

## ARTICLE

# THE CASE FOR THE INDEPENDENT STATEHOOD OF SOMALILAND

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## INTRODUCTION

Violent political convulsions have gripped the Horn of Africa since the end of 1990.<sup>1</sup> While the human drama unfolds, revealing its tragic dimensions, the international community continues to linger in a haze of apathy.<sup>2</sup> Few countries have experienced as much carnage, destruction and instability as Somalia.<sup>3</sup> The economic costs of the destruction are

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1. See CHANGING REALITIES IN THE HORN OF AFRICA: IMPLICATIONS FOR AFRICA AND U.S. POLICY, REPORT FOR THE THIRTY-SECOND STRATEGY FOR PEACE, U.S. FOREIGN POLICY CONFERENCE 4 (The Stanley Foundation, Oct. 24, 1991) (recounting the momentous events that have taken place in the Horn of Africa since 1990). In January, 1991, Siad Barre's twenty-one year old regime was overthrown in Somalia, which led to the declaration of independence by the northern half, the Republic of Somaliland in May, 1991. *Id.* In June, 1991, Mengistu Haile Mariam was overthrown in Ethiopia after fourteen years, leading the way for the independence of Eritrea. *Id.* In Sudan, there are signs of a secessionist upheaval by the Sudan People's Liberation Army. *Id.*

2. See Jane Perlez, *Somalia Self-Destructs, and the World Looks On*, N.Y. TIMES, Dec. 29, 1991, at §4 p.4 [hereinafter Perlez] (asserting that no country has done much to end the self-genocide in Somalia). The Under Secretary General of the United Nations, James Jonah, admitted that the events in Yugoslavia, Eastern Europe and the former Soviet Union diverted U.N. attention from Somalia. See Robert M. Press, *United Nations Takes Lead in Somalia Crisis*, CHRISTIAN SCIENCE MONITOR, Feb. 12, 1992, at 6 (explaining that U.N. involvement was limited in the escalating Somali crisis). The U.N. Security Council passed a resolution on January 23, 1992, calling for an arms embargo against Somalia, pursuant to Chapter VII of the UN Charter. See *id.* (noting that Security Council Resolution 733 took decisive action to alleviate the crisis in Somalia).

3. See IRVING KAPLAN ET AL., AREA HANDBOOK FOR SOMALIA viii (1969)

staggering,<sup>4</sup> and the extent of human rights violations, appalling.<sup>5</sup> Ironically, this chaos was not supposed to happen.

The Somalis are a cluster of indigenous peoples<sup>6</sup> who have inhabited the Horn of Africa for well over a thousand years. During this millennia, they have existed in a land devoid of peace and prosperity.<sup>7</sup> European colonial powers appeared in the nineteenth century, creating yet another episode of the African scramble and placing new pressures upon the Horn of Africa.<sup>8</sup> The experience of colonialism at the hands of Britain and Italy, and the political flux that marked their departure, form the core causes of Somalia's current turmoil.

The state of Somalia came into existence in 1960, resulting from a merger between two independent states, the Northern Somaliland, a British Protectorate, and the Southern Somalia, an Italian Trust territory.<sup>9</sup> In 1969, after a few years of civilian rule, the military, led by General Mohammed Siad Barre, overthrew the government in a bloodless coup.<sup>10</sup> General Barre ruled for the next two decades, with the alleged support of the Soviet Union.<sup>11</sup> This regime, marked by internal repres-

(reporting that virtually all Somalia nationals are ethnic Somali). Somalia was once hailed as the prototypical African nation-state due to its purported ethnic homogeneity. *Id.*; DAVID D. LAITIN AND SAID S. SAMATAR, *SOMALIA: NATION IN SEARCH OF A STATE* (1987)[hereinafter LAITIN].

4. See ECONOMIC INTELLIGENCE UNIT, *COUNTRY PROFILE 1991-92: SOMALIA* 36 (reporting that the United Nations Development Program's Human Development Report, 1991, ranks Somalia 149th of 160 countries in terms of its human development index). Somalia's foreign debt stood at US\$ 2850 million in 1989. JOHN DRYSDALE, *SOMALILAND: THE ANATOMY OF SECESSION* 16 (1991) [hereinafter DRYSDALE, *ANATOMY OF SECESSION*].

5. See UNITED STATES DEPARTMENT OF STATE DISPATCH, *1990 Human Rights Report: Somalia* (Feb. 1, 1991) (describing the human rights atrocities in Somalia); AFRICA WATCH, *SOMALIA: A GOVERNMENT AT WAR WITH ITS OWN PEOPLE* 126-131 (1990) (detailing the extent of human rights violations in Somalia).

6. See KAPLAN, *supra* note 3, at 29-53 (recalling the nomadic and pastoral society existing in Somalia before European colonization).

7. See KAPLAN, *supra* note 3, at 1-53 (1969) (reviewing the history of Somalia).

8. See FOREIGN AREA STUDIES, The American University, *SOMALIA: A COUNTRY STUDY* 1-61 (Harold D. Nelson ed., 1982) [hereinafter FOREIGN AREA STUDIES] (describing Somalia's early history and its experiences under colonialism).

9. See KAPLAN, *supra* note 3, at 212-13 (recounting the formation of the state of Somalia). Confusion may exist regarding nomenclature of Horn of Africa nations. The Somaliland which declared its independence in 1991 has boundaries coterminous with the colony of British Somaliland. Southern Somalia is the area once occupied by Italy. Somalia is the name of the unified British Somaliland and Southern Somalia.

10. FOREIGN AREA STUDIES, *supra* note 8, at 46.

11. *Somalia - A Poor Land of Pastoralists*, Reuters, Jan. 28, 1991, available in

sion and external aggression, ended when the combined might of several liberation movements, including Somali National Movement (SNM), the Somali Salvation, Democratic Front, Somali Patriotic Movement, and the United Somali Congress, deposed General Barre in 1991.<sup>12</sup> Instead of salvation however, the overthrow of General Barre's regime only worsened the situation and resulted in a Hobbesian nightmare of internal fighting.<sup>13</sup> While the war raged in and around Mogadishu, the capital of modern day Somalia, the northern part of Somalia remained stable.<sup>14</sup> Taking advantage of this situation, the SNM declared Northern Somaliland independent on May 18, 1991.<sup>15</sup>

This Comment explores the legal validity of Northern Somaliland's assertion of independence and argues for the recognition of Somaliland as an independent state. Section I discusses the validity of such independence in a historical perspective, dealing with the nature of sovereign rights over Somaliland. Section II posits arguments under international law for the exercise of such a right by the people of Somaliland. Section III analyzes the concept of recognition and its conformity with existing international law. This Comment concludes that Somaliland should be recognized as an independent nation.

