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**A Legal Analysis of Somaliland's Quest for Statehood under
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A Legal Analysis of Somaliland's Quest for Statehood under International Law

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Abstract

Purpose: The military dictatorship of Siad Barre in Somalia was overthrown, and Somaliland immediately declared its independence, withdrawing from the union with Somalia on May 18, 1991. Nearly three decades have passed since Somaliland proclaimed its independence, established its own government, maintained stability, and preserved peace. However, the international community has not yet recognized its claim. Among the remaining territories of the former Somali Republic, Somaliland stands out as the only one that has successfully established a democratic, stable government and long-lasting peace in the region. Somaliland, like many other African nations, was once a colony of the British Empire and contends that it should be recognized as an independent state.

Methodology: This essay employs a qualitative research methodology, relying on desk reviews and content analysis, as methods for data collection.

Findings: It examines the legal conceptions of statehood, from the Montevideo Convention to the more recent emphasis on self-determination, before addressing the situation in Somaliland.

Unique contributor to theory, policy and practice: It argues that Somaliland deserves statehood status, and that other nations should recognize it as such, as there is no legal basis under international law to do otherwise.

Keywords: *Somaliland, Statehood, Recognition, International law.*

INTRODUCTION

The Horn of Africa, where Somaliland is located, has been a region prone to turmoil and conflict. Since the early 1990s, the area has experienced significant political upheaval, with most of its nations witnessing coups d'état (Beyene, 2019). With the exception of Ethiopia, which fought Italy in the Battle of Adwa, this region was under the colonial rule of European countries after the Scramble for Africa (Ibid). The current unrest in Somalia is primarily influenced by the legacy of colonialism under Britain and Italy, as well as the political instability that followed their departure. The state of Somalia was established in 1960 by unifying the two previously autonomous regions of northern and southern Somalia after the British Somaliland and Italian Somali regimes collapsed in their respective areas. The military regime of Siad Barre was overthrown following years of civilian governance (Clarke and Gosende, 2003). Since then, there has been ongoing conflict between the civilian administration and the Somali National Movement (SNM), eventually leading to Somaliland's declaration of independence in 1991. Despite Somaliland having proclaimed its independence over 25 years ago, the African Union and the United Nations (UN) do not officially recognize it as a sovereign state. Among the former "Somali Republic" territories, only Somaliland, which holds an unrecognized sovereign status, has managed to establish the most stable and democratic administration (Beyene, 2019). Meanwhile, regions other than Somaliland, such as Al-Shabab, an affiliate of al-Qaeda, have gained control and posed a threat in other parts of Somalia.

After more than 31 years of separation from the Somali Republic, the Republic of Somaliland has developed informal connections with a number of states. Despite being governed by a directly elected government, neither the UN nor any other nations have formally recognized Somaliland as an independent state. Even though Somaliland has been governed by a succession of stable, non-violent autonomous administrations since its independence from Somalia, its attempt to gain international recognition has failed (Ahmed, 2020). Under European colonial rule in the 19th and 20th centuries, the Somali population was spread across five territories: British Somaliland (which included the current Somaliland claiming independence), Italian Somaliland (southern Somalia, with its capital Mogadishu), French Somaliland (Djibouti), Kenya, and Ethiopia (Pavković and Radan, 2011). Historically, however, Somaliland was a different and separate administrative entity from Somalia. Following the British occupation of Aden in 1839 and after the opening of the Suez Canal in 1869, the expansion of the British Empire reached the borders of Somaliland itself. To safeguard its trade interests in the Indian Ocean, during the scramble for and partition of Africa among the Europeans in 1884, Britain proclaimed Somaliland a protectorate known as 'the British Somaliland Protectorate' and appointed its first agent in 1885. This process of encroachment and assimilation was largely based on a series of agreements with local traditional elders and chiefs (Nur, 2018). The country remained under British rule for the next 73 years until it gained independence on June 26, 1960, becoming the Independent State of Somaliland. This move to

independence was welcomed by 34 countries, including Egypt, Israel, and the five permanent members of the Security Council (Ahmed, 2020).

Problem statement

Somaliland declared its independence, fulfilling almost all the legal criteria of statehood as its proponents argue (Aliye, 2020). In reality, Somaliland has remained a de facto state for more than thirty years and has made impressive strides in establishing a viable democracy, building institutions, and fostering vibrant socio-economic, cultural, and political development without formal recognition from any country or international bodies. The system developed by the Westphalia Treaty, and later on, the development of statehood and entitlement to rights and duties under international law, depends on the acceptance and recognition of a new entity as a state by members of the existing state community.

The reluctance of the international community to recognize Somaliland raises several questions that need answers under international law. However, despite the existence of convincing legal and factual grounds in its favor, Somaliland remains unrecognized. At this point, the remarkable question is why Somaliland has failed to gain recognition despite fulfilling all the legal criteria for statehood. Are there legal factors that have so far challenged Somaliland in securing international recognition? In the face of this prolonged denial of recognition, what kind of opportunities does Somaliland have to secure its acceptance as a de jure state under international law? To address these issues, this essay will examine the validity of Somaliland's claim to independence from the standpoint of international law and make a case for Somaliland's recognition as an independent state. A historical and decolonization perspective will be employed to analyze the legality of this independence while considering Somaliland's sovereign rights. Furthermore, the case of Somaliland's recognition by other United Nations members will be assessed from the standpoint of current international law, particularly the Montevideo Convention. The report will assert that Somaliland should be recognized as an independent state, and other governments should follow suit, as it complies with the requirements of the Montevideo Convention.

