questions whether territorial integrity is relevant in the context of failed states.

It also analyses the critical question of whether territorial integrity can be relevant in the case of failed states such as Somalia. It also critically analyses the policy of the African Union and the international community in the management of self determination in specific countries. This is contrasted with their policy in Somaliland.

IJST OF ABBRFVIATIONS

AMISOM	African Mission to Somalia
AU	African Union
EC	European Community
F.PLF	Eriirean People's Liberation Forces
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic. Social and Cultural Rights
ICJ	International Court of Justice
NFD	Northern Frontier District
OAU	Organization of the African Unity
SNM	Somuli National Movement
SPLA	Sudanese People Liberation Army
TFO	Transitional National Government
UN	United Nations
UNESCO	United Nations' Education, Scientific and Cultural Organization
UNGA	United Nations General Assembly
WWI	World War 1
WWII	World War II

Chapter One

Background of the Study

1.1 Introduction

On 26 June 1960, Somaliland gained its independence from Britain after 80 years of colonization with the name, the 'British Protectorate of Somaliland' After 5 days of independence. Somaliland united with Somalia or the 'Italian Protectorate', which fought for her independence from Italy on 1 July 1960.'During these 5 days, Somaliland was recognized as an independent state.'lor reasons explained below, Somaliland compromised its sovereignty and united with Somalia with the condition that the two nations create a more viable state based on equal justice of wealth and power sharing.'

Because of the rnal-treatment, which they met due to the unification with Somalia and with the failure of Somalia to function as a state, *Somalilanders* decided to rebuild their nation within the British boundaries during the colonial era.⁴ Consequently, Somaliland declared its separation from Somalia in 1991.⁵ The main reason why Somaliland hastily compromised her sovereignty was the dream of 'Great Somalia' or what is referred as the 'Somali irredentism'.The aim of this dream was to unite the five Somali regions in

¹ Adain H M 'Formation and recognition of new states: Somaliland in contrast to Eritrea' (1994)21 Review African Political Economy 21 hnp:"www.jstor.org/stable.4006181 (accessed May 28. 2012)

³ Shinn D. 'Somaliland The little country that could, a paper presented at the Centre for Strategic And Iiucnutionjl Studies (2002) http://csij.org/flks/mcdi»'c5is'pubs'anotcs_02l l.pdf (accessed May 28, 2012) and, F.ggerx AK 'When Mute Is a state? The Case for Recognition of Somaliland' (2007) 30 Boston College International and Comparative Law Rnlew 211.

Schoiswohl M. Status and Human Rights OMigrations of Son-Recognized De Facto Regimes in International Law The case of Somaliland' (2004). pp 156

The Republic of Somaliland 'Somaliland; Demand for international recognitkm\200\ http://www.SomulilandlaM.coim (accssed May 28.2012)

The Republic of Somaliland 'Somaliland: Demand for international recognition (2001) hnp:,Vwww.Somalilandlaw.com (accessed May 28.2012)

Iqbal Jhazbha>, Somaliland an African struggle for nationhood and international recognition (Midrand,South Africa: Institute for Global Dialogue, 2009) pp 32

the Horn of Africa and subsequently establish a Somali empire. Apart from Somalia and Somaliland, the other three regions were the Somali region in Ethiopia (Ogaden), French Somaliland (now Djibouti) and the Northern Frontier District of Kenya (NFD). In 1960, only Somaliland and Somalia gained their independence and together formed what was known as the Somali Republic. On July 1, the legislatures of the two newly independent states met at Mogadishu in joint session, and proclaimed the establishment of the Somali Republic. The Republic was declared a unitary state, consisting of two regions, the Northern and the Southern state. The two legislatures merged into one and became the National Assembly of the Somali Republic.

The unification of British Somaliland and the trust territory of Somalia created problems—economic, political, and administrative. Seventy years of British and Italian rule had imparted to each territory a distinct character, and accentuated whatever regional differences might have existed before. Besides, different economic, political, and administrative patterns had developed.⁸ Due to their distinct colonial experiences, the Northerners and Southerners, also members of different clans were distinguished by language and dialect, clan loyalty, and level and orientation of economic development. Consequently, the Northerners were not able to fully assimilate into Somalia, precipitating the North's eventual bid for autonomy.

In Africa, self-determination emerged as a result of struggle against colonialism. However, immediately after their independence, African countries have realized that the

⁷ Touval, Saadia. *Somali Nationalism*. (Harvard University Press) 1963. pp 112
Ibid., pp 109

self-determination itself can be destructive for the existing border?. 'Responding to this problem. African leaders shifted their minds from self determination to territorial integrity and therefore recognized the existing borders during the colonization era as the foundation of the African state.¹⁰ From here appears the inherent differing principle between self-determination and territorial integrity. The former entails the right to peoples to determine their destiny both politically and economically. The latter protects countries from fragmentation and ensures order and stability. The paradox is how to ensure that all peoples achieve their right to self-determination and at the same time, national states are protected from disintegration. The case of Somaliland is a good example. On 17 May 1991, the resistance movement and important groups in the former northern British colony, dissolved the union and declared formation of the Republic of Somaliland. It has since existed bearing characteristics generally attributed to a 'state' but without international recognition.

The study will allow us a deeper grasp of the Somaliland situation by illustrating its uniqueness and peculiarities. An important difference between legitimate and illegitimate claim to self determination is recognition. In other words, new States enter into the system largely as a result of their external acceptance. As the Westphalian order demands, the interstate system depends upon mutual sovereign recognition among States.

⁹ Mukisa Richard •*Toward a peaceful resolution of Africa* colonial boundaries*, Africa Today 44 (1)

¹⁰ Article III (3) of the Organisation of African Unity. Addis Ababa (1963)

The mere existence of a territorial entity which is also constitutionally independent is one thing...the extent to which it participates in international life is another matter....It depends on the number of other states which are wanting and willing to enter into relations with the state concerned ¹¹

Recognition by other States then, rather than simple *de facto* control and authority, is an important initial distinction between successful and failed self determinations in the international system. Secessionist regimes universally seek other States' formal recognition. Indeed, a 'critical mass* of external recognition must be achieved before any secessionist actor is considered a full member of international society. Yet Statesmen often disagree about what distinguishes a legitimate from an illegitimate claim to sovereign independence.

Common wisdom within the International Relations literature asserts States will act on their own political motives when questions of sovereignty arise. Such interest-based explanations raise more questions than they answer. Which self-interests guide States' recognition decisions? What happens when domestic motives conflict with geostrategic imperatives? Do all States confer recognition based upon similar criteria or do different States use different criteria? What, if any, influence do international norms have upon States' decisions? Generally, what accounts for the variance between the few actors that are formally recognized and deemed sovereign independent States and the many that receive little or no formal recognition and are not allowed equivalent participation in the interstate system?

11 James Alan, *Sovereign Statehood: The basis of international society*. Vol 2 (Allen and Unwin Publishers Ltd, 1986), p. 147

The study argues that that individual States' political motives insufficiently explain why potential members are accepted or rejected by the international community. Instead, the Strategic interactions among States must also be considered. States do not make their recognition decisions in a vacuum, they are interdependent and they rarely recognize unilaterally.

1.2 The Statement of the Research Problem

Although Somaliland has been an autonomous state for many years and has fulfilled the statehood criteria as recognized in the Convention of Montevideo, it has not yet received external recognition¹². The non-recognition of Somaliland has had a negative effect upon the lives of its people. *Somalilanders* are isolated from the international community. As a result, they are hindered from performing their basic functions as a 'state' despite the strategic geographical location they occupy. The government of Somaliland is unable to deliver the basic services to its citizens due to the siege imposed on it by the lack of external recognition.

Therefore, this study attempts to explore the reasons behind the non recognition of Somaliland. It investigates the obstacles that prevent the international community to grant Somaliland an official recognition. The study assumes that most of these obstacles are political more than legal. However, the political factors are mixed with legal arguments. Therefore, there is a need for clarification about these issues. This study will be conducted with a specific reference to the principles of self determination and territorial integrity

¹² Eggers A K, *When Is a State a State? The Case for Recognition of Somaliland*. 30 Boston College International Comparative Law Review (Vol. 30, No. 1, 2007). pp 217

within the African continent. The study investigates the rationale for the non-recognition/ recognition of Somaliland. It also questions whether territorial integrity is relevant in the context of failed states.

|J Research Questions

- 1) In the case of failed states such as Somalia, is territorial integrity still relevant?
- 2) Where there is a dichotomy between self-determination and territorial integrity, which one prevails?
- 3) Is there a double standard within the African Union and United Nations regarding Somaliland's accession while similar claims based on self-determination have already been recognized such as Eritrea and South Sudan?

1.4 Theoretical Framework

The research is situated within the framework of the systems theory. A system is a framework theoretically or conceptually defined for the analysis of phenomena in political, economic, and bio-social spheres of life. It normally consists of a set of variables in interaction among independent or dependent variables, which changes in one or more variables. The theory is based on the concept of a whole. Anatol Rapoport defines a system as "a whole, which functions as a whole by virtue of the interdependence of its parts."¹³ J.W. Burtons defines the concept of a system as "relationship between units".¹⁴

¹³ Bunon J W: *Systems, States. Diplomacy and Rules* (Cambridge University Press; 1998), p.6
¹⁴ U Dougherty J.E and Pfaltzgralt R.T. *Contending Theories In International Relations* New York. Harper Collins publishing Inc. 1990 p. 136

The system theory can therefore be defined as "a series of statements about relationship among independent and dependent variables, in which changes in one or more variables are accompanied or followed by changes in other variables or combination of variables."¹⁵ The system theory holds that within the international systems, states are held together by a complex network of interactions which make them inter-dependent in facilitating their basic functions. At the international level, a regime of interdependence has characterized the post-World War II era: military alliances, economic ties, trade relations, and currency arrangements circumscribe the sovereignty of the participants. Non-interference has become a non-reality as the growth in transnational exchanges and global obligations has undercut the decisiveness of national boundaries, international law has haltingly paralleled this development toward interdependence by recognizing areas of shared concern in space, over the seas, and with respect to people.

Self determination b\ groups within a state not only generates instability and civil conflict within the State but can also threaten international peace and security. These conflicts highlight the principal difficulty with the concept of self-determination. Every system seeks to maintain its equilibrium and therefore any disturbance tends to offset the balance. Against this background, all states in the system must cooperate to eliminate disturbances throughout the system. It is within this framework that the UN, AU and regional organizations interact with states to reduce disturbances within the system. New States enter into the system largely as a result of their external recognition.

15 Deng F. M; et al.. *Sovereignty as Responsibility: Conflict Management in Africa* . (Washington DC. the Brookings Institute, 1996)p

16 *The Logic of Secession*. *The Yale Law Journal*. Vol. 89. No. 4 (Mar.. 1980). pp. 810-812

As the Westphalian order demands, the interstate system depends upon mutual sovereign recognition among States.

The mere existence of a territorial entity which is also constitutionally independent is one thing...the extent to which it participates in international life is another matter....It depends on the number of other states which are wanting and willing to enter into relations with the state concerned.¹⁷

Literature Review

Overview

Somali land's self-determination and quest for international recognition will be analyzed.

Self-determination is a highly controversial notion. It has both political and legal dimensions.¹⁸

According to Helen Quane, the concept of self-determination creates difficulty when the majority of the population of a State claims the right to maintain the territorial integrity of the State while an ethnic, linguistic or religious group within the State claims the right to secede and establish an independent State. They not only generate instability and civil conflict within the State but can also threaten international peace and security. These conflicts highlight the principal difficulty with the concept of self-determination. Competing claims can be advanced in the name of self-determination due to the ambiguity surrounding the concept. Each State or non-State group can resort to the interpretation which best suits its interests.¹⁹

17 James Alton. *Sovereign Statehood. The basis of International society*. Vol 2 (Allen and Unwin Publishers Ltd. 1986). p. 147

18 Schoiswohl M. *Statute and Human Rights Obligations of Non-Recognized De Facto Regimes in International Law: The case of Somaliland* (2004) pp 61

19 Quane Helen, "The United Nations and the Evolving Right to Self-Determination" *The International and*

Rosalyn Higgins defines self-determination as 'the right of the majority within a generally accepted political unit to the exercise of power'.²⁰

Envar Hassani analyzes the concept of 'self-determination' and its historical roots.²¹ His work explains the various stages through which the principle evolved. In a more legalist point of view, Cassese also analyzed the content and the context in which the right to self-determination operates." He clearly differentiates between the political and legal aspects of self-determination. Crawford wrote on the relationship between state creation and self-determination in international law. ²²A lot of work has been written on the case of Somaliland.