### I. Validity of Independence in Historical Perspective

Before examining the legality of the May 1991 assertion of Northern Somaliland's independence in the light of earlier international treaties, a brief description of the complex societal forces that lie behind the current conflict is useful. Somali society is based on kinship ties that emphasize membership in clans genealogically derived from Arab ancestors.<sup>16</sup> The clans that comprise the core of Somali society are the Digil, Rahanweyn, Dir, Hawaiye, Darod, and Isaq.<sup>17</sup> The dynamics of interac-

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LEXIS, Nexis File, Reuters File. Siad Barre's alliance with the Soviet Union dissolved when the Soviet Union decided to support Ethiopia in a border dispute in 1977. *Id.*

12. See Perlez, *supra* note 2, at § 4 p.4 (recounting the liberation movements which joined together to overthrow General Barre's regime).

13. See Perlez, *supra* note 2, at § 4 p.4 (describing the internal fighting in Somalia).

14. See DRYSDALE, ANATOMY OF SECESSION, *supra* note 4, at vi (asserting that Somaliland is viewed as politically stable in comparison with the rest of the African Horn).

15. DRYSDALE, *supra* note 4, at vii.

16. FOREIGN AREA STUDIES, *supra* note 8, at 6; KAPLAN, *supra* note 3, at 4.

17. FOREIGN AREA STUDIES, *supra* note 8, at 7-8.

tion between these clans have traditionally determined the distribution of political power in Somalia at any given moment.<sup>18</sup>

#### A. THE LEGAL REGIME OF STATE AND SOVEREIGNTY

Central to the legality of Somaliland's assertion of independence is the extent to which such assertions manifest sovereignty over the territory, and therefore constitute a valid basis for the formation of a state.<sup>19</sup> The acquisition of territorial sovereignty embodies several international legal principles, including sovereignty, the territorial integrity of states, effectiveness, recognition and self-determination.<sup>20</sup> To be valid, Somaliland's assertion of independence must fulfill the operational standards of these doctrines.

Of primary importance is the interplay between the doctrines of territorial sovereignty and statehood.<sup>21</sup> The doctrine of territorial sovereignty remains a central element in the concept of statehood. Territorial sovereignty is acquired in one of five ways: occupation of *terra nullius*, prescription; cession; accession; and subjugation.<sup>22</sup> This scheme relies upon the civil law modes of *inter vivos* transfer of property and does not provide for the situation where a new state comes into existence.<sup>23</sup> This hands-off approach is due to the complexities involved in evaluating the emergence of the new state according to international law or municipal law.

A new state is normally born within the sphere of constitutional law or of civil strife. Accordingly, its legal status is perched perilously on the borderline between international law and municipal law. Given the traditional propensity of international law to treat statehood as existing within the walls of domestic jurisdiction, the new state's title of sover-

18. FOREIGN AREA STUDIES, *supra* note 8, at 9.

19. See IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 287 (3d ed. 1979) (explaining that territorial sovereignty is a characteristic of an independent state).

20. See *id.* at 109-29 (discussing the principles embodied in the concept of territorial sovereignty).

21. *Id.* at 207.

22. See R.Y. JENNINGS, The Acquisition of Territory In International Law 6-7 (1963); HERSH LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW 30 (1947) (describing the five methods by which territorial sovereignty is acquired).

23. J.H.W. VERZIJL, INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE, PART II 63 (1969). The birth of a state is a historical event that has retroactive effect once the state is recognized. *Id.* Therefore, the birth of a nation is not controlled by international law. *Id.*

eignty<sup>24</sup> inevitably depends on the largesse of the doctrine of recognition.<sup>25</sup> The rules regarding the acquisition of territory, creation of states and title, however, have been subjected to the standards of contemporary international law on the use of force<sup>26</sup> and human rights.<sup>27</sup>

#### B. SOVEREIGNTY UNDER THE TREATIES OF 1884 AND THE ACT OF UNION OF 1960

In the nineteenth century, Britain's primary, if not exclusive, interest in Somaliland was its need to safeguard the meat supplies to Aden and to ensure the safety of the trade routes.<sup>28</sup> Tired of Egyptian rule and faced with the prospects of expansionist moves by Abyssinia, the Somali clans readily consented to British protection.<sup>29</sup> By the end of 1884 the Ise, Gadabursi, Habar Garhajis, Habar Awal, and Habal Tol Jalo clans had signed formal treaties with Great Britain.<sup>30</sup> These agreements were treaties of friendship and commerce, and ostensibly conceded little to Britain.<sup>31</sup> The preamble to each clan treaty set forth that the document

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24. See JENNINGS, *supra* note 22, at 4 (stating that "the primary meaning of title is the vestitive facts which the law recognizes as creating a right"); BROWNLIE, *supra* note 19, at 126, 127 (cautioning that title is not coterminous with sovereignty; the latter is a consequence of the former).

25. See JENNINGS, *supra* note 22, at 127 (stating that the inevitability of this approach also depends on the doctrines of prescription and acquiescence). An objection may be made that it is only the acquisition of international personality that depends on the doctrine of recognition and not title to sovereignty. *Id.* at 37. Such a view, however, would rest on a misconception of the process of the creation of a new state. *Id.* In the case of established states, while recognition may not be a *condition* for the acquisition of title, in the case of new states, recognition is a vestitive fact, in so far as title to sovereignty denotes the entry of a state into the international sphere even as it confirms the new state's existence. *Id.* at 38. This discussion, however, should not be taken as a general endorsement of the constitutive theory of recognition. See LAUTERPACHT, *supra* note 22, at 41 (discussing the constitutive view of recognition).

26. See JENNINGS, *supra* note 22, at 9 (referring to Article 2(4) of the United Nations Charter which addresses the international use of force).

27. See BROWNLIE, *supra* note 19, at 552, 599 (discussing human rights and self-determination as they relate to the sovereign powers of a state).

28. I.M. LEWIS, *MODERN HISTORY OF SOMALIA* 46 (1988). The prospect of unstable trade routes resulted from the withdrawal of the Egyptians from Harar, Zeila, and Berbera. *Id.* The Egyptians withdrew from Somalia due to the necessity to commit more resources to battle a revolt in the Sudan. *Id.* at 44.