METHODOLOGY

To address the research objective effectively, this paper employed a qualitative research approach, utilizing desk review and content analysis as data collection tools. A qualitative study in this context is appropriate because it places emphasis on legal literature, including scholarly articles on the subject matter, legal journals, and other sources of international law related to statehood. Such sources provide a wealth of detailed information necessary for the research. Desk review was used to collect both secondary and primary data, aiming to establish facts about the legal factors that either challenge or inspire Somaliland's quest for state recognition. Data from desk review, combined with data from content analysis, enabled the researcher to thoroughly analyze the legal grounds supporting Somaliland's claim to statehood under international law. Primary sources such as international legal principles,

norms, practice, case laws, and precedents were extensively consulted during the desk review process.

LITERATURE REVIEW

Notion and legal analysis of statehood in international law and state recognition

Some authors have argued that statehood is not a distinct idea in international law, or they have even come close to dismissing statehood's status as a legal concept. These perspectives may help to perceive the State in less absolutist terms, but they are difficult to reconcile with the concept's widespread use in international "constitutional" documents like the UN Charter or State practice (Gardiner, 2003).

The fact that some fundamental rights and duties of states exist under international law serves to emphasize the unique status of states. Three concepts closely connected to the ideas of liberty, equality, and fraternity can encapsulate many of these essential rights and obligations as follows: the independence of states, the sovereign equality of states, and the obligation of states to peacefully coexist. Examples of how the independence and equality of states incorporate these rights include the right of states to adopt their own constitution, exercise exclusive jurisdiction over their territory, and if necessary, defend the state against an armed invasion. The duty to live in peace with one another implies, among other things, that states have a responsibility to refrain from interfering in the internal or external affairs of other states, to avoid using their territory or allowing it to be used for activities that violate the rights of other states or pose a threat to international peace and security, and to uphold their obligations under international law in good faith. The final criterion, for instance, suggests that states must protect human rights on their territory (Jama, 2011).

In a similar vein, Crawford, as cited in Herbst (Herbst, 2004), notes that states possess specific general and exclusive legal characteristics, which he divides into five principles that, in legal terms, constitute the hard core of the concept of statehood, forming the essence of the special position of states in customary international law. It appears evident that a precise and defined definition of a state exists in international law to determine which entity may be recognized as a state, considering the essential role of states in international law and international relations. There have been several attempts to achieve consensus on such a concept since 1945. Efforts were made to define the notion of a state during discussions regarding the draft texts for the Declaration of the Rights and Duties of States (1949), the Vienna Convention on the Law of Treaties (1956 and 1966), and the provisions on Succession of States in Respect of Treaties (1974). However, none of these attempts were successful as it proved to be too politically sensitive to codify a concept of the state (Raic, 2002).

International law does provide some guidance on how to address the question of statehood despite the lack of a precise definition of what constitutes a state. For example, the presence of effective control is often considered a significant, if not essential, factor in assessing the

establishment of new states. The widely accepted policy of recognition from the 19th century, which allowed existing states to authoritatively decide whether a new political community had enough legitimacy and civilization to join the existing community of sovereign and self-proclaimed civilized states, was eventually replaced by the so-called "principle of effectiveness." The presence of effective control over a certain region, often referred to as the concept of effectiveness, was used to replace this subjective policy of recognition (Warbrick, 2006).

As early as 1929, the arbitrator in the case of Deutsche Continental Gas-Gesellschaft stressed the importance of effective control. According to the arbitration, a state cannot be said to exist unless it possesses a territory, a population residing there, and effective governmental power over the area and its inhabitants (Warbrick, 2006). Similarly, legal doctrine has long recognized the significance of the concept of efficacy. Shaw points out that ultimate control over territory is the essence of a state and succinctly assesses the importance of effective control in defining a state. Older literature also contains similar statements, but Jellinek's "Drei Elementen Lehre" deserves particular attention as it states that a state must have three fundamental components to exist: territory, government, and people. The 1933 Montevideo Convention on the Rights and Duties of States (Montevideo Convention) codifies Jellinek's notion of these three elements (Portman, 2010). According to Portman (2010), Article 1 of the Montevideo Convention defines a state as a subject of international law having the following characteristics: (a) a permanent population; (b) a defined territory; (c) a government; and (d) the capacity to enter into formal relations with other states.

State recognition

A new state is born out from an existing State or an old State which disappeared and comes with a new name or by splitting an existing State into two States. If a new state enjoys certain rights, privileges and obligations then it must get recognition as a state, which is very essential (Mishra, 2020). However, there are some minimum criteria required before a State is considered to be a State. A State must get the De Jure (when a state is legally recognized) recognition for considering a State as a sovereign State. Political thought plays an important role in this decision whether to grant recognition or not. For recognition as a State, it must enter into relations with the other existing States (Ibid).

Recognition of a state under international law

Under international law, the recognition of a state can be defined as the acknowledgment or acceptance of a state as an international personality by the existing states of the international community. It is the declaration of fulfillment of certain essential conditions of statehood as required by international law (Mishra, 2020).