Schoiswohl questions the non-recognition of Somaliland despite the collapse of the mother state; Somalia. ²³ He analyses the relationship between effectiveness, state collapse, recognition, and secession by claiming that the more effective a secessionist entity is, the more declaratory that is, redundant recognition becomes. He goes on to conclude that when a clearly effective entity (as he shows Somaliland to be) secedes from a failed state (which he shows Somalia to be), it can be legally categorized as a state, notwithstanding the absence of international recognition. The second part of his book describes the historical events in Somalia and Somaliland, and analyzes various claims put forward in support of Somaliland's right to statehood.

Comparative Law Quarterly, Vol. 47, No. 3 (Jul., 1998), Cambridge University Press, pp. 537

Higgins Rosalyn, *The Development of International Law through the Political Organs of the United Nation** (Oxford, 1963), p. 104.2 Ibid pp. 105

21 Muoni *vi. Self-determination territorial integrity and international law* (2002)17.

22 Cassese A, *Self-determination of peoples'. A legal reappraisal* (Cambridge University Press, 1995)

23 Crawford J. *The Creation of State* in International Law* (Oxford University Press, 2006)

Schoiswohl M. *Statut and Human Rights Obligations of Non-Recognized De Facto Regimes in International Law* . The case of Somaliland'* (2004)

Schoiswohl considers the historic claim to title of Somaliland. the right of its population to self- determination, and the Somali government's denial of this population's human rights prior to Somaliland's 1991 declaration of independence. He rejects all these arguments as unsustainable grounds for secession, but then finds that Somaliland ought to be considered a state on the basis of its effective functioning, regardless of its not being entitled to what he considers "the right to secession." Schoiswahl examines the implications of non recognition on the status of de facto regimes, which are defined as non state entities exercising effective control over territory. He concludes that de facto regimes may be categorized as states despite the absence of recognition.

Schoiswohl describes the history of Somalia and Somaliland. and examines Somaliland's claim to state-hood, with the conclusion that it is effectively a state, despite not having been recognized as such. At the outset. Schoiswohl argues that the different motivations for refusing to recognize de facto regimes as states are opaque and irrelevant, as they all have the same legal consequences.

Professor Iqbal Jhazbhay has published on Somaliland and its struggle for international recognition. He concludes that the main obstacle to the recognition of Somaliland is the African Union. He is in support of Somaliland's assertion of independence in his book, *"Somaliland: an African Struggle for nationhood and international recognition"*. 115

" Schoiswohl's definition largely corresponds to the traditional definition of a State as reflected in the Convention on the Rights and Duties of States, Dec. 26, 1933, 165 LNTS 9. reprinted in 28 AJILS DPP. 75 (1934). Article I of which provides: The state as a person of international law should possess the following qualification*: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with (the other states

²⁶ Jhazbhay Iqbal. *Somaliland an African struggle for nationhood and international recognition* (Institute for Global Dialogue and South African Institute of International Affairs. 2009)

opinion of Somaliland's recognition issue, points out that Somalia does not exist despite the narrative dreamt up by African, Arab, and international diplomacy to serve their vested political interests. He argues that those who seek a solution to the Horn of Africa's problems must grasp this, and evaluate Somaliland's potential contribution to stability in the region. He focused on the achievements of Somaliland. However, those against the recognition of Somaliland argue that there are many ways to recognize the achievements of the Somaliland short of secession.

Jhazbhav is strongly criticized for calling for the balkanization of a homogeneous African country. That Somalis have more in common and regardless of their regional affiliations, they share the same ethnicity, speak the same language, follow the same religion, and have the same color. Those against Somaliland's recognition believe that during the European scramble for Africa, Somalia fell prey to colonial rule and ended up being carved into several spheres of influence. After the Second World War, Somali speaking people became united again under Britain. For unknown reasons, Britain handed back the south to Italy, the Northern Frontier District to Kenya, and the Haud and Reserved areas to Ethiopia.

The recognition of Somaliland is also supported by Alison K. Figgers, who argues that Somaliland, which has operated as a self-sustaining state since it declared independence in 1991, should be recognized as such by the international community.⁷ Figgers further argues that as international law expects that the right to self-determination be exercised

⁷ Figgers, A. K. *When is a State a State? The Case for Recognition of Somaliland*. 30 *Boston College International Comparative Law Review* (Vol. 30, No. 1, 2007). pp 212

within the framework of existing sovereign states. Somaliland finds itself at an impasse, because it lacks an effective parent state from which to apply for secession. With no coherent "parent" state with which to negotiate its independence, international law and the nation state system leave Somaliland with little alternative but to declare its independence and begin to act as an independent state, which it has done.^{2*} The author maintains that the question of whether Somaliland should be recognized as an independent state is hindered only by the blind adherence by the international community to the nation-state system's inviolability of borders ""

Alison F. G. G. further argues that Somaliland fulfills the Montevideo criteria for statehood (a permanent population, a defined territory, government, and the capacity to defend and represent itself) along with the obvious support for self-determination within the territory itself. That, some 97 per cent of its population supported independence in a referendum a decade after its initial declaration. Its problem, however, is Somalia's unwillingness to agree to a divorce.

Carroll and Rajagopal analyzed the legal grounds on which Somaliland bases its demand for international recognition.¹¹ According to Anthony Carroll and B. Rajagopal, any efforts to deny or delay recognition to Somaliland would not only put the international community at the risk of ignoring the most stable region in the Horn, it would impose untold hardship upon the people of Somaliland due to the denial of foreign assistance that

" Ibid, p 217

;n>KJ,.p222

Ibid., p 217

31C@rol| AJ & Rajagopal 8 *The Case for the Independent Statehood of Somaliland' .American University Journal of International Law and Policy (1992)*

recognition entails. The interest of world peace and stability require that, where possible, the division or fragmentation of existing states should be managed peacefully and by negotiation. But where this is not possible, as is the case with Somalia, international law accepts that the interests of justice may prevail over the principle of territorial integrity.

According to Onyeonoro Kamanu, the fight for African independence was waged under the flag of the right of self-determination. Yet the same African states and the O.A.U. condemned Biafra's attempted withdrawal from Nigeria and similar struggles in Southern Sudan, Chad, and Eritrea, without reference to the possible merits of their peoples' claims to the right of self-determination. Biafra secession, in particular, was fated as detrimental to African interests: it was irreconcilable with the goal of African unity and would set a precedent that could lead to the further balkanization of the continent. As a matter of political pragmatism, after independence, African governments were virtually unanimous in agreeing that respect for existing territorial boundaries should be a guiding principle in inter-African relations, it was felt that any attempt to redraw them could plunge these states into internecine conflicts.'

Ali Mazrui points out to the apparent contradiction between OAU/AU support for self-determination under colonialism, and opposition to the application of the same principle in a post-colonial setting. What makes the demand legitimate in one case but not in the other? Are there circumstances in which it can have validity in independent Africa? He has made a daring effort to reconcile this contradiction by articulating a distinction

* Onyeonoro S. Kamanu. *'Secession and the Right of Self-Determination: An O.A.U. Dilemma'* The Journal of Modern African Studies, Vol. 12. No. 3 (Sep., 1974), pp. 354-355

between colonial and post-colonial self-determination. Asserting that African independence had been demanded h\ appealing to liberal individualism rather than to collective self-determination, he concludes that there was therefore 'no inconsistency after independence in denying "self-determination" to the Somalis and other "tribal" groups^{i 3)}

A useful resource on Somaliland is Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: The Case of •Somaliland'. Another work that cites Somaliland within the context of failed states is States and Power in Africa: Comparative Lessons in Authority and Control by Jeffrey Herbst. Herbst sees Somaliland within the context of what he terms "the new type of state disintegration that parts of Africa is undergoing", where a new state emerges from simply exiting a failed state. Herbst follows this up by making a case for needed policy changes that allow for new states like Somaliland to be brought into the international economy, so as to benefit from engagement with institutions like the World Bank and the International Monetary Fund.³⁴

Since its unilateral independence in 1991, Somaliland has generated a lot of online journalistic commentaries, periodical articles, academic analyses, opinion and commentary pieces associated with the larger Somalia conflict and resulting political environment, there are sources that provide regular periodic updates on SomaUa'Somaliland, such as the International Crisis Group (ICG) "Africa Reports" that

^{u ^ ,4_} Maznii Mi A. *TowanLi a fax Africanaa study of ideology and ambition* (Chicago and London. 1967),
Herbst Jeffrey, *State and Power in Africa*. Princeton: Princeton University Press. (2000), pp. 267-8.

address the situation in Somaliland. In this regard, the reports and research paper; that have been produced by Matt have been invaluable sources of information for keeping abreast of ongoing developments in the Somali region, including Somaliland.*

Readily available online sources such as AllAfrica.com, awdalnews.com and hiiraan.com are also useful with respect to understanding unfolding developments in Somaliland as well as the Somali region as a whole. There is much material that is now accessible online on various websites, which has proven very useful.

In his 1994 work, John Drysdale provides an informative account of the local, regional and international politics of Somalia's disintegration, including the context in which Somaliland's unilateral independence was declared. Another excellent online source for understanding the liberation struggle context of the SNM, which spearheaded Somaliland's emergence from the larger conflict is Jack L. Davies' August 27, 1994 Civic Webs Virtual Library article on 'The Liberation Movements of Somalia'.

Several news articles and commentaries capture more recent developments growing out of Somaliland's quest for international recognition. Many of these sources are readily available on AllAfrica.com and include articles from newspapers of Kenyan origin. Other useful sources are periodically available from BBC's News and from a Somaliland website. Somaliland.Net.

International Crisis Group. •*Somaliland Democratization and its Discontent* Africa Report No. 66.
**onalla: Continuation of War by Other Means* Africa Report No. 88. (21 December 2004).
paging Somalia's Chance For Peace Africa Briefing No. 11, (9 December 2002).
Nip. /www.crisisgroup.org

There are many newspaper commentaries arguing in favor of Somaliland's recognition as a comparative 'model' African state, in a region of conflict and instability, and in need of African and international support to sustain its democratic experiment. In fact, while cases such as Somaliland's are a hard sell in African and developing world politics, the country has, nevertheless, managed to garner an important degree of political if not official diplomatic support from key African state actors such as neighboring Ethiopia and Djibouti.

One of the most persuasive cases for Somaliland's recognition is an official South African Department of Foreign Affairs (DFA) legal advisory. In April 2003, the Office of the Chief State Adviser (International Law) produced a report 'Somaliland's Claim to Sovereign Status'.¹ This report bases its brief on Somaliland's fleetingly brief history as an independent state prior to its union with former Italian Somaliland to form the Republic of Somalia. Thus legally Somaliland did not secede from Somalia but simply reverted back to its original independent status in the wake of the dissolution of Somalia.

Recent reports of the African Union on political developments in the Somalia arc useful. The findings of fact-finding missions from the AU that have included Somaliland are a point of departure from previous norm. Somaliland has managed to achieve a certain degree of informal political recognition from African Union member states. However, Somaliland's case for self-determination and quest of international recognition is in conflict

The Brenthurst Foundation. *African Game Changer*² *The Contingent CM of Somaliland: An International*
Legal Analysis (2010) [www.brenthurstfoundation.org/ilei/Brenthurst-Combined-Report-
on-Consequences-of-Somalilands-International-Recognition.pdf](http://www.brenthurstfoundation.org/ilei/Brenthurst-Combined-Report-
on-Consequences-of-Somalilands-International-Recognition.pdf) (accessed May 5, 2012)

with the African Union's commitment to maintaining colonial boundaries and territorial integrity.