29. *Id.* at 46.

30. *Id.*

31. *Id.* at 47.

was designed to maintain clan independence.<sup>32</sup> No treaty contained clauses relating to cession of territory; the clans merely pledged Britain a right of pre-emption.<sup>33</sup> The treaties only granted one such right; the right for British agents to reside on the Somali coast.<sup>34</sup> Most of the treaties contained clauses expressly declaring the treaties as provisional and subject to revocation or modification.<sup>35</sup> The treaties therefore left a large measure of sovereignty in the hands of the clan occupying the land.

The power to enact such treaties can itself be considered as an essential concomitant of sovereignty.<sup>36</sup> Thus, for example, if the Somalia which existed after 1960 refused to recognize the 1897 and 1954 Anglo-Ethiopian agreement as violations of the 1884 Anglo-Somali treaties, its refusal was legitimate.<sup>37</sup> Some Western nations attempted to strip such agreements with non-Europeans of any legal status.<sup>38</sup> These agreements are now, however, accepted as signifying the personality of both the ruler and the people concerned.<sup>39</sup> As a result, under the Anglo-Somali treaties of 1884, the northern Somali chiefs and their peoples retained

32. *Id.* at 46.

33. *Id.* at 47. The clans merely pledged that they would "never to cede, sell, mortgage, or otherwise give for occupation, save to the British Government, any portion of the territory presently inhabited by them or being under their control." *Id.*

34. *Id.*

35. *Id.*

36. See HURST HANNUM, *AUTONOMY, SOVEREIGNTY AND SELF-DETERMINATION* 22 (1990) (stating that a treaty which limits a state's own sphere of action by delegating certain powers to other states does not affect the state's status as sovereign power).

37. JOHN DRYSDALE, *THE SOMALI DISPUTE* 75-76 (1964). The reason for the refusal to recognize the Anglo-Ethiopian treaties had little to do with Somalia's intention to preserve the integrity of the 1884 Treaties, but was grounded upon and animated by a Pan-Somali ambition. See *infra* notes 52-61 and accompanying text (discussing efforts to establish a Pan-Somali union).

38. See, e.g., JOHN WESTLAKE, *COLLECTED PAPERS ON PUBLIC INTERNATIONAL LAW* 143-45 (1914) (advocating the legal incapacity of non-European natives and the necessity, therefore, to "furnish" a government for such natives because "[t]he inflow of the white race cannot be stopped where there is land to cultivate, ore to be mined, commerce to be developed, sport to enjoy, curiosity to be satisfied"). On the question of the inconsistency of the 1897 Treaty with the earlier Somali Treaties, the United States Secretary of State said that earlier agreements are not binding international treaties. DRYSDALE, *THE SOMALI DISPUTE*, *supra* note 37, at 76.

39. Western Sahara, 1975 I.C.J. 12 (Oct. 16). In this case, the International Court of Justice declared that the "agreements with local rulers . . . were regarded as derivative roots of title, and not original titles obtained by occupation of *terra nullius*." *Id.*

considerable residual sovereign powers and certainly existed as international persons.

The seminal document of the twentieth century was the Act of Union which established Somalia as a separate state in 1960.<sup>40</sup> Several factors, however, undermined its chances for success. Civilian rule, re-established in the North in 1948, did not exist in Southern Somalia, which had been under a ten-year Italian Trusteeship since 1950.<sup>41</sup> The two territories were separated institutionally, linguistically and historically. As a consequence, the two territories qualified as two individual countries.<sup>42</sup> With little binding them together, there was no driving force to create a single country. Two events, however, are credited for inspiring the 1960 unification. First, in 1946, the Bevin proposals suggested that British Somaliland and Italian Southern Somalia as well as part of Ethiopia should be grouped together to ensure that the nomads' way of life continue in an unobstructed manner.<sup>43</sup> These proposals directly influenced the Somali Youth League (SYL),<sup>44</sup> inspiring the ominous campaign of "Greater Somali" irredentism.<sup>45</sup>

The second factor was the 1954 Anglo-Ethiopian Treaty, which permitted the British to cede parts of Somalia to Ethiopia.<sup>46</sup> The ensuing outcry stimulated political activity in an otherwise dormant North,<sup>47</sup> and led to a campaign for unification and independence.<sup>48</sup> Political parties,

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40. See *infra* note 62 and accompanying text (examining the establishment of Somalia as a separate state); PAOLO CONTINI, *THE SOMALI REPUBLIC: AN EXPERIMENT IN LEGAL INTEGRATION* 1-6 (1969) (evaluating the success of Somalia's genesis).

41. DRYSDALE, *THE SOMALI DISPUTE*, *supra* note 37, at 73.

42. See YILMA MAKONNEN, *INTERNATIONAL LAW AND THE NEW STATES OF AFRICA* 27 (1938).

43. DRYSDALE, *THE SOMALI DISPUTE*, *supra* note 37, at 67. These proposals were named after Britain's Foreign Secretary Bevin who shared his vision of Somalia's future with the House of Commons on June 4, 1946. *Id.*

44. *Id.* at 69. The SYL was the earliest Somali national party which operated out of Mogadishu. *Id.*

45. See *id.* (discussing the historical aspects of Somali irredentism). The campaign for Greater Somalia proved to be one of the major causes of the persisting instability on the Horn of Africa. *Id.* For a general discussion of the status of the Horn of Africa, see TOM J. FARER, *WAR CLOUDS ON THE HORN OF AFRICA: THE WIDENING STORM* (1979).

46. See *FOREIGN AREA STUDIES*, *supra* note 8, at 149-53 (discussing the cessation of the Haud and the Reserved Areas to Ethiopia by Britain).