Essential requirements of the recognition of a state

Now the issue is whether Somaliland satisfies the requirements for a state under international

law. The Montevideo Convention stipulates the necessary conditions for statehood. A permanent population, a clearly defined territory, a functioning administration, and the ability to interact with other nations are the four fundamental requirements for statehood listed by the Montevideo Convention (Montevideo Convention, 1933). Additionally, the Montevideo Convention stipulates that although a state's political existence is not contingent on being acknowledged by other nations, such recognition may be overt or covert (Ibid). Depending on their own political and diplomatic goals, many countries have applied the treaty differently throughout time. But, the United States of America has been consistent in its understanding and application of the Montevideo Convention (Klinghoffer and Achille, 1991). This has been witnessed in the case of *Kadic v. Karadzic* and the self-proclaimed Bosnia-Serb Republic within Bosnia-Herzegovina, referred as Srpska named as a state and its leaders were held as accountable for the misdeeds they have committed against the civilians (*Kadic v. Karadzic* (2d Cir. 1995)). The court said that in order for Srpska to be considered a state, it must have established relations with other governments, control a certain geographic area, and manage its population within the confines of its authority. It has its own judiciary, legislative, and executive institutions, as well as its own currency. These circumstances seem to satisfy all international law requirements for a state with ease. Additionally, the US Department of State strengthened its stance and stated at a news conference that the US typically looked to the establishment of specific facts when deciding whether to recognize an organization as a state. These characteristics include having effective authority over a region with a defined population, a structured political administration of that region, and the ability to act decisively in order to handle international affairs (United States Department of State, 1976).

Regardless of the consistent or divergent stances taken by various nations on the subject of state recognition, a state's political existence is unaffected by the recognition or non-recognition of other states. The Montevideo Convention has confirmed and supported this viewpoint. The other states' recognition has no bearing on the state's political existence. According to the Montevideo Convention of 1933, a state has the right to defend its integrity and independence, to ensure its preservation and prosperity, and as a result, to organize itself as it sees fit to legislate regarding its interests, to manage its services, and to specify the scope of its judicial authority.

The fundamental idea behind the aforementioned clause is that a state's political existence is independent of whether or not other states formally or implicitly recognize it. The degree to which a particular entity satisfies the four Montevideo criteria for population, territory, administration, and sovereignty—or fails to—has no bearing on whether it is recognized or not under international law. The new state's ability to interact with other states is only demonstrated via recognition. It should be noted that recognition is a political act that is subject to the recognizing state's discretion.

Does Somaliland realize the Montevideo Convention and is it suitable as a state?

Somaliland meets the Montevideo Standards, despite the international community's reluctance to acknowledge this harsh reality. Somaliland unilaterally declared its independence since it lacked a functioning parental state that could either applaud or condemn its deed. When Somalia announced its "parental state" status and independence, it had no functioning government and was engulfed in a deadly civil war. The so-called "parental state" of Somaliland is still under risk thanks to Al-Shabab, a self-declared al-Qaeda affiliate and Islamist extremist. There is no functioning administration in Somalia that could protect the country from Al-Shabab and other conflicts based on clan. Instead, the joint African Union (AU) Mission to Somalia (AMISOM) is the sole organization that has helped the transitional government in Somalia (Beyene 2019). Without assistance from outside nations, the transitional administration would not have been able to hold on to the area. In actuality, Al-Shabab is hardly the only issue facing Somalia and its interim administration. Instead, clan-based conflicts and competitiveness also make Somalia's army weaker and make it less likely to oppose Al-Shabab (IRIN, 2014). Because asking permission from an ineffective and failing "parental state" is illogical, Somaliland was forced to choose a unilateral proclamation of independence.

Territory

Due to its distinct territorial boundaries, Somaliland complies with the Montevideo Convention's requirements. Since British colonial administration, Somaliland has had a defined geographic area. According to the Defense and Foreign Affairs Strategic Policy of 2006, it is bordered to the north by the Red Sea and the Gulf of Aden, to the northwest by Djibouti, to the west by Ethiopia, and to the east by Somalia. Three colonial treaties made between the British on the one hand and the French (1888), Italians (1894), and Ethiopians (1897) on the other also set boundaries for Somaliland. The 137,600 square kilometer limits are those that were granted at the time of independence from the British in 1960. Among the 55 African states, an independent Somaliland would come in at number 36 in terms of size. Although they frequently make it difficult for other governments to recognize a state's claim to a particular region, border disputes are not deemed unlawful under international law (Solomon, 2012). However, by acknowledging this border, Ethiopia and Somaliland agreed on a long-term port usage agreement (Somaliland government, 2012). Additionally, "Ethiopia and Somaliland have agreed to exercise maximum effort to establish short and long-term transit cooperation mechanisms" recently. This demonstrates that Somaliland is still exploiting and maintaining its own territorial boundaries efficiently.

Population

According to Clapham et al. (2011), Somaliland's population is over 3.5 million, steady, and growing at a pace of 3.14% on average. The populace demanded a referendum and supported the statehood when Somaliland announced its independence. For instance, a 2001 constitutional vote revealed considerable public support for sovereignty, and a subsequent

referendum in 2006, ten years after the country's inaugural proclamation of independence, revealed 97% support (Marc, 2006). This referendum served as a sign of the populace of Somaliland's interest in and even active participation in the push toward the establishment of an independent Somaliland state.