1.6 Justification of the Study

This study is significant because the people of Somaliland have suffered and are still suffering due to the so-called territorial integrity. It seems that the African Union treats Somaliland as any other secessionist group, which might dismember an African country.¹⁷ It is unfounded argument to assert that the case of Somaliland is just about secession. Rather it is dissolution of union where Somaliland restores its original boundaries before 1960." Government publications emphasize the pre-colonial origins of Somaliland and, consequently, that Somaliland was 'not an entity which was born after the disintegration of the Siad Barre dictatorship.' Noted in particular are traces of 'the mined cities of Somaliland' - evidence which apparently proves 'that in ancient pre-historic times a country existed in Somaliland which had its own identity and its own geographic contours' (Government of Somaliland, 1997).

1.7 Scope of the Study

There have been a lot of studies done on Somaliland's pursuit of self determination. The focus has been mainly on whether Somaliland qualifies for statehood and thus fulfilled the traditional criteria of statehood recognized in the Convention of Montevideo.³⁹ Only few have touched on the fact that Somaliland qualifies for being in a situation of union

² IMF African Union -Risum*: *AUFad-finding Mission to Somaliland'* (2005) unpublished report Para 8.

⁸ The Republic of Somaliland *'Somaliland Demand for international recognition'* (2001)

WtwL ¹ **omallandlaw.com* (accessed May 3, 2012)

The Convention of Montevideo on the Rights and Duties of States of 1933

dissolution instead of secession and thus resembles the case of Yugoslavia⁴⁰ in that what has not been adequately addressed is the question of what justifies the non-recognition of Somaliland since it is illogical to argue that the case of Somaliland is about secession. *SomollanJeri* willingness to settle for the previously established borders of British Somaliland allows them to claim that they are continuing to respect the territorial integrity of Africa's colonial states and obey the rules of the Charter of the African Union. On the other hand, given the fluid nature of Somali clan ties and the potential axes of division, a territorial state comprising of anything but all Somali-inhabited territory is likely to be uncertain. Nonetheless, self-determination by Somaliland could set an important precedent for other groups in Africa. Those who have challenged the territorial integrity of Africa's borders provide little guidance on how this might be redrawn, and underestimate the difficulties that would result particularly when resource-rich territories such as Sudan and South Sudan are involved. Some efforts towards self-determination are more likely to lead to violence when there are many other groups within the state.

1.8 Hypothesis

1. Somaliland's self-determination quest is based on the dissolution of the union with Somalia than on secession.
2. Somaliland has fulfilled the traditional criteria of statehood recognized in the Convention of Montevideo.

The main obstacles to the recognition of Somaliland are political more than legal reasons.

⁴⁰ Poore B. *Somaliland: Shackled a haded State* (2009) Stanford Journal of International Law .45. p 117-

I_9 Methodology

The method used in gathering data for the study is mainly library research in doing a comparative analysis on the management of self determination in Africa. The secondary sources of data collection were obtained through scholarly works on self determination, territorial integrity and recognition; from Journals and other documents of political significance. It analyses and seeks to explain the dichotomy between the concept of self-determination and territorial integrity. The study refers to cases in Africa that have grappled with issues of self determination such as Eritrea and South Sudan. It also looks for global comparison of similar cases of self determination such as the dissolution of Yugoslavia and contrasts it to the disintegration of Somalia. Finally, the study draws a conclusion from these cases to determine where the case of Somaliland can be fitted.

1.10 Chapter Outline

This study contains five chapters. Chapter one contains the background of the study and the literature review. Chapter two is a conceptual analysis of self determination and the context in which it is applied. Chapter three reviews territorial Integrity and the management of self determination. Chapter four analyses the principles of recognition of Somaliland. Chapter five concludes the study and offers recommendations.

Chapter Two

A Conceptual Analysis of Self Determination

2.1 Introduction

This chapter sets out to analyze the concept of self-determination. Much of Somaliland's argument in its struggle for international recognition arises around the principle of self-determination. It is therefore necessary to examine the legal, socio-economic and political aspects of self-determination. It is an ambiguous concept and fairly difficult to define or explain its content. However, despite its controversy, self-determination is 'one of the most important driving forces in the international community. This chapter defines the concept and looks at its historical origins. The chapter also specifically examines the concept within the African context

According to Helen Quane, the concept of self-determination creates difficulty when the majority of the population of a State claims the right to maintain the territorial integrity of the State while an ethnic, linguistic or religious group within the State claims the right to secede and establish an independent State. They not only generate instability and civil conflict within the State but can also threaten international peace and security. These conflicts highlight the principal difficulty with the concept of self-determination. Competing claims can be advanced in the name of self-determination due to the ambiguity surrounding the concept. Each State or non-State group can resort to the interpretation which best suits its interests. "

¹ Helen Quane, "The United Nations and the Evolving Right to Self-Determination" *ITK International and Comparative Law Quarterly*, Vol. 47, No. 3 Jul., 1998. Cambridge University Press, pp. 537

there is disagreement among scholars with regard to when self-determination emerged as a useful concept. Some argued that its appearance goes back to the peace of Westphalia where it appeared for the first time in 1648⁴² Others claim that self determination originates from 'the American Declaration, of Independence in (1776) and the French Revolution, which marked the demise of the notion that individuals and peoples, as subjects of the King, were objects to be transferred, alienated, ceded... in accordance with the interests of the monarch.'^vThe two opinions, however, are close to each other.

Though the Peace of Westphalia was the starting point of self-determination, its practical use started with the American and French Revolutions. Hassani for example argues that in practice it was the French Revolution that proclaimed self-determination as a revolutionary principle against despotism and monarchic rule.⁴⁴ Since then, the concept of self-determination has gone through various stages. Hence, the Peace of Westphalia together with the American and French Revolutions marks the first stage of the concept.

A second, major phase of self-determination took place between the two World Wars (1919-1939).⁴³ As Hassani mentions, after the WWI 'self-determination does not appear anymore as a revolutionary but as a guide to the conduct of day-to-day international relations, "in this period, self-determination was used as an effective political tool to

42 Hassani. E *Self-determination, territorial integrity and international law* : (Institute for Peace Support and Conflict Management. Vienna. 2002). pp 59

⁴³ c)»»«eA. *Self-determination of peoples. A legal reappraisal* (CambnAgc University Press, 1995).
PP II

⁴⁴ E. *Self-determination, territorial integrity and international law* (Institute for Peace support .. ^ Conflict management. Vienna.2002). pp 60.

** Ibid., p 69

<6 Ibid.

^structure "states of central Europe. The United States president Woodrow Wilson suggested 'that self-determination should be the guiding principle when it came to divide the Ottoman and Austro-Hungarian empires and redrawing the map of Europe.^Wilson's ambition was to block the Allies powers from using self-determination as a tool of pressure against Germany. Austro- Hungarian and Ottoman empires and consequently redraw the territories that fell under those empires.'"

Generally, in that period, there were two major opposing opinions: the Wilsonian representing the American view and the Soviet Union view conceptualized by Lenin. " To the Wilsonian thought, self-determination meant two things: 'The right of people to choose their own sovereignty and their own allegiance and not be handed about from sovereignty to sovereignty as if they were property.*' 'To Lenin, 'self-determination was a useful revolutionary- slogan which would lose its force once the revolutionary class had seized power and multinational states merged into a unitary socialist order, e.g.. socialist (communist) federation.'⁵² Thus, the American approach attached the right to self-determination to people, while the Soviet approach made it attachable to the state itself. As discussed above, at the very beginning, self-determination emerged as a political principle. It played a critical role among states in the international relations sphere.

Casey A. *Self-determination of peoples: A legal reappraisal* (1995). pp 20

⁵¹ *Ibid.*

⁵⁰ Hassani E., *Self-determination, territorial integrity and international law* (2002) pp 82

⁵¹ *Ibid.*, pp 81

⁵² *Ibid.*, pp 73

A third and more important stage for self-determination started after the WWII. After World War II, self-determination emerged as a fundamental principle in the United Nations Charter⁵³ and provided the basis for the decolonization of Africa and Asia." The development of the legal right to self-determination is based on the UN Charter. Article 1(2) of the Charter provides that one of the purposes of the United Nations is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". Article 55 provides that the United Nations shall promote a number of goals with a view "to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples"⁵⁴.

After the WWII, self-determination became a legal standard intended for the liberalization of nations under colonization.⁵⁵ Since then the greatest challenge has been how to differentiate between the political and legal dimensions of the concept. It appears then that the most disputes about definition of self-determination are political more than legal. Crawford explains this tension by saying that "the question of the ambit of self-determination, the territories to which it applies, has arguably remained as much a matter of politics as law"⁵⁶

Notwithstanding, the political argument, self-determination is a legal right, which means the 'right of peoples to determine their own destiny. In particular, the right allows a

53 *The Logic of Secession*. The Yale Law Journal. Vol. 89. No. 4 (Mar., 1980), pp. 804.

54 Quane Helen, "The United Nations and the Evolving Right to Self-Determination" The International and Comparative Law Quarterly. Vol. 47. No. 3 (Jul., 1998), pp. 539

« Cassese A. *Self-determination of peoples: A legal reappraisal* (1995). pp 37

⁶ « Crawford J. *The Creation of States in International Law* (2006). pp 115

people to choose its own political status and to determine its own form of economic, cultural and social development, free of outside interference.⁵⁷ As appears from this definition, self-determination is classified into two broad categories; internal self-determination and external self-determination. I highlighting this point. Schoiswohl states that international law aims at the realization of self-determination either within or against a given state. Doctrine distinguishes two component parts of self-determination, namely the "internal" and "external" dimensions of the right to self-determination, "internal self-determination 'encompasses the right to political participation, i.e. the people's right to assert their will, to choose a government and be represented.' On the other hand, external self-determination 'envisages a right to political independence (against outside interference) and ultimately a right to secessions.'⁵⁸

However, self-determination is limited both by the context in which it is applied and by the peoples to whom it belongs. With regard to whom it belongs, there is a great controversy around what does constitute 'self' and whether this self can demand for self-determination outside of colonial context. Therefore, the following sections deal with in which context self-determination applies.

2.2 The Context of the Right to Self-Determination

As a legal right, self-determination appeared only after the WWII. At this stage self-

⁵⁷ Conference Report for the Unrepresented Nations and Peoples Organisation *'Self-determination in relation to individual human rights, democracy and the protection of the environment'* (1993) (accessed Way H.2012)

⁵⁸ Schoiswohl M. *Statu* and Human Rights Obligations of Non-Recognized De Facto Regimes in international Law: The case of Somaliland'* (2004): Martinus Nijhoff Publishers, pp 68

⁵⁹ Ibid.

determination became an effective tool by which colonized peoples liberalize themselves from foreign domination. Accordingly, self-determination was primarily applied in a colonial context. Latin America and Africa are the best examples to explain the demand for the right to self-determination in a colonial context.

Moreover, self-determination also played a critical role in restructuring Yugoslavia after its dissolution.⁶⁰ It means there is a room for the right to external self-determination outside of colonial context. However, in each of these regions, self-determination took different form.

2J Socio-Economic and Political Right to Self-Determination

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Essentially, the right to self-determination is the right of a people to determine its own destiny. In particular, the principle allows a people to choose its own political status and to determine its own form of economic, cultural and social development. Exercise of this right can result in a variety of different outcomes ranging from political independence through to full integration within a state. The importance lies in the right of self-determination, so that the outcome of a people's choice should not affect the existence of the right to make a choice.

⁶⁰ Badinter Arbitration Commission at <http://www.la-7k.com/MpfAu.ctidubrwmk.<reaJtnHybaJttitcrpdf> (revised May 14, 2012)

In practice, however, the possible outcome of an exercise of self-determination will often determine the attitude of governments towards the actual claim by a people or nation. Thus, while claims to cultural autonomy may be more readily recognized by states, claims to independence are more likely to be rejected by them. Nevertheless, the right to self-determination is recognized in international law as a right of process belonging to peoples and not to states or governments, the right of self-determination is a legal, political and socio-economic right to all people. For example, the armed struggle in South Sudan was a demand for the right of self-determination of a people to determine their own political destiny, economic well being and cultural development.