47. *FOREIGN AREA STUDIES*, *supra* note 8, at 149-53. The SYL as well as the Somaliland National League, a predominantly Isaq organization in the North, were not able to stimulate widespread interest in party politics in the North. *Id.*

48. *FOREIGN AREA STUDIES*, *supra* note 8, at 148-55.

however, were unable to capitalize fully on the mobilization of political emotion. The leadership of Somaliland National League (SNL) preferred to postpone unity,<sup>49</sup> the SYL experienced internal divisions,<sup>50</sup> and the Northern Isaq clans were generally apathetic towards the aspirations of the SYL.<sup>51</sup>

As part of the process of decolonization, the British government announced that the Protectorate would become independent on June 26, 1960. The Italian government later announced that the Italian trust territory would gain independence five days later, on July 1, 1960.<sup>52</sup> These dates reflected the United Nations' desire for more speedy independence.<sup>53</sup> The advancement of the independence dates put undue pressure on the internal administrations of both territories. Furthermore, with no one responsible for laying the legal foundations for the Union and few consultations between the North and South,<sup>54</sup> the result was the "precipitate Union".<sup>55</sup> 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.<sup>56</sup> Subsequently, the National Assembly should have elected a Provisional President.<sup>57</sup> On June 27, 1960, the day after its independence, Northern Somaliland's Legislative Assembly passed the Union of Somaliland and Somalia Law.<sup>58</sup> Since the authorized representative of Southern Somalia never signed this treaty, however, it remained with-

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49. FOREIGN AREA STUDIES, *supra* note 8, at 34.

50. See FOREIGN AREA STUDIES, *supra* note 8, at 147, 157 (explaining how relations within and with other clans became more strained due to internal and external clan hostilities).

51. FOREIGN AREA STUDIES, *supra* note 8, at 147-151.

52. See G.A. Res. 1418, U.N. GAOR, 14th Sess. (1959).

53. See CONTINI, *supra* note 40, at 6 (explaining that the United Nations General Assembly advanced the date of independence of the Trust territory from December 2, 1960 to July 1, 1960).

54. See CONTINI, *supra* note 40, at 8 (discussing the lack of consultations between British Somaliland and Southern Somalia).

55. FOREIGN AREA STUDIES, *supra* note 8, at 33-34, 150.

56. See CONTINI, *supra* note 40, at 8 (detailing the process by which the Act of Union was to be approved).

57. See CONTINI, *supra* note 40, at 8 (explaining that the Constituent Assembly incorporated this clause providing for the election of the Provisional President in both the transitional and final provisions of the constitution).

58. See CONTINI, *supra* note 40, at 9 (explicating that this law incorporated the proposed Act of Union previously sent to Mogadishu).



out force in the south.<sup>59</sup> Instead, on June 30, 1960, the Legislative Assembly of Southern Somalia approved the Atto di Unione (Act of the Union) in principle, which was significantly different from the Union of Somaliland and Somalia Law.<sup>60</sup> At midnight on June 30, 1960, the Italian Trusteeship Agreement expired and the President of the Legislative Assembly, acting in his capacity as the Provisional President of the Republic, proclaimed the independence of Somalia.<sup>61</sup>

On January 31, 1961, the National Assembly proclaimed a new Act of Union, repealing the Union of Somaliland and Somalia Law and made the Act of Union retroactive as from July 1, 1960.<sup>62</sup> The act of "repealing", however, was not effective in all of Somalia.<sup>63</sup> Furthermore, since the South, in negotiation with Italian officials, drafted the constitution, northern politicians could make only marginal changes.<sup>64</sup> The referendum on the Constitution in June 1961 reflected Northern resentment of Southern power. The SNL successfully campaigned against ratification, contributing to the low turnout in the North; only 100,000 voted,<sup>65</sup> and they overwhelmingly rejected the Constitution.<sup>66</sup> In contrast, almost 1,852,660 voted in the South.<sup>67</sup>

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59. CONTINI, *supra* note 40, at 9.

60. See CONTINI, *supra* note 40, at 9 (discussing how the Atto di Unione requested the government of Southern Somalia to design a single Act of Union with Northern Somaliland, such act to be submitted to the National Assembly for approval).

61. CONTINI, *supra* note 40, at 10.

62. CONTINI, *supra* note 40, at 13.

63. DRYSDALE, ANATOMY OF SECESSION, *supra* note 4, at 12. The absence of a legally valid Act of Union was manifested in a trial of the senior officers who had attempted a military coup in the North, when the judge acquitted them on the basis that, in the absence of a valid Act of Union, the court lacked jurisdiction in Somaliland. *Id.*

64. LAITIN, *supra* note 3, at 71 (noting, for example, that both the President and the Prime Minister were from the South). The Northern politicians could make few changes to the constitution, since most of the drafting occurred before the British agreed to grant independence to Somaliland. *Id.*

65. LEWIS, *supra* note 28, at 283. Only 100,000 of the North's estimated population of 650,000 voted. *Id.*

66. See DRYSDALE, ANATOMY OF SECESSION, *supra* note 4, at 12 (analyzing the impact of the SNL campaign against ratification and the breakdown of voting in the North).

67. DRYSDALE, ANATOMY OF SECESSION, *supra* note 4, at 12. By clan, the votes against ratification were Hargeisa (72%), Berbera (69%), Buro (66%), and Erigavo (69%). *Id.*

## II. Arguments for Independence Under Contemporary International Law

The state of Somaliland and its people existed as sovereign international persons<sup>68</sup> until the Act of Union, at which time Somaliland sought unification with Southern Somalia. The unification effort, however, fell short of the legal requirements mandated by domestic and international law.<sup>69</sup> With nothing more than the recognition of other states to testify to the existence of Somalia as a unified state,<sup>70</sup> it is necessary to consider the legal grounds on which Somaliland can reassert itself on the international plane.

### A. VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

An accepted, enduring maxim in legal and political theory is that the deprivation of basic human rights justifies rebellion.<sup>71</sup> Although interna-

68. Interim Agreement for a United Kingdom Aid Mission, June 26, 1960, 374 U.N.T.S. 331-63.

69. Vienna Convention on the Law of Treaties, reproduced in 8 I.L.M. 679 (1969). The Act of Union falls short of the Vienna Convention's standards for a valid international treaty. *Id.*

70. See, e.g., AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW 147 (3d ed. 1977) (arguing that recognition alone may confer state status on a nation). *But see* BROWNLIE, *supra* note 19, at 173 (explaining that a vice in title may or may not be cured by recognition).