Effective and strong government

Somaliland developed a government that mainly relies on community-based leadership and an inclusive council of elders, as well as one that effectively controls the majority of the area it claims (Ismail and Reginald, 1999). It has a constitution (approved by popular vote), democratically elected officials at all levels, and fundamental state institutions such as a bicameral parliament, an independent judiciary, a permanent electoral commission, an army and police, and custodial forces, in addition to the symbolic markers of statehood such as a national flag, currency, and crest (Beckman, 2009).

Nevertheless, the ultimate legislation of the state, the Somaliland Constitution, is one of few that ensure a distinct separation of powers between the legislative, executive, and judicial departments (Fred, 2006). The self-declared, unrecognized republic held presidential elections on April 14, 2003, and the results marked a significant turning point in the path of democratization. The election outcome was closer than the one in which Dahir Rayale Kahin, the incumbent president, won by a mere 80 votes against Ahmed Siilanyo the leader of opposition part named Kulmiye. Additionally, Somaliland had parliamentary elections in 2005, local government elections in 2012, a second presidential election in 2010, a third presidential election in 2017, and a third parliamentary election together with a third local council election in May 2021. Elections that are held on a regular basis and at regular intervals show that Somaliland has a functioning political system. In comparison to Somalia, the administration of Somaliland is rather stable.

Capacity to enter into relations with other states and making diplomatic relationship

In addition, Somaliland has signed treaties and developed close diplomatic connections with several nations. Despite not being officially recognized, Somaliland has established informal and formal ties with a number of other governments and received de facto recognition from a number of other nations worldwide. People have traveled with the Somaliland passport to South Africa, Kenya, Djibouti, Ethiopia, Uganda, UK, Sweden, and the USA. The cooperation has covered a range of issues, including security, trade, immigration, and development assistance. Somaliland has offices in the USA, Canada, UK, Sweden, France, Norway, Belgium (Brussels), Ethiopia, Djibouti, Ghana, Kenya, South Sudan, and Yemen (Beckman, 2009).

Ethiopia was the first nation to open an embassy in Hargeisa, and Ethiopian Airlines recently began offering regular service between Addis Ababa and Hargeisa (David 2002). Additionally, Ethiopia and Somaliland have close economic ties, and the port of Berbera is the second-most significant port for imports into and exports out of landlocked Ethiopia after

Djibouti.

The Montevideo criteria, however, cannot be taken into account in a general sense because Somaliland is a part of a previously recognized state, and they are unlikely to be the only considerations states make when determining whether to grant explicit recognition or deal with the entity implicitly as an independent state (Portman, 2010). Some academics contend that statehood entails the statement of “claim of right” in addition to the Montevideo Convention’s descriptor requirements. Such a claim may be made for a number of reasons, such as self-determination, freedom from tyranny or persecution, breach of a voluntary union’s rules, or mutual consent (Ibid).

People’s opinions on whether Somaliland should be recognized typically diverge not over whether it meets the Montevideo Convention’s factual requirements for statehood but rather over whether it can assert a legal claim to statehood and if it would raise the likelihood of new conflict in Somalia. This topic cannot be understood without referencing the colonial history of Africa, sentiments toward secession and self-determination on the continent, and the inviolability of colonial boundaries (Ibid).

What other states should do

Other nations ought to acknowledge Somaliland as an independent state in light of the aforementioned facts about it. As was stated before, a state’s recognition or non-recognition of Somaliland is not subject to legal consequences as long as it is a matter of the state’s discretion and outside the purview of the law. They are free to do so if they choose, helping to contribute to the establishment of peace and security in the Horn of Africa. The recognition of Somaliland by other nations will be significant in putting an end to the illusory “Great Somalia” plan and in bringing about long-lasting peace and stability in the surrounding countries of Djibouti, Kenya, and Ethiopia because they are also affected by this illusory plan (Beyene, 2019). Despite submitting a formal application to join the African Union in 2005, Somaliland has not heard back. In order to bring about a long-lasting peace in Somaliland and the Horn of Africa, the African Union should make a wise choice on Somaliland’s membership (Ibid).

Right to self-determination of the people of Somaliland

Conceptual underpinnings on the right to self-determination

The idea of self-determination initially emerged following the initially World War (Clarke and Gosende, 1992). Self-determination was “the benchmark for peacemakers at Versailles,” one may say. President Woodrow Wilson of the United States referred to national self-determination as “an imperative principle of action” (Henry and Philip, 2000). The power to determine one’s own fate is referred to as the right to self-determination under international law. Residents of a territory cannot exercise their right to self-determination unless their humanity is recognised. In particular, the concept provides the populace the opportunity to pick their own

political affiliation and the path they wish to take in terms of developing economically, culturally, and socially (Malcolm, 1986). From total integration within a state to political independence, the exercise of the right to self-determination can lead to a variety of diverse outcomes. The ability to make a decision is essential, and its existence should not be threatened by the outcomes of other people's choices.

The notion of the right to self-determination is extensively mentioned in Article I of the UN Charter. Before it was included in the UN Charter, Lenin and others openly accepted the issue, and it served as the cornerstone for the reconstruction of Europe following World War I. Additionally, there has been a conceptual evolution of the idea of peoples' rights to self-determination that began in the years following World War II and intensified in the 1960s as a result of decolonization. This transition pertains to the transformation of self-determination from what was originally considered to be a political notion into a binding legal requirement, or jus cogens. On a variety of legal foundations, several facets of self-determination have been established. The International Covenant on Economic, Social, and Civil Rights (hereafter referred to as "ICESCR" and "ICCPR," respectively) and the International Covenant on Civil and Political Rights (hence referred to as "ICCPR" and "ICESCR," respectively) represent arguably the most significant stage in the development of this right. The practice of self-determination has traditionally sparked more discussion than what is stated in the Covenants. Other international and regional human rights and other accords, as well as decisions made by the International Court of Justice in various circumstances, also address the concept.