2.4 Self-determination in Africa

The following section, briefly discusses how the African peoples exercised their right to self-determination. Self-determination strongly manifested itself in the African context. This is because, the continent had a long history associated with colonialism and perhaps. Africa is the sole continent in the world, which colonial masters drew the entire of its borders. This gives the impression that Africa in fact was subjugated to absolute colonialism. Consequently, self-determination became the only means through which African peoples could achieve their statehood. Accordingly, self-determination emerged in the context of Africa as a tool of struggle against colonialism, alien subjugation and foreign domination. Yet, the inherited political boundaries of the emerging nations continued to constrain the scope of self-determination. The anti-colonialist phase.

ironically, accepted the old colonial boundaries as legitimate and unalterable, regardless of the incongruous mix of peoples within the political unit.

The United Nation General Assembly (UNGA) resolution 1514 (XV) and its supplementary resolution 1541 (XV) were the legal basis of that struggle.⁴² Resolution 1514, among other things declared that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
2. All peoples have the right to self-determination; by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.

Two points are clear from this resolution. Firstly, the basis for the right to self-determination is the UN Charter to which the resolution makes reference. Specifically, this reference is made to article 1 (2) of the Charter, which provides that one of the UN objectives is 'to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...' Secondly, in this context, self-determination means the right to be free from the control and domination of the

61 *The Logic of Secession*. The Yale Law Journal. Vol. 89. No. 4 (Mar., 1980). pp. 805

62 UN Resolutions 1514 (XV) 'Declaration on the granting of independence to colonial countries and peoples of 1960' at http://www.un.org/Depts/da/resolutions/res_1514.htm

63 http://www.un.org/Depts/da/resolutions/res_1541.htm

64 **1541(XV)** 'Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under article 73 of the Charter' (Turner¹ at http://www.un.org/Depts/da/resolutions/res_1541.htm)

65 http://www.un.org/Depts/da/resolutions/res_1541.htm

66 **Accessed** (May 14, 2012).

colonizing powers. It covers political, economic, social and even cultural aspects. In other words, self-determination means the complete freedom from any foreign interference by allowing colonized nations to govern themselves.

Accordingly, the UN recognizes the right to self-determination in a very narrow sense, which implies that no nation or group of people has the right to external self-determination outside of colonial context. This will be the case even if those peoples have to suffer the same situation as if they were under colonialism. Resolution 1514 itself supports this interpretation by stating that 'any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.'⁶³ The 1970 Declaration on the Friendly Relations, which was issued to supplement the above resolutions further support this position of the UN.'

Apart from the Charter and the followed resolutions, the right to self-determination was also entrenched into two fundamental human rights conventions. These are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁶⁵

w Article 7 of the United Nation Resolution 1514 above.

^ • The UN Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations at <http://0-dw.ce»s-ddsny>.

**">or^innopac.up.ac./a/doo'RESOLUT10N/GEN>>JRO/34
•ccessed May 14,2012).**

**MBoth Conventions were adopted by the UN General Assembly in resolution 2200 A (XXI) of 16
"•ccmber 1966 in New York.**

Common article 1 of the two Covenants reads as follows:

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

The first observation about this provision is that it repeats almost the same wording of the above resolutions and makes again a reference to article 2(1) of the Charter. It is also clear that the provision deals with self-determination in a colonial context. In addition, the provision puts an obligation upon the member states to respect the right to self-determination in a way that is consistent with the UN Charter. Some scholars interpreted that to mean that the UN wanted to close the door to secessionist movements.⁶⁶ Since the adoption of these provisions, the right to self-determination became a legal standard in the UN context.⁶⁷

J* Dugard J, *Institutional Law. A South African perspective* (2005) pp1 06.

⁶⁷ Cassese A. *Self-Determination of Peoples: A legal Reappraisal* (mi) pp 37.

These legal norms manifested themselves rightly in the African context. This is because firstly, at the time of drafting the UN Charter and the two resolutions; 1514 and 1541. most African nations were under colonization. Secondly, although the Charter of the Organization of the African Unity (OAU) of 1963 primarily targeted at eradicating all forms of colonialism, at the same time, it recognized the colonial borders.^{6*} Thirdly, after the decolonization process, several African peoples claimed the right to external self-determination. Examples are the cases of Biafra and *Katangese people v Zaire, the case of Cunme People v Cameroon.*" The OAU response to all of these cases, was the same and constant; no right to external self determination after the independence. Biafra's attempt to secede from Nigeria was unsuccessful and received little support from the international community. The conflict was dealt with at a regional level by the OAU. which supported Nigeria's claim to maintain its territorial integrity. The United Nations did not consider events in Nigeria but the Secretary-General, when questioned about the Biafra's' right to self-determination, stated that it "never accepted... the principle of secession of a part of its Member States. By upholding the territorial integrity of Nigeria, the international community was effectively denying a separate right to self-determination for an ethnic group within the State and affirming that the right to self-determination had to be exercised by the entire population of the State. "

«» Article 2 (1) (c) and (d) of The Charter of the OAU.
 WKevin MgwangaGunmc et al v Cameroon(2003)

^ - fr WMChnr ore- cnyliili Deciwn CommunicationCameroon/Comm.266- OVpdf accessed May 15,

?0 Quanc I Iclen. "The United Nations and the Evolving Right to Self-Determination" The International and Comparative Law Quarterly. Vol 47. No. 3 (Jul.. 1998). Cambridge University Press, pp. 568

African leaders are skeptical about borders and any claim that questions it. Fears against recognizing Somaliland claim that it sets a precedent for similar claims and therefore such recognition may trigger a 'Balkanization' of the entire continent. OAU/AU has already recognized similar secessionist claims, which rebut the argument that Somaliland sets a precedent for the rest of Africa. By recognizing the Western Sahara and Eritrea as independent states and by lobbying and agreeing for the secession of the South Sudan, the question of whether secession is acceptable in Africa is mute.

Confusion surrounds the legal principle of self-determination. This led to the mistaken belief that the principle was intended to be universally applicable. When groups in non-colonial States unsuccessfully invoked the right, the international community was accused of double standards and the existence of a legal right to self-determination was denied on the grounds of this perceived inconsistency. For them, peoples in independent States had already exercised the right to self-determination. By affirming the universality of the right, they were seeking to extend its application to peoples who had not yet exercised it.

2.5 Self Determination in Eastern Europe

According to Helen Quane, an example of a successful self-determination occurred in the former Socialist Federal Republic of Yugoslavia. Yugoslavia rejected declarations of independence by four of its constituent republics and used force to prevent them from succeeding. The escalation in fighting and the wide-spread human rights violations led to the involvement of the international community first at a regional level and then at an

international level. The international community's overriding objective was to broker a peaceful settlement of the conflict and this seems to have dictated its response to the declarations of independence. Initially, the international community favored a negotiated settlement which would maintain Yugoslavia's territorial integrity. When this was not possible, it indicated its willingness to recognize the republics but only within the framework of an overall settlement. When this was unsuccessful, the European Community indicated its willingness to recognize the republics provided they satisfied the "Guidelines for the Recognition of New States in Eastern Europe and the former Soviet Union". As previously noted, these Guidelines required a State seeking recognition to undertake a range of commitments designed to maintain peace and protect human rights. Once the republics gave the necessary undertakings they were recognized by the Community and subsequently by a large number of States.

The recognition of these new States might be interpreted as broadening the concept of people to include the population of the highest constituent units of federal States in the process of dissolution.⁷¹ The Arbitration Commission of the EC Conference on Yugoslavia expressed the opinion that Yugoslavia was in the process of dissolution and that its internal borders had become external borders. This implied that once Yugoslavia began to dissolve the republics automatically became States and their inhabitants had a right to self-determination by virtue of being organized as States.

71 Quanc Helen. "The United Nations and the Evolving Fight to Self-Determination" *The International and Comparative Law Quarterly*. Vol. 47. No. 3 (Jul. 1998). Cambridge University Press, pp. 570

Chapter Three

Territorial Integrity and the Management of Self-Determination

3.1 Introduction

This chapter analyses the critical question of whether territorial integrity can be relevant in the case of failed states such as Somalia. It also critically analyses the policy of the African Union and the international community in the management of self-determination in specific countries. This is contrasted with their policy in Somaliland.

All people have the right to self-determination. However, there is great tension between this right and the principle of territorial integrity. The implication of territorial integrity is that while all peoples have the right to self-determination, all nations have also the right to protect their countries from fragmentation. Thus, there is inherent tension between the two concepts that raises number of questions.

The first of these questions is which borders should be given the right to integrity. In other words, should we protect even those borders, which were drawn arbitrarily and without the consent of their inhabitants? A second question is which of the two principles, prevails the other in resolving this conflict. Put differently, which of the two should we prioritize when harmonizing the tension between self-determination and territorial integrity?

n.,
•vwumi O S 'Secession and the Right of Self-determination: An OAU Dilemma' C (1974) 12 *Journal of Modern African Studies* 355
tl Ouali A 'Territorial Integrity: Rethinking the Territorial Sovereign Right of the Existence of' (2006) 11 *Geopolitics* 630. internet <http://dx.doi.org/10.1080/M6500406008W792> accessed 12 August 2012

Territorial integrity appeared in the Covenant of the League of Nations. Article 10 of this Covenant provided that 'the members of the League undertake to respect and preserve against external aggression the territoriality integrity and existing political independence of all members of the League.'⁴ In addition, both the UN Charter and the OAU Charter (and currently the AU Constitutive Act) emphasized the importance of territorial integrity but none of the two defined the concept. Article 2 (4) of the UN Charter provides that 'all members shall refrain in their relations from the threat or use of force against the territorial integrity or political independence of any state. Furthermore, article 3 of the OAU Charter stipulates that one of the Origination's principles is to 'respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence.'⁵

The UN resolutions of 1514 and 1541 and the 1970 Declaration concerning Friendly Relations and the Vienna Declaration and Programme for Action (the Vienna Declaration) all made clear that self-determination does not mean the violation of the territorial integrity of any member state in the United Nations without out defining what the concept means.^{7,1}

El Ouali defines territorial integrity as 'the character attached to the territory of every state, which should not be subjected to any kind of grip aiming at subtracting it. durably

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The Covenant of the league of Nations. (1919).

unhcr.org,'refworl<lpublisher,LON»,3dd8b9S54.0.him (accessed 23 August 2012)

^ Article 3 (b) of the AU Constitutive Act.

The UN resolutions 1514 and 1541(n 85 above), the UN Declaration concealing Friendly Relations, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Right* on 25 July 1993.

or momentarily, from the authority of the state.' As this definition implies, the purpose of territorial integrity is to prohibit the use of force against any sovereign state. Accordingly, Zacher observes that the principle refers to the 'growing respect for the proscription that force should not be used to alter interstate boundaries.'

To some scholars, territorial integrity aims to block the ambitions of secessionist movement.^{7*} This is because secessionists often demand to 'redraw the political boundaries'.[^] According to this view, even if such secession is based on a legitimate claim of right to self-determination 'unfortunately, it seems directly contrary to another, equally venerable, principle of international law, which upholds the territorial integrity of existing states.'^{4"} The violation of territorial integrity can also be external where other states may support or encourage secessionists in their cause." That is why, the UN Charter required state members to refrain from any act that may amount to the disruption of wholly or partly of the territorial integrity of other states." It is clear that territorial integrity is a political tool that compels the nations of the world to comply with the new world order.

El Ouali A 'Territorial Integrity: Rethinking the Territorial Sovereign Right of the Existence of States' (2006) 11 *Geopolitics* 630

Brilmayer L 'Secession and Self-determination: A territorial Interpretation' (1991) 16 *Yale Journal of International Law* 178

"ibid,

"ibid.,

Gordon R 'Saving Failed states: Sometimes a Neocolonialist notion' (1997) 12 *American University Journal of International Law and Policy* 903.

The UN resolutions 1514 and 1541 (n 85 above). The UN Declaration concerning Friendly Relations, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993.