71. HUGO GROTIUS, DE JURE BELLI AL PACIS LIBRIS TRES 157-58 (Francis W. Kelsey trans., 1925). Grotius states that the people can depose a ruler who openly shows himself to be the enemy of the whole people because a ruler cannot simultaneously exercise both the wills to govern and to destroy. *Id.* De Vattel declares that when a ruler violates fundamental laws by attacking the rights and liberties of his people, the people may rise up in a rebellion. E. DE VATTEL, 3 THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW 24 (Charles G. Fenwick trans., 1758). This right, according to De Vattel, derives from two premises: that the people have inalienable rights, and that these rights derive from the object of every society. Indeed, De Vattel's view springs directly from his naturalistic conception that civil society confers the power of the government upon the ruler, but with the implied reservation that "the sovereign will use that power for the welfare of the people and not for their destruction." *Id.* at 20. De Vattel asserts that the reason why people submit to governments is for their own welfare and security. *Id.*

The Declaration of American Independence also reflects the notion that the exercise of sovereign power is contractual in nature by asserting the people enjoy the right to alter or abolish government that is destructive of the ends for which government is instituted. THE DECLARATION OF INDEPENDENCE (U.S. 1776) reprinted in THE DECLARATION OF INDEPENDENCE 83 (Robert E. Casey ed., 1927). It should, however,

tional law justifies rebellion, domestic law does not, and indeed cannot,<sup>72</sup> entertain such possibilities.<sup>73</sup> Domestic law, however, is not dispositive of the existence of such a right under *international law*.<sup>74</sup> International law lacked a theoretical and normative basis for the articulation and expression of the right to secede<sup>75</sup> until the development of the human rights jurisprudence in general, and more specifically self-determination.<sup>76</sup> Self-determination is the only norm which can simulta-

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be noted that the United States Constitution does not contain the right to rebel or secede. See U.S. CONST. (lacking a provision granting the right to rebel); see also *Texas v. White*, 74 U.S. 700, 724-25 (1869) (holding secession of Texas from the United States unconstitutional because the states' acceptance of the Federal Constitution represented a waiver of the right to secede). But the holding does not imply that such a right has ceased to exist as a matter of *international law*. *Id.*

72. See generally, Cass R. Sunstein, *Constitutionalism and Secession*, 58 U. CHI. L. REV. 633 (1991) (arguing that secession is not a constitutional right).

73. Abraham Lincoln, First Inaugural Address (March 4, 1861) in INAUGURAL ADDRESSES OF THE PRESIDENTS OF THE UNITED STATES (United States Government Printing Office, 1961). As Abraham Lincoln said, "no government proper ever had a provision in its organic law for its own termination." *Id.* at 121. But see KONST. SSSR art. 72 (1977) reprinted in 18 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein and Gisbert H. Flanz eds., 1990) (granting the right to secede to each republic). Lincoln's view was not shared by Thomas Jefferson who argued for the right to secede to deter the abridgement of civil rights and liberties. LEE C. BUCHHEIT, SUCCESSION: THE LEGITIMACY OF SELF-DETERMINATION 109 (1978) (quoting a letter from Thomas Jefferson to W. Crawford, dated June 20, 1816, in which Jefferson stated that he would not object to any State separating from the Union if it so desired).

74. For a recent affirmation, see Cass R. Sunstein, *supra* note 72, at 662 (discussing the right of self-determination).

75. G.A. Res. 217A, U.N. Doc. A/810 (1948) At the most, international law could have conceivably subsumed a right to rebel in a contractualist conception of the ruler and the ruled and could have justified the use of unilateral doctrines for treaty abrogation, such as material breach and *rebus sic stantibus*. Egregious violations of human rights by the ruler would constitute a material breach of an agreement to rule or a fundamental change of circumstances. *Id.* at art. 29(2), 9. Violation of human rights would also contravene the object and purpose of the contract to rule. But such arguments still do not solve the question of how a state can evolve in a world where the only states that exist purportedly exist already. These arguments only address how to terminate the ruler-subject relationship, not how to create a valid person. *Id.* at art. 6.

76. See R. WHITEMAN, DIGEST OF INTERNATIONAL LAW 39 (vol. 13, 1968) (noting that the result of this normative vacuum is best seen in the ambiguity with which international law tackled the right to secede). First, international law concedes that no rule forbids revolutions within a state. *Id.* To regulate a domestic revolution would violate the maxim that international law is law between states, not persons. *Id.* at 40.

neously destroy and build.

The Preamble to the Universal Declaration of Human Rights recognizes the right to rebel against a government guilty of egregious violations of human rights.<sup>77</sup> Various international instruments enumerate international human rights. These include the International Bill of Rights,<sup>78</sup> the Convention on the Prevention and Punishment of the Crime of Genocide,<sup>79</sup> the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>80</sup> several regional instruments,<sup>81</sup> and pieces of national legislation.<sup>82</sup> These documents clearly set forth certain rights such as freedom from torture, detention without charges or trial and rights to life, liberty and security of persons; these rights are not to be violated under any circumstances because they constitute rules of *jus cogens*.<sup>83</sup> Accordingly, if the political establishment engages in violating these rights on a genocidal scale, the people may claim a right to self-determination through secession.<sup>84</sup> In addition, this right to se-

Thus, in the case of rebellion or civil war, international law would not intervene until the results were certain. *Id.*; see also *Aalands Islands Case*, League of Nations O.J. Supp. No.3, 6 (1920) (stating that when a state undergoes transformation or dissolution, its legal status is uncertain).

A vast body of law, the "international law of civil war", does relate the impact of civil war and international statist order. In the absence of interventionary questions, as in the situation of Somaliland, however, the international law of civil war is inapplicable. On the international aspects of civil war, see generally *THE INTERNATIONAL LAW OF CIVIL WAR* (Richard A. Falk, ed. 1971).

77. G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948); see also LUIS KUTNER, *DUE PROCESS OF REBELLION* (1974) (positing that human rights need to be legally protected, otherwise rebellion is forced upon the people).

78. See *THE INTERNATIONAL BILL OF RIGHTS* (L. Henkin, ed., 1981) (listing the documents included in the International Bill of Rights as: the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights).

79. *Adopted* Dec. 9, 1948, *entered into force* Jan. 12, 1951, 78 U.N.T.S. 277.

80. *Opened for signature* Mar. 7, 1966, *entered into force* Mar. 12, 1969, 660 U.N.T.S. 195.

81. *Convention for the Protection of Human Rights and Fundamental Freedoms*, signed Nov. 4, 1950, *entered into force* Aug. 11, 1955, 213 U.N.T.S. 22; *American Convention on Human Rights*, signed Nov. 22, 1969, *entered into force* July 18, 1978, Series No. 36 at 1; *African (Banjul) Charter on Human and Peoples' Rights*, adopted June 27, 1981, *entered into force* Oct. 21, 1986, OAU Doc. CAB/LEG/67/3/Rev. 5 (1981) *reprinted in* 21 I.L.M. 59 (Jan. 1982).