Right to self-determination in the context of the inhabitants of Somaliland

International law guarantees the citizens of Somaliland the right to self-determination. From three different angles, there are many legal justifications for Somaliland's right to self-determination and independent declaration of statehood under international law.

Right to self-determination is people's right

First, the author contends that because Somaliland's citizens are regarded as a people by international law, they have the right to self-determination. There are both objective and subjective standards for defining what the term "people" means. According to objective standards, "people" is defined in terms of having a unique language, race, and religion (Höhne, 2006) different from the local population as a whole. From the perspective of these objective criteria, it appears that Somaliland's residents may not truly merit the title of "people." Considering that they are ethnic Somalis, speak the Somali language, and adhere to Sunni Islam like practically other Somalis do. However, this norm is extremely broad and even ignores some real-world situations in the majority of European and African nations. Despite having a similar language, race, and religion, Norwegians, Swedes, and Danes are regarded as distinct "peoples" in Europe (Lars, 2000). Tanzania, Kenya, Uganda, and the Democratic Republic of the Congo all have Swahili as their national or official language, despite the fact that they are all regarded as distinct "people" (Lambert, 1995). The simple

fact that Somaliland's residents share the same language as the rest of the Somali population, practice Sunni Islam, and are of Somali descent does not diminish their standing as human beings. They view themselves as Somali landers rather than as the rest of the Somali population since they have their own unique identity and culture (Beyene, 2019). The subjective criteria are quite different from the objective criteria when we look at them. It solely focuses on the view of the residents or the groups themselves as if they are a distinct people and existed there to assess whether the inhabitants or groups of a given region merit what "people" imply (Jean, 1948). This standard leaves leeway for the locals to define themselves in the context and sense that makes the most sense to them. It is only their own concern as long as the residents continue to see themselves in a particular light.

Along with the residents' personal perceptions of themselves, how others see the residents also has an impact. Overall, the proponents of subjective criteria contend that the existence of a group may be due to the group's perception of itself as existent and distinct, to the outside world's definition of the group as distinct from them, or to any combination of internal and external identification. For instance, according to Sartre, "the Jew is a man that other men consider to be Jewish... the anti-Semite is the one who makes the Jew" (Ibid). This indicates that other people's anti-Semitic attitudes have greatly aided in the acceptance of Jews. They should be regarded as "people" based on the fact that the group considers itself to be separate and that other groups view them as distinctive.

The previous regime singled out the residents of Somaliland, who are primarily ethnic Somalis from the Isaq clan, for persecution due to their clan membership (Ibid). The state may have elevated the Isaq to the status of a "people" with rights of self-determination distinct from the "greater Somali" community by killing a portion of its own people and defining that portion by an unchangeable and collective characteristic like clan affiliation. In their process of constructing a nation since 1991, the people of Somaliland have created the identity of a Somalilander using elements of their colonial history and their resistance to the Siad Barre government. The author fervently contends, on the basis of the aforementioned considerations, that the people of Somaliland deserve and meet the criteria for the designation "people." As long as Somaliland's citizens merit human status, they have the same entitlement to exercise their right to self-determination as everyone else (Beyene, 2019).

Instance of decolonization justifies somaliland's right to self-determination

Decolonization is the second factor that supports Somaliland's claim to the right to self-determination. Although political scientists and attorneys who study self-determination concur that the right to self-determination guarantees colonized people the ability to form states independent of their colonial rulers, the concept of "secession" from post-colonial states is less clear. The self-determination concept serves as the foundation for the Declaration on the Granting of Independence to Colonial Countries and Peoples, which justifies decolonization. The Organization of African Unity, currently known as the African Union, promoted the idea of

using colonial borders to create sovereign republics. The former African Union still upholds the stance that its member nations follow the boundaries by which they gained independence, and in Somaliland's case, this concept is valid (Ibid).

British Somaliland was the name of the British Empire colony that included the present-day Somaliland. The northern region of Somalia, which is today known as Somaliland, was handled independently from the southern region of Somalia during colonial times. The inhabitants of Somaliland gained their independence from Britain in 1960, just like other Africans. When Somaliland declared its independence from British colonial administration, several nations, including Security Council members, recognized it. The first Somali territory to achieve independence and get UN recognition was Somaliland in northern Somalia. After Somaliland gained independence, Southern Somalia, which is now the Somali Republic, and Puntland did as well. Despite declaring independence and receiving UN recognition as a sovereign nation, Somaliland's independence was short-lived. Somaliland's sovereignty lasted barely five days until it decided to form the Somali Republic by joining with northern Somalia.

Five days later, in a bilateral treaty, the newly formed Somaliland and the Italian Somali decided to unite, albeit the pact ultimately had issues. These abnormalities occurred as a result of the actions of the authorities in Southern Somalia. Separate treaties were negotiated by each state, and Somaliland forwarded its document to Southern Somalia's authority. However, the government of Southern Somalia did not transmit its own pact to that of Somaliland. The Southern Somali authorities never endorsed the draft treaty that the Somaliland authorities handed them; instead, they produced their own, the Act of Union, which was adopted by the national legislature (Paolo, 1969). The Somaliland authorities were never contacted during the entire process, and they did not agree to the newly ratified Act of Union.