3.2 The Validity of Existing African Border*

It is a noble idea to protect all the boundaries of sovereign states from disintegration. However, 'all boundaries are constructed, and are in some sense artificial.'* This reality necessitates the need for rechecking the validity of the existing borders. This need is specifically pressing in relation to African borders. Mutua paints a painful picture on how African borders were created unethically and without the consent of the African peoples.*⁴He states that "unlike their European counterparts, African states and borders are distinctly artificial and are "not the visible expression of the age-long efforts of...peoples to achieve political adjustment between themselves and physical conditions in which they live." Colonization interrupted that historical and evolutionary process."Therefore, it is unreasonable that such borders remain unquestioned. Mutua brings our attention to the need for moral and legal inquiry about the current African borders arguing that the post-colonial state in Africa and its borders are not sustainable, 'because it lacks basic moral legitimacy.

The case of *Burkina Faso v Mali* explains what Mutua highlights/" This is a case where the International Court of Justice (ICJ) expressly declared that African peoples do not have the choice to question the validity of the existing borders at the time of independence.* Surprisingly, the Court emphasized the importance of those borders for the entire continent. It stated that 'the chamber nonetheless wishes to emphasize its

⁴ Cuticliano J ' Territorial integrity and the Right" to Self-determination: An examination of the Conceptual Tools' (2008) Brook Journal of International. pp528

Mutua M • Why redraw the map of Africa A moral and Legal inquiry(1995)16 Michigan Journal of International law pp 1113-1150; iii 3.

teb«J.ppll5

Coir concerning the Frontier Dispute (Burkina Faso v RepuNic of Mali) ICJ (22 December 1986) ICJ Reports 554.

ICJ above Para 20.

general scope, in view of its exceptional importance for the African continent and for die two Parties.^{1M} It seems that even the meaning of self-determination was abused. Rejecting the coloni/cd nations the option to rechcek the viability of the existing borders, constitutes a bare denial of the very right to self-determination.^ Mutua rightly observes this point saying that 'the invention of the African state by colonialism and the subsequent misapplication of self-determination arc the root causes of the crisis of the post-colonial staie.'[^]It is clear that neither self-determination nor territorial integrity necessarily served the aspirations of the colonized peoples. 'The right to self determination was exercised not by the victims of the colonization but their victimizes, the elites who control the international state system.'"

Such contradiction dominates die African Union. Dunning the colonialism. African leaders were keen about their right to self determination however, immediately after independence they took an opposite course. This is by adopting and putting much emphasis on the principle of territorial integrity. It is apparent that African leaders did not allow themselves to rethink about the validity of the principle and its compatibility with the right of peoples to self-determination. According to Mutua, Latin American leaders chose this principle for the common interest of their peoples while Africans thought only about their personal political and economic gains/ Mutua further explains that African elites who possessed the leadership in the Africa's post colonial state '[were] loathe to »',^{bW} •

Mutua M ' *Why rtdrm- the map ofAfrica: A moral and Legal inquiry* (1995) 16 *Michigan Journal of International Law* 11 SO

ibid.,1116

' Munia M ' *Why redraw- the map ofAfrica: A moral and Legal inquiry*' (1995) 16 *Michigan Journal of International Law* 1119

give up privileges come from control of the state. Since their lavish lifestyle stems from the state as organized, it would be suicidal for the leaders to participate in changing it.¹⁶¹

It appears that in Africa the aim was not to achieve self-determination of peoples. Rather there was a long-term contract between the colonial masters and their successors of the so-called African elites, because 'dependence continued under the post-colonial state, the instrument of narrow elites and their international backers.'¹⁶¹ Hassani gives an example of Somalia with regard to the Somali region in Ethiopia (Ogaden) and Morocco with regard to Western-Sahara. As a result, many African peoples were denied any historical claim to their ancestral lands.

JJ The Practice of the OAU

Legally, the OAU has been constant in adopting the principle of territorial integrity **except** in a few situations and therefore blocked any claim to self-determination after the independence. As indicated above, the 1963 Charter of the OAU expressly recognized this principle and made it the foundation of resolving all dispute pertaining to the frontiers of the new African states.¹⁶¹ The Cairo Resolution followed the Charter, in which the OAU 'solemnly (reaffirmed] the strict respect by all member states of the Organization for the principle laid down in paragraph 3 of article III of the Charter...

Accordingly. African leaders appeared to have prioritized territorial integrity than self

" Ibid,

* Ibid., pp 1118

J b Hassani *Self-determination, territorial integrity and international law* (2002) pp21

Article 3 of the OAU Charter.

Article I of the Cairo Resolution. (July 1963)

http://www.africaonline.com/ol/au/1/Humtntvl/ecixi(m/h<>gblli)CAi\cmNyl964 pdj(accessed August 25.2012)

determination. However, the question arises around what justified the OAU support of the Western-Sahara case and its silence with regard to the secession of Eritrea. In addition, the AU agreed to the secession of South Sudan from the North.^w Let us now consider these cases briefly.

3.3.1 Western Sahara

Western Sahara was historically a region of Morocco colonized by Spain.¹⁰¹ During the colonization of the region, there was a dispute between Spain and Morocco as to the future of the region.¹⁰¹ While Spain advocated for the independence of Western Sahara after its departure, Morocco had argued that the region formed an integral part of its territory.¹⁰² Consequently, the United Nations General Assembly (UNGA) referred the dispute to the ICJ for an advisory opinion. The finding of the Court was simple and straight forward.¹⁰³ It first found that the people of Western Sahara had the right to self-determination and therefore their free will has to be respected.¹⁰⁴ Secondly, that there was legal ties between Morocco and Western Sahara before the arrival of the Spanish colonial to the territory.¹⁰⁶ Following the advisory opinion of the ICJ, Morocco declared what became known as the 'Green March' in which it liberated the Western-Saharan from the colonization of Spain annexing the region to its territory.¹⁰⁵ This act of Morocco created a new conflict between Morocco and the Polisario Front, which was the main political

* I liiik M 'Lexaluy ^Secessions: The Case of Eritrea' (1994) *ZEmruy International Lau Re\itnv* 526

** The International Crisis Group Report

¹⁰⁴ *Western Sahara advisory-opinion* (16 October 1975) (1975) *ICJ Reports* 12. 54

¹⁰³ Naldi J G, *The Organization of The African Unity: An analysis of its roles* (1999)

^m *Western Sahara advisory Opinion* (16 October 1975) (1975) *ICJ Reports* 12.

¹⁴¹ Naldi J G, *The Organization of The African Unity An analysis o) Its rules* (1999) pp54
Western Sahara adv isory Opinion (16 October 1975) (1975) *ICJ Reports* 12.1'ara 163

¹⁰⁵ *Ibid.*, Para 162

* *Ibi.*, Para 75

Western Sahara advisory Opinion (16 October 1975) (1975) *ICJ Reports* 12. 54

actor in the region." "The response of the Polisario was to announce Sahawari Arab Democratic Republic (SADR) declaring an independent state.¹" The finding of the ICJ tells us that Morocco had sovereignty over the region before the colonization and therefore the call for separate statehood of the Saharawi people amounts to violation of the Morocco's territorial integrity.

Accordingly, the OAU was expected to stand against any attempt of this kind as it did with the previous cases. Surprisingly, the OAU did the opposite. At the beginning, the OAU pretended to be neutral to the dispute and called the two parties to resolve their dispute amicably. "However, it started to take more progressive steps towards the recognition of SADR as the legitimate representative of the Sahawari people."¹ This was by issuing number of resolutions regarding this matter. The most notable of these resolutions is the 92 (XV) in which the OAU appointed an *ad hoc* Committee to give a final say about the matter."² The recommendation of the committee resulted in the OAU resolution No. 114. which recommended that Morocco withdraw from Western Sahara and the inhabitants of the region exercise their right to Self-determination.¹ ' As the above resolution failed to bring a considerable solution, the OAU took a more radical step; this is by accepting the SADR to the membership of the OAU in 1984."*Thus, the

^m Ibid.,

^j* Ibid.,

¹¹ Naldi JG *The Organization of The African Unity. An analysis of its roles* (1999). Pp 58-59

;;;ibid.,p6i

OAU Resolution 92(XV): Resolution of the Union of Western Sahara Sudan, 1978

Ibid.,

^{1M} Naldi JG *The Organization of The African Unity: An analysis of its roles* (1999). pp 65

OAU treated Western Sahara as an independent state. Consequently, Morocco withdrew from the membership of the OAU."⁵

The OAU finally expressed its full support of Western Sahara in resolution 104 which recalled upon that the parties undertake direct negotiations and secondly, the UN in conjunction with the OAU will provide peacekeeping force."⁶ The Western Sahara case does illustrate the OAU contradictions. Perhaps the only reason that forced the OAU to treat this case uniquely was that Western Sahara had a different colonizer from that of Morocco. If such justification legitimizes self determination in international law, Somaliland can argue on the same ground.

3J.2 Eritrea

This is another case, which reverses the OAU principle that colonial borders should be maintained. As mentioned before, the OAU opposed any attempt of secession from the existing borders in the Cairo resolution of 1964." At that time, Eritrea was an integral part of Ethiopia though the signs of the Eritrean struggle had already begun.¹ Since then, Eritrean movements intensified their armed struggle, which resulted in the full independence of Eritrea from Ethiopia.^{1"} There are two arguments regarding the legality of Eritrea's secession.¹⁰ One argument is as asserted above to assume that Eritrea was an integral part of Ethiopia and consequently the 1949 UN decision, which federated Eritrea

⁵ Ibid .pp 58
:>id..pp<*

The Cairo Resolution of 1964.

^{1,1} R lyob, *The Eritrean Struggle for Independence Domination, Reuuiamv and Nationalism I'MI- 1993(1995)*

Ibid , pp 54

^{ai} Haile M 'Legality ofSecessions: The Case of Eritrea Y1994) SEMroy International Law Review 479.

to Ethiopia and the Ethiopia's subsequent full annexation of Eritrea were both legal. Therefore, it was questionable whether Eritrea had the right to secede from Ethiopia. Contrary to the OAU sanctioned principle of territorial integrity, Eritrea used war as a primary means to achieve its secession.

Having said this, do not ignore the UN referendum that finally led to the complete independence of Eritrea, because it is obvious that the referendum itself was a direct result of the armed struggle. Surprisingly, as Lyob explains though 'the Eritrean case went against the grain of Africa's post-colonial order and its attendant philosophical, ideological and political premises...', the OAU did not express a single objection to the Eritrea's unlawful use of force.¹¹⁴ Instead, the OAU did not only recognize Eritrea as an independent state but also witnessed its secession as an observer during the UN referendum for the Eritrea's independence.¹¹⁵

A second argument that might justify the OAU position is that Eritrean struggle was against colonialism and foreign domination. In this, Ethiopia is regarded as a colonial state and therefore Eritrea's use of force was legitimate because it was fighting for its freedom. Again, this does not serve the OAU for two reasons. First, the OAU did not assist the people of Eritrea while one of its purposes was 'to eradicate all forms of colonialism from Africa.'¹¹⁶ Accordingly, the OAU was under obligation to assist Eritrea

^m Ibid, pp 486-487

Ibid , pp 497

⁰¹ Ncgash T, *Eritrea atui Ethiopia: The federal experience (1996)* 164.

⁰⁴ lyob R, *The Eritrean Stru^le for Independence: Domination, Resistance and Nationalism* 19-11- 1993 (1995) , pp 54

k y m , 45

Article 2 (d) of the OAU Charter.

in its fight against colonialism. The OAU reluctance to support the Eritrean struggle shows its belief that this case was not in fact about colonialism.¹ Secondly, the Eritrean people themselves could not win their case under this argument. After noticing the international community's objection to this argument, the Eritrean struggle movement shifted its focus to the principle of self-determination and argued that they were denied this right internally by their own state; Ethiopia.¹ Another factor that accelerated the success of the Eritrean secession was the argument that Eritrean people did not exercise their right to self-determination since the Italian colonialism.¹

3.3.3 South Sudan

The African Union was instrumental in making the Comprehensive Peace Agreement between the Sudanese People's Liberation Army (SPLA) and the government of the Sudan in 2005.^{1,1} This case clearly violates the spirit of the AU constitutive Act with regard to the question of borders, the AU did not seem to object to this move of the Southern Sudan. This shows the African Union's implicit support of the South Sudan secession. Probably, the only justification that the AU has for its support is that there was an agreement between the two parties. This justification ignores the fact that this agreement was the result of bloody conflict in which the SPLA waged a guerrilla war against the government of the Sudan for at least 27 years.¹ This argument further suggests that if any group

Negash T, *Eritrea and Ethiopia: The federal experience* (Uppsala, 1995) pp 163

Ibid.