82. 22 U.S.C. § 2304 (1988); 22 U.S.C. § 2151(n) (1988).

83. See e.g., *RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE U.S.* § 702 (1987) (reciting the rights which are considered *jus cogens*).

84. Ved P. Nanda, *Self Determination Under International Law: Validity of*

cede acquires greater legitimacy if the pattern of human rights violations indicates an attempt by the state to decimate a distinctly identifiable group.<sup>85</sup>

Siad Barre's regime killed, tortured and imprisoned thousands of Somalis over the years.<sup>86</sup> His government looted and destroyed private property through the security apparatus established with the help of the former German Democratic Republic and the KGB.<sup>87</sup> Barre unleashed the full fury of his regime's thuggery against the wealthier and independent Isaq clan in Somaliland.<sup>88</sup> The human rights violations included summary executions, rape, torture, imprisonment, or detention without charges or trial, and the theft of private property.<sup>89</sup> The genocidal attack on the Isaq clan intensified with the military bombing and shelling of the northern cities, Hargeisa and Burao.<sup>90</sup> The government staged a selective campaign to burn down Isaq towns.<sup>91</sup> During the course of the 1988 civil war, 50,000 people were killed and another 500,000 were

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*Claims to Secede*, 13 CASE W. RES. J. INT'L L. 257 (1981) [hereinafter *Claims to Secede*]; BUCHHEIT, *supra* note 73; see also Antonio Cassese, *Political Self Determination - Old Concepts and New Developments*, in UN LAW/FUNDAMENTAL RIGHTS 155-57 (Antonio Cassese ed. 1979) (noting that a state which oppresses its peoples violates not only the rights of the members, but also the rights of the international community); JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 247-70 (1979) (examining the right to secession in creating statehood); Ved P. Nanda, *Self Determination Outside the Colonial Context: The Birth of Bangladesh in Retrospect* in SELF DETERMINATION: NATIONAL, REGIONAL AND GLOBAL DIMENSIONS 193-220 (Yonah Alexander and Robert A. Friedlander eds., 1980) (arguing that a claim for self-determination should be awarded legitimacy if a group is subjected to "alien subjugation, domination and exploitation").

85. *Claims to Secede*, *supra* note 84, at 278.

86. *Somali Army Killed up to 60,000 Civilians in North, Reports Says*, Reuters, Jan. 18, 1990, available in LEXIS, Nexis Library, Reuters File.

87. See Rakiya Omaar, *Diminishing Prospects*, W. AFR. 182, 192-83 (Feb. 3-9, 1992) (discussing the savagery of Siad Barre's regime); Richard Greenfield, *Siad's Sad Legacy*, AFR. REP. 13, 15 (March-April, 1991) (noting that the German Democratic Republic and the KGB supported Barre's regime financially); FOREIGN AREA STUDIES, *supra* note 8, at 198-99 (stating that the right of habeas corpus was abolished in October 1970).

88. *Somalia: Observations Regarding the Northern Conflict and Resulting Conditions*, United States General Accounting Office, Report to Congress, at 2 (May, 1989) [hereinafter GAO Report].

89. *Id.* at 2-3.

90. MARIA BONGARTZ, *THE CIVIL WAR IN SOMALIA: ITS GENESIS AND DYNAMICS* 13 (1991).

91. See AFRICA WATCH, *supra* note 5, at 131 (recounting the story of a survivor of the regime's attack on the Isaq towns).

forced to flee to Ethiopia.<sup>92</sup> Government forces also laid over a million unmarked land mines in the North.<sup>93</sup> These acts flagrantly violated not only human rights norms but also humanitarian norms relating to the protection of victims of non-international armed conflicts.<sup>94</sup> The attempt to annihilate the Isaq also had economic dimensions. The government diverted development investment<sup>95</sup> and livestock trade from the north.<sup>96</sup>

## B. SELF-DETERMINATION

In light of these massive and egregious violations of human rights and the genocidal repression of the North, the people of the former state of Somaliland declared independence in 1991. By declaring independence, the people of Somaliland exercised their inherent right of self-determination.

### 1. Nature of "Self" in Self-Determination

The difficulty in defining "self" in self-determination is evinced by a comment by I.W. Jennings who said that self-determination is nonsensical because the people cannot exercise the right to decide until someone else determines who constitutes the people.<sup>97</sup> Such a claim stems from the positivist belief that the membership in the international community is restricted to already-existing states in law and fact.<sup>98</sup> The right to acquire legal status creates, in Fitzmaurice's words, a "logical impasse" because such a right cannot vest in any extralegal entity.<sup>99</sup> As a result,

92. See AFRICA WATCH, *supra* note 5, at 171-92 (describing the flight of the people as the fighting intensified).

93. DRYSDALE, ANATOMY OF SECESSION, *supra* note 4, at 18.

94. See Protocol II, Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, opened for signature Dec. 12, 1977, entered into force Dec. 7, 1978, UN Doc. No. A/32/144 (1977), Art. 4 (outlining duties by states regarding protection of victims of non-international armed conflicts).

95. See DRYSDALE, ANATOMY OF SECESSION, *supra* note 4, at 16 (reporting that in 1987-1989, only US \$91 million out of a total of US \$1.43 billion, or 6.4% was distributed to the five regions that now constitute Somaliland).

96. BONGARTZ, *supra* note 90, at 22.

97. A. RIGO SUREDA, THE EVOLUTION OF THE RIGHT OF SELF-DETERMINATION 28 (1973) (quoting I.W. JENNINGS, THE APPROACH TO SELF-GOVERNMENT 55, 56 (1956)).

98. Nathaniel Berman, *Sovereignty in Abeyance: Self-Determination and International Law*, 7 WIS. INT'L L. J. 51, 60-62 (1988).