By combining the Italian Somali with the British Somaliland on July 1st, 1960, the Somali Republic was established. The people of Somaliland did not approve of the union formed in this manner, and it really breaches international law's treaty law. It is true that the Somaliland population first agreed to join Southern Somalia and establish the Somali Republic. However, the process used to set up the republic was improper and against the will of the Somaliland population (Beyene, 2019). The Vienna Convention on the Law of Treaties (1969) makes it very apparent that in order for a treaty to be considered legal, the other state must agree to it. The bilateral agreements that Northern and Southern Somalia created to establish the Republic were invalid since they never had the other side's approval. According to the Vienna Convention, a convention cannot become enforceable until governments formally agree to be bound by it (Ibid). The Law of Union between Somaliland and Somalia (Law of Union), a treaty created by Somaliland, was to come into effect upon the signature of "duly authorized representatives of the peoples of Somaliland and Somalia" (Act of Union 1960). The pact was signed by delegates from Somaliland but not those from Southern Somalia. As an alternative, the Atto di Unioni (Act of Union) was passed "in principle" by the Legislative Assembly of

the Somalia Trust Territory (Italian Somalia) (Ibid). The pact negotiated by Somaliland differs significantly from the Act of Union. The two states' union was then formally recognized by a presidential order issued by the southerner serving as the republic's interim president. The National Assembly accepted the Atto di Unioni six months later. Both treaties of unification appear to lack the assent of the opposing party to the arrangement because they are official agreements between two governments.

Even if we presume that the Act of Union did constitute a valid treaty, Somaliland may legitimately contend in another way that under the dictatorship, material violations of the treaty allowed the north to terminate the pact. As a result, the northerners did not approve of the new Somali state that was created within a constitutional framework through the Law of the Union and the Act of the Union. Despite the Union's formation and declaration in any manner, it was short-lived. In 1969, the Somali Republic's constitutional system was toppled, and a military dictatorship took over all political authority (Roethke). Despite the fact that the military dictator who broke the agreement was not a party to the agreement and a non-civilian ruler, Somaliland still upholds its right to terminate the agreement. The conditions that caused Somaliland to join Southern Somalia no longer existed, and Somaliland is now able to argue that the treaty has expired because its main goal was never to impose a military dictatorship. The accords that the Italian and British Somaliland signed in order to create the Union were void. The geographical integrity of a "united Somalia" would not be violated by Somaliland's claims to independence as long as the treaties were null and void and terminated as a result of the actions of the Southern Somali tribes. A "legitimate exercise of self-determination under the decolonization framework of the Declaration on the Granting of Independence" justifies Somaliland's unilateral declaration on the Granting of Independence to Colonial Countries and Peoples" (Ibid).

The secession or withdrawal of Somaliland from the Union or the Somali Republic does not amount to the dismemberment of a sovereign state, but rather to the restoration of a previously independent and sovereign state to its previous status, given the violation of the bilateral treaty by the Southern Somali and the invalidation of those treaties. This indicates that the Act of Union was void under international law since Somaliland still has the option to withdraw.

Grave human rights violation during Barre's regime

Another legal justification for Somaliland's unilateral proclamation of independence is the serious human rights violations committed against its citizens under Siad Barre's rule. The incidence of this violation of human rights validates the nation's right to declare independence. Hugo Grotius, a renowned expert on international law, explains that the existence of human rights abuses justifies rebellion and that "the people can depose a ruler who openly shows him to be the enemy of the whole people because a ruler cannot simultaneously exercise both the wills to govern and to destroy" (Kelsey, 1925).

Furthermore, P. Nanda contends that if the people's fundamental liberties and rights are

violated on a genocidal scale, they have the right to secede in order to exercise their right to self-determination (Nanda, 1981). The author's thesis, that the violation of people's rights is an acceptable tool to announce once self-determination, will be correctly supported by this argument. According to international law, the people have the right to exercise their right to self-determination when the violation of that right manifests itself to a higher extent or on a genocidal scale. The Preamble to the Universal Declaration of Human Rights, one of the many international human rights documents, acknowledges the freedom to revolt against a government that has committed serious human rights violations¹⁹. People have a right to protection against violations of their rights; therefore, even the slightest one will raise the issue of their right to self-determination in order to avoid such violations. The history of the Somaliland people has extensive documentation of this serious human rights violation. Thousands of Somalilanders were slain, imprisoned, and had their possessions pillaged under Siad Barre's rule. In Somaliland, there was also a deliberate genocide targeting the more affluent Isaq clan members, which were carried out with the assistance of the former German Democratic Republic and KGB (Omaar, 1992). The military's aerial bombing and artillery bombardment of the northern cities, including Hargeisa and Burao, increased the genocidal assault against the Isaq clan. Around 50,000 people were killed in Somaliland as a result of this murderous assault, and another 500,000 fled to Ethiopia, which lies next door. The primary cause of Somaliland's people being subjected to such genocidal-scale human rights violations was their necessity to proclaim their independence in 1991. Since they have a natural right to protection from such serious human rights violations, they unilaterally proclaimed their independence.