^m **Ibid.,**

ⁿ **Guscse A. *Self-determination of peoples. A legal reappraisal* (Cambridge University Press, 1995)**

³¹ PP222

The Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/the Sudan People's Liberation Army (2005)

Deng M 'Sudan at Crossroads' in FM Deng (eds) *New Sudan in the Making* Red Sea Press (NJ) (2010) pp30.

wishes to secede from a given country, that group should firstly start fighting and finally sign a peace agreement as in the case at hand. In contrast, in the case of Somaliland, it is the will of the people, which led to a peaceful separation from Somalia and not the gun.

3.4 Territorial Integrity in Failed States

The above cases were raised in the context of functioning states and the question was whether some part of those states can seek self-determination. However, the difficult answers where the rump state from which self-determination is sought does no longer exist. Unfortunately, the international community has failed in the same manner the OAU/AIJ has failed, to reconcile between self-determination and the so-called territorial integrity. As discussed earlier, the UN Charter and several resolutions clearly rejected any division or secession from member state of the UN. Those provisions did not differentiate between the dissolution of federal and the disintegration of single states.¹¹ Yet we see in practice if set of states secede from a federal state, such act is regarded as dissolution of federation and not secession. In contrast, if a single state fails to exist, a functioning part of that state cannot claim statehood. The case of Somalia clearly illustrates this situation.

3.5 The State Failure of Somalia

Somalia does not exist today as it was between 1960 and 1991. The Republic of Somalia consisted of a union between two states; Somaliland and Somalia.¹² For over 20 years, there has been no central government in Somalia except The Transitional Federal

the UN resolution* 1514 and 1341, the UN Declaration concerning friendly Relations, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 July 1993.

International Law Commission Yearbook Vol. II (1972) pp 285.

Government (TFG) it was formed in Kenya in 2004. The mandate of the ITU was to restore peace and reconcile between the fighting functions but the TFG could not even defend itself forget about restoration of peace. It was indeed a mockery to international law to refer the TFG as the legitimate government of Somalia while it did not control more than 10 kilometers square of the capital city; Mogadishu."⁶ The TFG controlled the Villa Somalia (the presidency house), the Mogadishu International Airport and the main seaport of Mogadishu with the assistance of the African Mission to Somalia (AMISOM) troops." The rest of the country is under the effective control of warlords except the north-eastern region of Puntland.

The totality of these scenarios tells us one fact: that Somalia is a tailed Suite, therefore, it is unreasonable for Somaliland to join a failed State."in contrast. Somaliland is a well-functioning state. While successive warlords displace their rivalry in Somalia, a new elected president replaces the previous in every five years in Somaliland. Therefore, the question is. is it logic to invoke the principle of territorial integrity in such context?

3.6 Conclusion

This chapter discusses the dilemma of how to resolve between the rights of people to self-determination and territorial integrity. The practice of the international community regarding this issue seems contradictor)¹. The practice of the international community

"Article II of the TFG Charter (2004) www.av.ilo.org/wcmspygroups/public/-ed.../wcms_127637.pdf (Accessed August 27, 2012)

¹ Amnesty International 'Hard news: Journalists' lives in danger in Somalia' (2009)

^u Hull C Svensson E 'African Union Mission in Somalia (AMISOM)' (200*) at [http://www.fol.sc/upload/pn\)Jccti''AfnwFOI-R--2596--SE.pdf](http://www.fol.sc/upload/pn)Jccti''AfnwFOI-R--2596--SE.pdf) (Accessed August 27, 2012)

¹ Inter-Africa Group Report 'Conference on the current peace and security challenges in the Horn of Africa' (2007) [www.lifc-pcacc.org/sajt/filer/pdf/Horn Of Africa BulletinABI003.pdf](http://www.lifc-pcacc.org/sajt/filer/pdf/Horn%20Of%20Africa%20Bulletin%20ABI003.pdf) (accessed August 28, 2012)

shows the prioritization of territorial integrity. Therefore, it is clear that there is a confrontation between self-determination and territorial integrity. Two lessons emerged from our case studies. That territorial integrity is disregarded when a given is about a unique case. Secondly, when the mother state ceases to function territorial integrity cannot be invoked as a defense against self-determination. Not surprisingly, both scenarios apply to Somaliland.

Chapter Four

An Analysis of the Principle of Recognition of Somaliland

4.1 Introduction

The previous discussions in the above three chapters, have laid down the groundwork for the right to external self-determination and that this right is limited by the principle of territorial integrity. It became clear that though self-determination right is threatened by putting much emphasis on the importance of territorial integrity. The confrontation between the two principles has created the dilemma of whether international law favors the right of peoples to self-determination or territorial integrity when the two collide. This dilemma is what calls the case of Somaliland into examination. A critical question here is in light of the above discussions, should Somaliland be recognized as independent state. The next question is what justifies the non-recognition or the recognition of Somaliland. Chapter four answers these questions.

4.2 Justification for the Recognition of Somaliland

Though the main purpose of this study is to find out why the international community is so reluctant to recognize Somaliland. It is necessary first to determine whether in fact Somaliland deserves such recognition. Apart from fulfilling the criteria of statehood and being a *de facto* state for over twenty years. Somaliland has many other grounds that justify its recognition as an independent state. These grounds are discussed below.

4.3 Historical Difference of Somaliland from Somalia

It is extremely important to understand that Somaliland's history- is dramatically different from that of Somalia.^{1w}This difference is in three dimensions. Firstly, prior to the colonial rule, there was not a Somali state which had sovereignty the territories inhabited by the Somali race.^M Rather there were nomadic tribes led by traditional chiefs known as the *Sultans*. Nevertheless, there was a substantive difference between Somaliland and Somalia in this regard. Whereas Somalia's tribes were purely nomadic, the British colonizer arrived on Somaliland coasts while the features of the modern nation-state of Somaliland had already shaped itself.¹¹¹ An example illustrating this fact is that Somaliland traditional leaders signed formal treaties with the British Empire.^{14*} These were not treaties merely by name but were such that shows the strong bargaining position of the Somaliland leaders at that time. The following quote gives us the essence of those treaties:

No treaty contained clauses relating to cession of territory; the clans merely pledged Britain a right of pre-emption. The treaties only granted one such right; the right of British agents to reside on the Somali coast. Most of the treaties contained clauses expressly declaring the treaties as provisional and subject to revocation or modification. The treaties therefore left a large measure of sovereignty in the hands of the clan occupying the land. ⁴¹

^{**} **Schoiswohl m**, *Status and Human Rights Obligations of Non-Recognized De Facto Regimes in International Law: The case of Somaliland* (2004) pp 212

Ibid., pp 97

Somaliland Centre for Peace and Development *A self-portrait of Somaliland. Rebuilding from the ruins* (1996) <http://www.wwapd-somaliland.org/docs/selfportrait.pdf> (accessed September 15, 2012)

^w **Schoiswohl m**. *Status and Human Rights Obligations of Non-Recognized De Facto Regimes in International Law: The case of Somaliland* (2004) pp III

^{14*} **Carroll A J & Rajagopal B** 'The Case for the Independent Statehood of Somaliland' (1992) 8

A Policy 653

The fact that Somaliland leaders entered into such powerful treaties is sufficient to indicate that Somaliland was indeed a sovereign state before the colonial era. In contrast, history did not record that Somalia's clan leaders attempted to sign such treaties when Italy came to colonize them. Secondly, during the colonization era, Somaliland had 80 years of self-governance experience. Because the British colonizer rule was indirect, local leaders 'were able to continue autonomously with the societal structure they had been living with for centuries'.¹⁴¹ Contrary to this situation, Somalia was under the Trusteeship of the UN from between 1950-1960. Thirdly, immediately after the independence, Somaliland became an independent state before uniting with Somalia and many countries recognized Somaliland as such. Some scholars argue that Somaliland even became a member of the UN. "However, only after 5 days of its independence, Somaliland united with Somalia through the Act of Union. In submitting that this Act was not legally valid, Somaliland remained *de jure* independent since 1960."¹⁴²

4.4 Somaliland and the Right to Self-determination

A second argument that justifies the recognition of Somaliland as an independent state is the right to external self-determination. As discussed in the previous chapters, a right to external self-determination is granted either in a colonial context or exceptionally in a post-colonial context where internal self-determination is denied or gross violation of

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Schomvohl M. *Status and Human Rights Obligations of Non-Recognized De Facto Regimes in International Law. The case of 'Somaliland'* (2004) pp 11

¹⁴⁵ **r.ggen AK** *When state is a state? The Case for Recognition of Somaliland'* (2007) 30 *Boston College International and Comparative Law Review* 212.

¹⁴⁶ **Poorc, B** *'Somaliland: Shackled a Failed State'* (2009) 45 *Stanford Journal of International Law* 77 pp 80

human rights is committed against those demanding such right. Interestingly enough, Somaliland argues on both grounds.¹⁴⁷ These arguments are formulated below.

4.5 Self-determination from Colonialism

On this ground, the people of Somaliland argue that they did not achieve their right to self-determination from Britain yet.¹⁴¹ The unification with Somalia was not based on the true expression of the free will of Somalilanders. Rather, it was a conspiracy between few political elites who were fascinated by the ideals of the so-called 'Great Somalia' and Somalia taking advantage of the enthusiasm of the Somaliland political elites for Greater Somalia. The basis of the unification between Somaliland and Somalia was the Act of Union.

At the procedural level, the drafting process of the Act was totally contrary to what was agreed upon between the two sides. 'Delegates from Northern Somaliland and Southern Somalia were to sign an international treaty between the two states to form a union, after which the Southern legislative assembly was to approve the document.'¹⁴⁸ Only after signing such treaty 'the National Assembly should have elected a Provisional president.'¹⁴⁹ Following this procedure, on 27 June 1960, the Somaliland Legislative Assembly passed an act known as the 'Union of Somaliland and Somalia

¹⁴⁷ Carroll AJ & Rajagopal B 'The Case for the Independent Statehood of Somaliland' (1992) 8 *American University Journal of International Law & Policy* 662-666

¹⁴⁸ Kicuter, A 'Self-determination, Sovereignty, and the Failure of States: Somaliland and the Case for Justified Secession' (2010) 19 *Minnesota Journal of International Law*. pp. 1-22

¹⁴⁹ Carroll A S & Rajagopal H 'The Case for the Independent Statehood of Somaliland' (1992) 8 *American University Journal of International Law & Policy* pp 660

¹⁵⁰ Ibid..