99. See Sir Gerald Fitzmaurice, *The Future of Public International Law and the*

the birth of a state lies outside international law until a new situation has been definitely established, and the situation is normal in terms of territorial sovereignty.<sup>100</sup> Once such a definitive new situation has been established in law and fact, a state becomes a member of the international community.<sup>101</sup> This view leads, in turn, to the constitutive view of recognition whereby the act of recognition determines temporally the birth of a state.<sup>102</sup> Despite the seemingly irrefutable logic of the positivist argument, the inevitability of a logical impasse is not readily apparent. If only entities that are already members have a right to become members, the existence of such a right becomes redundant.<sup>103</sup> In other words, a right to acquire legal status - a right to self-determination - can by definition, vest only in an entity that *lacks* legal status.<sup>104</sup> Viewed this way, no logical impasse occurs and the positivist objections seem less relevant. Similarly, Lauterpacht argues, that the duty to recognize carries a correlative right that, although imperfect, can still vest in an entity not yet recognized.<sup>105</sup>

At the other end of the spectrum lies the claim that the right to self-determination must be viewed as a distinct historical phenomenon, and that its validity depends on the extent of domination.<sup>106</sup> The Fitzmaurice thesis views international community along a horizontal axis,<sup>107</sup> whereas the latter postulates a vertical approach.<sup>108</sup> The

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*International Legal System in the Circumstances of Today* in INSTITUT DE DROIT INTERNATIONAL, EVOLUTION ET PERSPECTIVES DU DROIT INTERNATIONAL 196, 233 (1973) (quoted in Berman, *supra* note 98, at 60-62) (stating that it is difficult to refer to an entity unless it already exists, and "that it makes little juridical sense to speak of a claim to become one, for in whom or what would the claim reside?").

100. *Id.*

101. *Id.*

102. See LAUTERPACHT, *supra* note 22, at 38-41 (discussing the development of theories of recognition of new states in international law).

103. Berman, *supra* note 98, at 62.

104. LAUTERPACHT, *supra* note 22, at 38-39. This positivist argument is grounded upon the view that a right to acquire legal status is somehow necessary or expedient. *Id.*

105. *Id.* at 74.

106. Berman, *supra* note 98, at 64. This idea is a variant of the "equality theory" of self-determination. *Id.*

107. See Berman, *supra* note 98, at 61-64 (examining Fitzmaurice's theory of states' rights to self-determination).

108. See Berman, *supra* note 98, at 66-67 (exploring W. Ofuatey-Kodjoe's arguments for implementing a vertical approach in giving or denying a state the right of self-determination).

historical approach, while conceding that people of a given territory could claim the right to self-determination, introduces "subjugation" as a prerequisite to self-determination.<sup>109</sup> Such a view suffers from the logical inconsistency that subjugation exists only in the context of colonialism and that colonialism no longer exists.<sup>110</sup> If correct, using subjugation as the prerequisite for self-determination is *passé* unless subjugation extends to non-colonial situations.

These two theories about the nature of self-determination coincide with the competing definitions of "self": one subjective and the other, objective.<sup>111</sup> The subjective view considers factors internal to a people,<sup>112</sup> and the objective approach depends on external criteria that apply to a new state whether or not the people consent.<sup>113</sup> The Fitzmaurice thesis would seem to fit in well with the objective conception of self, since criteria such as territory, culture, recognition and the like, qualify a people for the right to self-determination.<sup>114</sup> On the other hand, a subjective theory would accept such factors as political struggle and domination.<sup>115</sup> Yet, each category is not impervious to the other. There exists a complex dynamic in the tension between the subjective and objective theories. This tension suggests alternative solutions to controversies such as that of Somaliland where traditional law suspends its operation. Indeed, the debate about "self"<sup>116</sup> contrasts alternative

109. Berman, *supra* note 98, at 67.

110. Berman, *supra* note 98, at 67. Otuatye-Kodjoe recognizes that the notion of subjugation loses meaning with the demise of colonialism, but asserts that until non-colonial groups can press their claims in the international political arena; the subjugation doctrine remains valid. *Id.* This view is a revival of the Fitzmaurice thesis that those who have legal rights are already present internationally, and are pressing claims of self-determination. *Id.*

111. BUCHHEIT, *supra* note 73, at 9-11. According to the subjective view, a group of people may claim a right to self-determination when they perceive themselves as an independent political entity. *Id.* at 10. Such a definition of the right to self-determination is unstable because perceptions of people differ and change. *Id.* In contrast, the objective view maintains that the right belongs only to people showing objective commonalities, such as religion, geography, economics, language, and a history of independence. *Id.* at 10-11.

112. *Id.* at 14. The internal factors of self-determination include a people's claim of right to influence the political decisions in their community. *Id.*

113. FITZMAURICE, *supra* note 99, at 241. External criteria for self-determination may require that a new state join with other nations in consenting to equal restraint under law. *Id.*

114. BUCHHEIT, *supra* note 73, at 10.

115. BUCHHEIT, *supra* note 73, at 8. Subjective factors of self-determination may include aspiring to self-govern even if freedom leads to an impoverished existence. *Id.*

116. FITZMAURICE, *supra* note 99, at 237-39. Orthodox disapproval of subjective



forms and bases of international law.<sup>117</sup>

The concept of self-determination has been part of intellectual discourse for centuries. The French Revolution provides early examples of arguments over the principle of self-determination.<sup>118</sup> Both Woodrow Wilson of the United States<sup>119</sup> and Vladimir Lenin of the former Soviet Union<sup>120</sup> popularized the concept around the turn of this century. After lying dormant during the period between World Wars I and II,<sup>121</sup> the principle again acquired currency in the Atlantic Charter in 1941<sup>122</sup> and was incorporated in the Charter of the United Nations.<sup>123</sup> Numerous

factors may consist of mere devices to protect established self interests. *Id.* at 238. If peace in an international community, however, requires consent to common rules, then a new nation must by some process accommodate the tension between self-interest and community interest. *Id.* at 239. Legal resolution of this tension depends on the jurist's particular historical view and resulting choice of either community interest or self-interest as a disruption of the natural process. Berman, *supra* note 98, at 105.

117. Berman, *supra* note 98, at 99-103. Parties in a controversy over secession will present opposing definitions of "self" and will propose contrasting bases for the international law regarding disruptive political events. *Id.* at 103.

118. MALCOLM SHAW, *TITLE TO TERRITORY IN AFRICA* 59 (1986).

119. 53 CONG. REC. 8854 (1916). President Woodrow Wilson advocated that a people has a right to choose the government under which they live. *Id.* At the Versailles Peace Conference following World War I, President Wilson promoted ideals of self-determination. MICHELA POMERANCE, *SELF DETERMINATION IN LAW AND PRACTICE: THE NEW DOCTRINE IN THE UNITED NATIONS* 2 (1986). These ideals, however, made a compromise in facing the essential dilemma of self-determination: that recognition of rights under one definition of self required denying self-determination under the opposing definition of self. *See id.* at 2-3 (describing the preference of power for indigenous peoples over recent settlers to a region).