Inability to exercise internal self-determination right

Last but not least, during Siad Barre's rule, the people of Somaliland were subjected to blatant human rights violations and denied the opportunity to exercise their internal right to self-determination. As a result, they were compelled to revolt against the system and declare their own external self-determination to secure their internal self-determination, which had been violated. Anthony J. and Rajagopal provide an appropriate explanation for this, stating that 'the denial of a people's internal self-determination leads to the revival of their external right of self-determination.' Clearly, this is what occurred in Somaliland. They declared their external self-determination after their internal self-determination was violated while they were still part of the Somali Republic. In addition to the violation of their right to internal self-determination when they were members of the Somali Republic, the dissolution of the Republic also created a political void. The only option left for the people of Somaliland after the collapse of the Republic was to declare their external self-determination and seek independence as a nation-state. Therefore, the author contends that Somaliland is still entitled to exercise its right to self-determination and secede from the Republic of Somalia because it was unable to do so while it was part of the Union. Under such circumstances, international law provides for secession, which Somaliland duly carried out.

State recognition under international law regime

In this section of the paper, the issue of whether other states should recognize Somaliland as an independent state or not will be addressed. Moreover, the paper will evaluate the effect of the recognition or the non- recognition by other States on the Statehood of Somaliland in the context of International Law. In the current understanding and discourse of international law regime, there are two different views that deal with the issue of state recognition.

Constitutive theory: Constitutive theory is the first theory to address the question of state recognition. This theory claims that recognition is required for a new state and that it only occurs if the existing states acknowledge it (Lambert, 1995). In order to have a status of international legal personality, according to the current understandings of international law, a "state" must be acknowledged by the United Nations' member states. A new "state" will not have legal personality under international law if the UN member nations do not recognize it. There are several issues with this hypothesis. The theory appears to infer that there is no responsibility before recognition, which is the fundamental argument connected to the non-recognized state's obligation. However, this claim is false because unrecognized governments are also permitted to engage into legal agreements. For instance, Somaliland, an unrecognized state, has a pact with Ethiopia for the use of Berbera port (Eggers, 2007).

Declaratory theory: Declaratory theory is the second theory relating to a state's recognition. This view holds that if a state satisfies the requirements for statehood under international law, it will be recognized and granted legal personality immediately, and recognition can only serve political purposes with regard to the law. The proponents of this idea also contend that once a state meets the criteria for statehood, other states are instantly obligated to recognize the new state. Although the advocates of this theory make this argument, existing state policy does not support it. Based on the two views mentioned above, it is reasonable to draw the conclusion that state recognition is optional and serves no function in terms of international law. Dealing with declaratory or constitutive theory is useless if state recognition is optional and outside the purview of the law (Ian, 1979).

CONCLUSION

Thirty years ago, Somaliland formally declared its independence. Despite this declaration, none of the United Nations' member states have expressly acknowledged it. The international community's rigid adherence to the inviolability of borders within the nation-state system, and their refusal to recognize Somaliland's right to be acknowledged as a de jure state, are the only factors preventing its recognition as an independent state. Somaliland has already fulfilled the conditions for both self-determination and the right to be recognized as an independent state. The norms and obligations of the Montevideo Convention have been met by Somaliland. The only remaining step is for the international community to decide whether to accept its legal identity and admit it as a United Nations member. What Somaliland lacks is official statehood recognition from other nations, a straightforward step that would enable it to enter the global

arena and set a positive example for other nations grappling with internal turmoil and chaos. The analysis of this study reveals that Somaliland's quest for independence faces numerous legal and political obstacles. The primary obstacle is related to political issues within and around Somaliland, the positions of African states on withdrawal or secession, and the self-political interests of neighboring nations, which drive them to support the African Union's stance. Therefore, this paper boldly proposes that the international community should endorse Somaliland's recognition and independence to fulfill its moral duty to bring about lasting peace and stability in the Horn of Africa.

RECOMMENDATIONS

Findings of the study show that, Somaliland's Quest for Statehood under International Law is still challengeable. Thus, it is widely recognized that acquiring *de jure* status of Somaliland state requires comprehensive, coordinated and integrated action of both the government and people of Somaliland. Therefore, based on the findings the study states following recommendations:

1. Somaliland should use the right to self-determination to justify its unilateral self-determination through remedial right to withdraw or secession. To establish this, it must provide irrefutable evidence of ongoing gross violations of human rights and the continuous denial of the right to internal self-determination during the period of union, with a likelihood of this continuing.
2. Somaliland needs to adopt consistent concepts and principles in its foreign policy and strategy for claiming independence. It should focus on further developing and strengthening arguments based on the factual events surrounding its declaration of independence.
3. Recognizing that international communities often prioritize their self-interest and exercise discretionary power in recognition decisions, Somaliland should take decisive measures to bolster its socio-economic and political institutions while advancing democratization efforts.
4. Somaliland should move beyond clan-based policies and demonstrate itself to the world as a more viable and economically stable political community. This can be achieved through a commitment to transparency, inclusivity, and a corruption-free governance system, fostering a more democratic economy and governance.
5. To expedite its recognition, Somaliland should actively engage in regional matters, particularly in negotiations with Somalia. These negotiations should be based on amicable and compelling factual grounds to gain support for its recognition efforts.

REFERENCES

Ahmed F (2020). The Quest of the Republic of Somaliland to Seek International Recognition.