Law^m However, Somalia's Legislative Assembly did not sign this Law and consequently it never came into force.¹⁵² In contrast, on 30 June 1960, Somalia's Legislative Assembly passed the so-called Atto di Unione (the Act of Union) without the consent of Somaliland's Legislative Assembly.^m On 31 January 1961, the National Assembly in which Somaliland representatives were outnumbered replaced the 1960 Act of Union with a new Act of Union repealing the Union of Somaliland and Somalia Law, which had a retroactive application from 1 July 1960.^{1*4}

At the substantive level, the Act was also defect. It 'was significantly different from the Union of Somaliland and Somalia Law.^m It did not recognize even the right to internal self-determination for Somalilanders.^m The Act was the product of Somalia's representatives alone. This was because Somaliland representatives in the National Assembly were excluded from the drafting process.¹¹¹ For these reasons, Somalilanders rejected the validity of the Act. A referendum on the 1961 Constitution of the Republic of Somalia reflected this rejection.[^] Approximately 90 % of Somalilanders voted against the ratification of that Constitution. Therefore, the union between the two countries lacked any legally valid basis. It is clear then that the people of Somaliland did not exercise their right to self-determination. Accordingly, the case of Somaliland is akin to

^{1,1} http://www.somalilandlaw.com/Somaliland_Act_of_Union.htm (accessed September 15, 2012)

Carroll A J & Rajagopal B 'The Case for the Independent Statehood of Somaliland' (1992) 8 American University Journal of International Law & Policy 660

^m **Ibid , p 661**

^m **Ibid..**

Ibid.,

Poore B 'Somaliland Shacked a Failed State' (2009) 45 Stanford Journal of International Law 117

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Carroll A) A Rajagopal B 'The Case for the Independent Statehood of Somaliland' (1992) 8

American University Journal of International Law * A Policy 661

www.somalilandlaw.com/Documentx/Canstinaion1%0.pdf (accessed September 15, 2012)

that of Fritrea where Ethiopia illegally annexed it to its territory.^{15*} This illegal annexation finally justified the secession of Eritrea and only after this secession. Eritrea exercised her right to self-determination and gained its independence from the original colonizer; Italy.¹⁶⁰

4.6 Self-determination Based on Cross Violation of Human Rights

As indicated earlier, international law exceptionally grants external self-determination outside of colonial context. One of these exceptions is where a given state commits a gross violation of human rights against some part of its population.¹⁶¹ This was what happened in Somaliland when a military coup led by Siyad Barre destroyed any hope of democratic rule on 21 October 1969.¹⁶¹ From that day until its collapse in 1991, this military junta committed all sorts of human rights atrocities in Somaliland.¹⁶¹ The government denied Somalilanders any form of participation in the political decision-making and excluded them from sharing in the country's wealth. What was worse, when Somalilanders attempted to challenge the regime and demanded for their rights, they were subjected to degrading and dehumanizing treatments 'including extra-judicial executions, disappearances, arbitrary arrest and detention, torture, harassment', massive

¹⁵⁹

Iyob K. *The Eritrean Struggle for Independence: Domination, Resistance and Nationalism 1941-1993* (1995) pp 16

Cassese A. *Self-determination of peoples: A legal reappraisal* (1995) pp 222

Carroll A J & Rajagopal B 'The Case for the Independent Statehood of Somaliland' (1992) 8 *American University Journal of International Law & Policy* pp 662

¹⁶¹ Sh Hasan M-R 'The 1969 military coup in Somalia part III: In search for a MM- ideology and alliance' (2009) [nt wssw.warkant.com](http://wssw.warkant.com) (accessed September 17, 2012)

Carroll A J & Rajagopal B 'The Case for the Independent Statehood of Somaliland' (1992) 8 *American University Journal of International Law & Policy* pp 665

rape of women, and confiscation and destruction of prosperities that worthy billions of dollars if not trillions."⁴

We have a moral obligation to be recognized. In liuropc a number of countries with no previous experience of statehood have been recognized... and international lawyers tell us any nation, which has been victimized by a state of which it was part, has the *right to secede* (ligal; u former president of Somaliland).¹⁶⁵

For the above reasons, some have argued that what happened in Somaliland was in fact genocide or at least was an attempt of genocide. This specifically is the case when one looks at how die regime specifically targeted the *Isaaq* clans who constitute the majority of Somalilonders.¹^1^The International Crisis Group observed that "the government's simultaneous practice of repopulating *haaq* communities with refugees from other clans was analogous to ethnic cleansing, and there were widespread and credible reports of war crimes."¹Consequently, the Somuli National Movement (SNM)- primarily from the *haaq* clans- ventured an armed struggle that ended up widi the successful separation of Somaliland and the collapse of the military regime.¹⁶⁸

4.7 Dissolution of the Act of Union

A third reason, which justifies the recognition of Somaliland, is that the union between Somaliland and Somalia has been dissolved. This is with the assumption that the Act of

^{1M} Somaliland Centre for Peace and Development 'A self-portrait of Somaliland Rebuilding from the ruins' (1996)17

¹ **Schoilwohl M.** *Status and Human Rights Obligations of Non-Recognized De Facto Regimes in International Law: The cast of Somaliland* (2004) pp 163

^{^1bkJ}.pp17

¹lie International Crisis Oroup. Report 17

^m Ibid . 211

Union was legally valid.¹⁶⁹ Under this assumption, the Act had a contractual nature and as we know, whenever one of the contracting parties fails to fulfill its obligations under a contract or acts contrary to it, such contract automatically terminates. This is exactly the case of Somaliland and Somalia

The Act of Union terminated because of three reasons. Firstly, the purpose of the Act was to achieve the ideals of 'Great Somalia', which did not happen to date. Secondly, the Union presupposed the respect for human rights and the rule of law. Somalia acted contrary to this obligation when it violated various fundamental rights of thousands of Somalilanders. Finally, Somalia failed to exist as a functioning state and therefore cannot any more fulfill its obligations under the contract of union because if one of the contractors dies, the contract terminates. Mazrui rightly described the status of the Act, raising the question 'what if the marriage included spouse abuse? In a union between two individuals, wife beating can be grounds for divorce. Is it not about time that partner-abuse became grounds for divorce in a marriage of states also?'¹⁷⁰

Moreover, dissolution of union states is not a stranger either to Africa or to international law. In Africa, many unions were dissolved. Examples are the unions of Senegal and the Gambia, Senegal and Mali and Egypt and Syria.¹ Internationally, the dissolution of the federation of Yugoslavia is sufficient as previously discussed in this study. Therefore, rejecting the Somaliland claim on the ground of secession is a baseless argument.

Ibid..

The International Crisis Group Report 17.

^{1,1} Scapino. I.B. *International Law and Self-determination: the question of Eritrea* (1987) 15 *Journal of Opinion* 6

4.8 Justifications for the Non-recognition of Somaliland

The reasons behind the non-recognition of Somaliland are complex. They are a mixture of political considerations and legal dimensions.¹⁷² The reason is that the law itself is often used as a political tool.¹⁷³ In fact, Somaliland argues that the question of recognition remains unsettled merely for political considerations.¹⁷⁴ However, one cannot disregard the legal aspects as well. In the following paragraphs let us deal with both legal and political questions which may constitute a bar to the recognition of Somaliland.

4.9 The Legal Question on Non-recognition of Somaliland

The legal question relating to the non-recognition of Somaliland is primarily based on the assumption that the case of Somaliland is about secession.¹⁷⁵ This assumption raises two interrelated questions. Firstly, whether Somaliland fulfilled the statehood criteria and therefore qualifies for recognition. Secondly, whether the secession through which Somaliland seeks independence is legitimate in the first place. Answering these two questions in the negative clearly blocks Somaliland from gaining an international recognition as an independent state. In this sense, Somaliland lacks any legitimate claim. These two questions are answered in the following chapters.

Schoiswohl M. *Status and Human Rights Obligations of Non-Recognized De Facto Regimes in International Law: The case of Somaliland (2004)* pp 171

¹⁷² **Worster W T** 'Law, Illegality, and the conception of the state in Hate recognition theory' (2009) 27 Boston University International Law Journal 115.

¹⁷⁴ **M Schoiswohl.** *Status and Human Rights Obligations of Non-Recognized De Facto Regimes in International Law The case of 'Somaliland' (2004)* pp 171

¹⁷⁵ *Ibid.*

4.10 Fulfilling the Statehood Criteria

The Convention of Montevideo sets out the classic criteria of statehood, which determines whether a newborn state can be recognized as such.' "Article I of this Convention, provides that "the state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.' Accordingly, it is only when these conditions are met, that an entity can be called a state. There is no dispute that Somaliland completed these four criteria and more.¹

Somaliland has permanent population of 3.5 million.¹ *Somaliland restored and controls the same territory ul the time of the independence, which 'covers an area of 137, 600 square kilometers''^To fulfill the third criteria. Somaliland docs not have only a government but sufficiently effective and truly democratic government like which is rare in the horn of Africa, ""finally, Somaliland has the capacity to enter into diplomatic relations with other states both in Africa and outside of Africa.¹⁸ Somaliland has liaison offices in Kenya. Djibouti. Ethiopia. France, the Republic of Ireland and Yemen.*² Somaliland has also good relationship with the Republic of South Africa. Ghana Uganda, the United States of America, the United Kingdom. Sweden and

**** The Convention of Montevideo on the Duties and Responsibilities of states**

The African Union Risume: AO Factfinding Mission to Somali/and' (2005)

F.ggers AK 'When state Li a state' The Case.Jor Recognition of Somaliland '(2007) 30 Boston College International and Comparative Law Review pp213

"" Schoiswohl M. Status and Human Right Obligations of Non-Recogni:ed De Facto Regimes in International Law: The case of 'Somaliland' (2004) pp 166

Hie International Crisis Group Somaliland: lime for African Union leadership' (2006) Africa Report

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September 17.2012)

"" www.Somahland.org. www.Somalilandprtss.com (accessed September 17.2012)

"" <http://www.somaJdandgov.com> (accessed September 18.2012)

Denmark.¹⁵ In addition, the European Union supports Somaliland financially. Though the Arab countries oppose the Somaliland separation from Somalia, a number of these countries recently expressed their interest in building new relations with Somaliland. Among these are Qatar, Kuwait and the United Arab Emirates. These examples are some of the few when it comes to Somaliland's capacity of entering into relations with the outside world.^{1M}

Additionally, apart from the Convention of Montevideo, modern international law requires other criteria for statehood such as respect for human rights, the assurance of minority rights and democratic rule of law. Human Rights Watch has observed this fact stating that:

Somaliland has done much to build the foundations of democratic governance grounded in respect for fundamental human rights. In 2003 and 2005- in June 2010- it held competitive and credible national elections, including parliamentary polls that put the territory's House of Representatives firmly in the hands of the political opposition. There is a vibrant print media and an active and independent civil society.

The Constitution of Somaliland is founded on number of noble principles that sufficiently addresses the above requirements.^{1Kft} Amongst these principles: separation of powers, multiparty system, free and fair elections, respect for the rule of law and the promotion of fundamental human rights.^{1*}

www.hadhanaag.com (accessed September 18, 2012)

^{1.1} *www.hadhanaagne.com* (accessed September 18, 2012)

^{1.5} Human Rights Watch ' *Hostages to peace: Threats to human rights and Democracy in Somaliland*' (2009) at <http://www.hrw.org/node/84298> (accessed September 19, 2012)

"The Constitution of the Republic of Somaliland (2001) <http://www.hadhanaag.com/somaliland/constitution.htm> (accessed September 19, 2012)

Ibid., chapter 2

4.11 Dissolution of the Act of the Union us opposed to Secession

The second legal argument that may justify the non-recognition of Somaliland is to claim that Somaliland seeks illegitimate secession. This argument is based on the assumption that Somalia functions as a state and accordingly granting any recognition to Somaliland violates the territorial integrity of Somalia and consequently dismembers Somalia from the international community. Secondly, the proponents of this view argue that Somaliland can seek internal self-determination instead of external.¹¹⁸ This argument is baseless because it ignores the political vacuum, the lawlessness, the anarchy and the social chaos that prevail Somalia today.¹¹⁹ Thus, any argument regarding the relationship between Somalia and Somaliland should depart from dissolution of union point of view instead of secession let alone illegitimate secession.

4.12 The Geo-Political Position of Somaliland

The geopolitical position of Somaliland is such a one that attracts both regional and international interests.¹⁰⁰ The reason is, Somaliland locates in one of the most strategic regions in the world; the Gulf of Aden.¹⁰¹ The Gulf of Aden links the three major continents of the world; Asia, Africa and Europe. The Gulf of Aden is strategic primarily for trade reasons because it is the biggest trade route in the world through which 16,000

Eggers A K *When state is a state' The Case for Recognition of Somaliland (2007) 30 Boston College International and Comparative Law Review pp383*

**** Sievers A-H and Spilker D.** *Somalia: current conflicts and ne* chances for state-building (2008) at [http://www.boell.or.ke/downloads Somalia engl-i.pdf](http://www.boell.or.ke/downloads/Somalia_engl-i.pdf) (accessed September 19.2012)*

¹ **Commission of the European Communities** ' *Strategy for Africa. An EU regional political partnership for peace, security and the development in the Horn of Africa' (2006) at <http://europafha.files.wordpress.com?008'05'10-06-eu-africa-rqional-parmci^iip-on-peacc-andsecurity.pdf> (accessed September 19.2012)*

¹⁹¹**Kimani BJ** ' *Strategy for the Horn of Africa' (1993) at [hnp://www.dtic.mil/cgi-bin/GetTRDoc?Location-U2&doc=GetTRDoc.pdf&AD=ADA264860](http://www.dtic.mil/cgi-bin/GetTRDoc?Location-U2&doc=GetTRDoc.pdf&AD=ADA264860) (accessed September 19.2012)*

commercial vessels cruise yearly.^WIn addition, most countries in the Gulf region are rich with oil and thus they need to channel their exports through the Gulf of Aden to the outside world.¹ Secondly, the Gulf of Aden is important for security reasons.^{1<M}The war against terrorism and piracy has impacted on the determination of Somaliland. This means that there are multiple stakeholders in relation to the non-recognition of Somaliland. In the following chapter, let us consider the most important of these stakeholders.

4.13 The AU Position on the Recognition of Somaliland

The major opponent to the case of Somaliland is the AU.[^]African leaders are skeptical about borders and any claim that questions it.[^]In view of the AU, recognizing Somaliland sets a precedent for similar claims and therefore such recognition 'may trigger a Balkanization' of the entire continent. ""This argument is ill-founded for several reasons.

" **Betkinan R** 'Somali Piracy' Is international law part of the problem or part of the solution?' (2009)

At <http://www.nivcdu.org/arc/2009/09/19/20090919.pdf> (accessed September 19, 2012)

9.pdf (accessed September 19, 2012)

¹ **Kiniani BJ** 'Strategy for the Horn of Africa' (1993) at <http://www.dtk.mipgibin/GetTRDoc?Location=U2&doc=CictTRDoc.p&AD=ADA264860> (accessed September 19, 2012)

Osondu CC ' The Horn of Africa and International Terrorism the Predisposing Operational

Environment of Somalia (2008)

<http://researchspk.ke.uk/jrac.nfxmlurttiitstiC4ni/handle/10411/70> OSONDU.%20thesis.pdr?sequence=3

(accessed September 19, 2012)

^{1M} **Schois Mohl M.** *Status and Human Rights Obligations of Non-Recognized De Facto Regimes in International Law: The case of Somaliland* (2004) pp 173

"* **OAU. AHG/Rcv 16 (I).** Resolution adopted by the first ordinary session of the assembly of heads of state and government held in Cairo, July 1964 at <http://www.unhcr.org/refugees/refugees.html>

<http://www.unhcr.org/refugees/refugees.html> (accessed September 19, 2012)

Carroll A J & Rajagopal B ' The Care for the Independent Statehood of Somaliland' (1992) 8

American University Journal of International Law, - & Policy pp 679

First, it is not reasonable to simply argue that the case of Somaliland cannot be considered because of its secessionist motive. The problem of Somaliland is unique and truly new to Africa.¹⁹*We are dealing with *de facto* state for 20 years besides a failed state the same period. The AIJ itself sent a fact-finding mission to Somaliland that recommended that 'objectively viewed, the case should not be linked to the notion of "opening a Pandora's box". As such, the AU should find a special method of dealing with this outstanding case.*²⁰⁰

Secondly, OAU/AU has already recognized similar secessionist claims, which rebut the argument that Somaliland sets a precedent for the rest of Africa. By recognizing the Western Sahara and Eritrea as independent states and by lobbying for the secession of the South Sudan, the question of whether secession is acceptable in Africa is settled. Thirdly, Somaliland lacks institutional capacity, which enables it to respond to the challenges that it faces due to the lack of recognition because it cannot transact with the outside world since it lacks official recognition. In addition, Somaliland cannot sustain its current situation without international recognition. There is a great possibility that Somaliland can collapse like the rest of Somalia if it is not granted urgent recognition.*⁰²Such collapse may have wider ramifications to the entire continent.

An All fact-finding mission to Somaliland. Para 10 of the AU Mission Report. 2005
Ibid., section 4.3.1 (a).

^{an} The AU Mission Report, Para 8.

Poore. B 'Somaliland Shacked a Failed State' (2009) 45 *Staitford Journal of International Law* 117 pp 154

²⁰² Schoiswohl M. *Status and Human Rights Obligations of Non-Recognized De Facto Regimes in International Law: The case of Somaliland* (2004) pp 178

4.14 The League of Arab States Position on the Recognition of Somaliland

The League of Arab States is the second major stakeholder that plays a critical role in the non-recognition of Somaliland.[^] There are a number of reasons for the Arab countries' concern about Somaliland's recognition. Firstly, Somalia as a whole was a member country of the League. Consequently, any partition of a member country is contrary to the spirit of the Charter of the League. Secondly, there is a great fear that Israel might use the strategic military base of Berbera for military purposes, which is a sensitive issue to the security of the Arab countries.^{J<M} Thirdly, there is another concern that Ethiopia might be the mastermind behind the secession of Somaliland because it has interests in the Somaliland's waters since Ethiopia is a land-locked country. This scenario is also fearful to Arab countries because they consider Ethiopia the African twin of Israel.^{;>v} One of the reasons, is that there is a potential dispute between Ethiopia and the most populous Arab country; Egypt about the Nile river waters;[^] Therefore, Somalia should remain stronger and united in order to play an effective regional role that could mitigate Ethiopia's threats to the Egyptian interests.^{:"7}

^m Shinn D. 'Somaliland: The Untitled Country that Could'. Centre for Strategic and International Studies (2002) http://csis.org/files/mcdm/csispubs/notes_0211.pdf (accessed September 20, 2012)

Mutair AAI-Mutain 'Arabs losing Somaliland to Israel' (2010) www.Somalilandpress.com (accessed September 20, 2012)

Ibid..

Jha/bhav I. *Somaliland an African struggle for nationhood and international recognition* (Institute for Global Dialogue and South African Institute of International Affairs, 2009) pp166

** Ibid..

4.15 Major Player* and their Role in Somaliland Recognition

Internationally, two major powers are notable here; the US and the F.U.^{2(m)}It seems that the ease of Somaliland confuses these two powers and consequently, their attitude is contradictory. On one hand, both the EU and the US are worried about the instability of Somalia and at the same time so keen about the stability of Somaliland. On the other, both the US and the EU have special relations with the other stakeholders in the case of Somaliland: the African and Arab countries."""This means that the US and the EU have greater interests both in Africa and in the Arab world. "Therefore, neither the US nor the EU wishes to harm its relations with these regional players by recognizing Somaliland, because taking such step will mean sacrificing greater interests in favor of a tiny country; Somaliland.⁷"Hence, in order to promote the case of Somaliland, the EU and the US need to whisper in the deaf ears of the Arab and the African leaders.²It is clear then that the people of Somaliland are suffering not because they are guilty of illegitimate secession but because they are victims of contradicting interests of the world major powers.

[^] Ibid., p 174. And I he International Crisis Group 'Somaliland: Time for African Union leadership' (2006) Africa Report NO. 110 <http://www.crisisgroup.org/-/media/Files/africa/horn-of-africa/somaliland%20Time%20for%20African%20Union%20Leadership.pdf>

^M D Shinn. 'Somaliland: The little country that could', a paper presented at the Centre for Strategic and International Studies (2002) <http://csis.org/files/media/csis/pubs/0211.pdf> (accessed September 20, 2012)

^{1,0} International Crisis Group 'Somaliland: Time for African leadership' (2006) Africa Report NO. 110 <http://www.crisisgroup.org/-/media/Files/africa/horn-of-africa/somaliland%20Time%20for%20African%20Union%20Leadership.pdf> (accessed September 20, 12)

^M Poore, U 'Somaliland: Shackled a haded State' (2009) 45 *Stanford Journal of International Law* 117 pp 121

^{1,2} D Shinn, 'Somaliland: The little country that could', a paper presented at the Centre for Strategic and International Studies (2002) <http://csis.org/files/media/csis/pubs/0211.pdf> (accessed September 20, 2012)

Chapter Five

Conclusion and Recommendation*

5.1 Conclusion

The above discussion in the previous chapters examined whether Somaliland has a legitimate claim under international law to be recognized as a separate state from Somalia. The study discovered that legally speaking Somaliland has a legitimate case under the umbrella of the right to self-determination. This is by considering two different contexts in which a right to Self-determination can be claimed.

Firstly, self-determination is a legal right that belongs to peoples under colonization. To be free from colonialism, such people must be given a suitable opportunity to express their will freely in determining their economic and political status without any interference. Somaliland was not given a proper opportunity to be free from Britain. This was because the process of decolonization was interrupted by the haste unification with Somalia on 1st July 1960 only after 5 days of Somaliland's independence.

Secondly, international law grants a right external self-determination to any group whose rights were violated by the state to which they are part. Accordingly, even if we assume that Somaliland is an integral part of Somalia, it has the right to secede because its human rights were violated. Between 1981 and 1991, Somalia's central government executes not less than 50,000 Somalilanders. There is no human rights violation greater than killing such number of innocent human beings.

Another dimension that sufficiently justifies Somaliland's claim to statehood is that the Republic of Somalia was a union between two sovereign states; Somalia and Somaliland. The former failed and the latter fully functions. Therefore the Union dissolved. In such circumstances, international law permits the functioning part to restore its original territories. This is what Somaliland did in 1991. Furthermore, international law requires such part seeking recognition to fulfill the criteria of statehood under both the Convention of Montevideo and modern international human rights law. Under the Montevideo Convention requirements, Somaliland has a permanent population of 3.5 million and a defined territory of 137,600 square kilometers. Somaliland has a government, which effectively controls its territory, maintains security, provides basic services, holds free and fair elections and punishes criminals such as pirates who are threat to the international trade in the Gulf of Aden.

Finally, Somaliland has the capacity to enter into diplomatic relations with other states. It has a number of liaison offices in several countries such as Djibouti, Yemen and France. Under the modern international law requirements for statehood, Somaliland has a good constitution that guarantees fundamental human rights with an independent judicial body, which monitors its implementation. International organizations involved in the promotion of human rights such as Human Rights Watch and Amnesty International, praised the Constitution of Somaliland.

The research study has answered the question as to why Somaliland remains unrecognized despite its full completion of all legal requirements for statehood. It has

answered this question by coming to the conclusion that the main obstacles to the recognition of Somaliland are political interests other than legal justifications. There are a number of stakeholders in the political game responsible for the non-recognition of Somaliland. These stakeholders include the Arab League, United States, European Union and the African Union. However, the AU is the biggest opponent to the recognition of Somaliland. This is because the international community left all matters concerning African borders for the AU. The problem is that the AU does not treat the case of Somaliland objectively. It simply argues that the recognition of Somaliland has the potentiality to balkanize Africa. Put differently, the AU argues that such recognition will open Pandora's Box for similar secessionist claims. This argument is rebutted by the OAU recognition of Eritrea, Western Sahara and the AU recognition of South Sudan self-determination.

S.2 Recommendations

Somaliland survived from falling into the abyss of the anarchy that has befallen Somalia. The conflict in Somalia has expanded to take new dimensions such as the emergence of the piracy phenomenon. All that is happening in Somalia has a direct impact on Somaliland. Additionally, Somaliland has its own internal problems such as the lack of infrastructure, poor service delivery and an unemployment that devastates the youth of Somaliland. Somaliland cannot respond to these challenges effectively. This is because Somaliland is under a siege imposed upon it by the lack of recognition. Due to the lack of recognition, Somaliland cannot trade with the outside world and cannot borrow money

from international financial institutions and the people of Somaliland cannot travel because their passports are not recognized and they do not have alternative documents.

The totality of these factors suggests that Somaliland can collapse like the rest of Somalia and become a failed state. This disaster will have serious ramifications not only to Somaliland but also to the whole region of the Horn of Africa and consequently to the entire continent and to the world. Therefore, the AU has a moral obligation to change its attitude and take positive steps towards Somaliland. As has been previously recommended to the AU by its own fact-finding mission to Somaliland in 2005 and by the International Crisis Group, the AU should be disposed to judge the case of Somaliland from an objective historical viewpoint and a moral angle vis-a-vis the aspirations of the people; if not recognition, at the minimum level, the AU assign Somaliland an interim observer status which will allow Somaliland to: To be present for open sessions of the AU relevant to Somaliland's status; To have access to non-confidential AU documents with the status issue; To participate in meetings to which Somaliland invited without voting; and to present its argument before the AU official meeting. Finally, the AU should mobilize financial resources to help the government of Somaliland to achieve a better standard of living for its citizens.

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