- Middlesex University, school of law, Department of law and politics.
- Aliye MI (2020), the Challenges and Prospects of Somaliland Independence under International Law, New Generation University College, Hargiesa, Somaliland.
- Beckman R (2009) Somali Piracy- Is international Law Part of the Problem or Part of the Solution? NUS Law School, Nanyang Technological University.
- Beyene TS (2019) Declaration of Statehood by Somaliland and the Effects of Non-Recognition under International Law. *Beijing Law Review* 10(1):196-211.
- Carroll AJ, Rajagopal B (1992). The case for the independent statehood of Somaliland. *American University International Law Review* 8(2/3):653-681.
- Clapham C, Hansen H, Herbst J, Pham JP, Mazimhaka P, Schulman S, Mills G (2011). African game changer? The consequences of Somaliland's international (non) recognition. A Study Report- Discussion Paper 5.
- Clarke WS, Gosende R (2003). Somalia: Can a Collapsed State Reconstitute Itself? In R. I. Rotberg (Ed.), *State Failure and State Weakness in a Time of Terror*. Washington: Brookings Institute Press. David S (2002). "Somaliland: The Little Country That Could," CSIS Africa
- Eggers AK (2007). When Is a State a State? The Case for Recognition of Somaliland. *Boston College International and Comparative Law Review* 30:211.
- Fred O (2006). Breakaway State Has Achieved Peace, Stability, Democracy, East African (Kenya).
- Gardiner RK (2003) *International Law* (1 ed.). Pearson Education Limited. Henry J.S, Philip A (2000). *International Human Rights in Context*. New
- Herbst J (2004) In Africa, what does it take to be a country?" *The Washington Post*.
- Höhne MV (2006). Political identity, emerging state structures and conflict in northern Somalia. *The Journal of Modern African Studies* 44(3):397-414.
- Horn: the West Pushes for Somaliland Recognition, p. 34.
- Ian B (1979). *Principles of Public International Law* 287 (3d ed). Integrated Regional Information Network (IRIN) 2014.
- Ismail IA, Reginald HG (1999). The Heritage of War and State Collapse in Somalia and Somaliland: Local-Level Effects, External Interventions and Reconstruction, *20 Third World Q.* 113, 113.
- Jama JM (2011) Somaliland: The Way Forward: Ponte Invisibile Redsea-online.
- Jean PS (1948). *Anti-Semite and Jew: An Exploration of the Etiology of Hate*. New York:

Schocken Books.

Kadic v. Karadzic (2d Cir. 1995), 70 F.3d 232, 236-37

Kelsey F (1925). Hugo Grotius on the Law of War and Peace, translation. (Carnegie Edition).

Klinghoffer v. S.N.C. Achille Lauro (2d Cir. 1991, 937 F.2d 44, 47); Nat'l Petrochemical Co. v. M/T Stolt Sheaf, 860 F.2d 551, 553 (2d Cir. 1988).

Lambert J (1995). Betrayed Trust: Africans and the State in Colonial Natal. Pietermaritzburg: University of natal Press.

Lars V (2000). Northern Europe: Languages as Prime Markers of Ethnic and National Identity. In S. Barbour et al. (Eds.), Oxford: OxfordUniversity Press.

Malcolm NS (1986). Title to Territory in Africa; International Legal Issues. Oxford: Oxford University Press.

Marc L (2006). The Signs Say Somaliland, But the World Says Somalia. N.Y.: Times, June 5.

Mishra A (2020). State Recognition under International Law, KIIT School of Law, Odisha. Article 60 (1) of the Vienna Convention allows parties to bilateral treaties to invoke breach as grounds for termination.

Montevideo Convention (1933). Art.3.

Nanda P (1981). Self Determination under International Law: Validity of Claims to Secede. Case Western Reserve Journal of International Law 13:257.

Notes 9. http://csis.org/files/media/csis/pubs/notes_0211.pdf. Defense and Foreign Affairs Strategic Policy 7 (2006). Dilemma of the

Nur H (2018), the rebirth of Somaliland (16): the peace building and reconciliation Somaliland style. Wargeyskasaxafi.wordpress.com.

Paolo C (1969). The Somali Republic: An Experiment in Legal Integration. London: Frank Cass.

Pavković A, Radan P (Eds.) (2011). The Ashgate research companion to secession. Ashgate Publishing, Ltd.

Portman R (2010). Legal Personality in International Law" (1st ed.) Cambridge University Press.

Raic D (2002) Statehood and the law of self-determination. Netherlands: Khiwar Law International.

Solomon L (2012). British traditions boost the de facto state of Somaliland" Somaliland Press News from <http://somalilandpress.com/lawrence-solomon-capitalist-haven-29183> The Republic of Somaliland, Somaliland: An African Success Story, <http://www.somalilandgov.com/G8Somaliland.pdf>

Somaliland and Somalia: The 1960 Act of Union—An Early Lesson for Somaliland.

The Montevideo Convention on Rights and Duties of States art (1933).

United States Department of State Press Relations Office Notice (1976). quoted in Eleanor C. McDowell, Contemporary Practice of the United States Relating to International Law, 71 AM. J. INT'L L. 337 (1977) .

Vienna Convention on the Law of Treaties (1969) Article 24:2.

Warbrick C (2006). States and Recognition in International Law. In M. D. Elvans, International Oxford University Press.

York: Oxford University Press.



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