120. V.I. LENIN, *CRITICAL REMARKS ON THE NATIONAL QUESTION: THE RIGHT OF NATIONS TO SELF-DETERMINATION* 110 (1968). Lenin advocated the right to agitate for secession and hypothesized that granting freedom to secede would reduce the demand to secede. *Id.*

121. *See* SHAW, *supra* note 118, at 60 (recognizing that self-determination does not appear in the final draft of the Covenant of the League of Nations despite Wilson's advocacy).

122. *See* SHAW, *supra* note 118, at 61 (noting the inclusion of the right to self-determination in the Atlantic Charter).

123. U.N. CHARTER art. 1, para. 2. The Charter establishes that international relations rest upon the principles of equal rights and the right to self-determination. *Id.* Similarly, the Charter recognizes that economic and social justice among nations is necessary to make self-determination credible. U.N. CHARTER art. 55. The Soviet Union introduced the Charter's commitment to self-determination during the San Francisco Conference of 1945. RUTH B. RUSSELL, *A HISTORY OF THE UNITED NATIONS CHARTER* 810-11 (1958). The prior Dumbarton Parks Proposals did not recognize a right to self-determination. *Id.* at 810.

U.N. General Assembly Resolutions,<sup>124</sup> the International Bill of Rights,<sup>125</sup> and many decisions of the International Court of Justice<sup>126</sup> recognize the right of self-determination. Despite the convincing argument that self-determination should be a general right,<sup>127</sup> a penumbra of uncertainty still surrounds the concept.<sup>128</sup> International jurists agree generally that peoples dominated by geographically distant powers have a right to self-determination.<sup>129</sup> The traditional anti-colonial interpretation of self-determination,<sup>130</sup> however, was inappropriate when colonialism disappeared<sup>131</sup> even though claims to self-determination contin-

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124. See G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. No. 16, at 67, U.N. Doc. A/4684 (1960) (declaring that subjecting peoples to alien domination is contrary to the United Nations Charter and affirming that a people has the right to self-determination even if a dominant nation might argue that the people are not politically or economically prepared for self-determination); G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, at 123-24, U.N. Doc. A/8028 (1970) (attesting to the duty of every state to promote the realization of self-determination by peoples in bringing a speedy end to colonialism).

125. See *supra* note 78 (recounting the documents that comprise the International Bill of Rights).

126. See Namibia Advisory Opinion, 1971 I.C.J. 16, 31 (June 21) (applying the principle of self-determination to all non-self-governing territories); Western Sahara Advisory Opinion, 1975 I.C.J. 12, 31 (Oct. 16) (noting the extension of self-determination to end colonial situations); see also AURELIU CRISTESCU, THE RIGHT TO SELF-DETERMINATION: HISTORICAL AND CURRENT DEVELOPMENT ON THE BASIS OF UNITED NATIONS INSTRUMENTS ¶¶ 136, 151, 153, at 22-23 (1981) (summarizing that, though not compelling as a general principle of law, the concept of self-determination provides an active rule in contemporary international law).

127. See BUCHHEIT, *supra* note 73, at 126 (concluding that international jurists cannot disregard the claim of the right to self-determination, and consequently, jurists must develop a workable method of distinguishing genuine from false claims of the right).

128. See POMERANCE, *supra* note 119, at 73 (discussing the intellectual validity of the right to self-determination). International jurists must resolve uncertainties and discrepancies between the concepts of self-determination, democracy, and legitimate representation. *Id.* at 75.

129. See BUCHHEIT, *supra* note 73, at 17. Some jurists, attempting to limit the effect of the right to self-determination, declared an objective "salt water" test which required that a people would have a legitimate claim to self-determination if a body of salt water separated the seceding people from the governing power. *Id.* at 18.

130. See G.A. Res. 1514, *supra* note 124, at 67 (requiring that nations take immediate steps to transfer power of self government to non-self-governing territories); CRISTESCU, *supra* note 126, ¶ 149, at 23 (recognizing G.A. Resolution 1514 as a milestone in hastening the process of self-determination among peoples); Western Sahara Advisory Opinion, 1975 I.C.J. 12, 31 (Oct 16) (postulating that G.A. Resolution 1514 terminates the claim of legitimacy for colonial situations).

131. See BUCHHEIT, *supra* note 73, at 18-19 (describing the popular expectation of

ue to arise throughout the world.<sup>132</sup> In order to retain its place in the realm of international relations, self-determination doctrine must adopt to modern circumstances where local governments, not distant powers, repress independent peoples.<sup>133</sup>

The subjective and objective notions of self provide a basis for discourse.<sup>134</sup> Neither notion of self taken individually, however, explains the rhetoric and practice of self-determination, especially in the context of Somaliland. The following sections propose a three-tiered argumentative structure that accommodates the peculiarities of Somaliland. First, even when a state forms through processes of severe international political dislocation, international law has competence to determine the state's status through the tool of self-determination. Second, during such determination, the unit seeking international status is quasi-sovereign in nature. Third, the subjective and objective theories of self are complimentary rather than mutually exclusive.

## 2. The Argumentative Structure and Application

In 1920, a distinguished Commission of Jurists appointed by the

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peoples that self-determination would apply even when the governing power was local, but contrasting the intent of dominant nations that movements of self-determination would end with the dissolution of colonial situations).

132. See RUPERT EMERSON, *SELF-DETERMINATION REVISITED IN THE ERA OF DECOLONIALIZATION* 52-53 (Harvard University Occasional Papers in International Affairs No.9, 1964) (commenting that, under decolonization pressures, England and Italy divested themselves of colonies and created political divisions that are hostile to the expressed desires of indigenous peoples to have a unified country); Elizabeth A. Pearce, *Self-Determination for Native Americans: Land Rights and the Utility of Domestic and International Law*, 22 COLUM. HUM. RTS. L. REV. 361, 388 (1991) (arguing that since the United States government has a history of making promises and breaking them, domestic obligations rather than international law should provide a basis for self-determination of native Americans); Michael S. Carter, *Ethnic Minority Groups and Self-Determination: The Case of the Basques*, 20 COLUM. J. L. & SOC. PROBS. 55, 85-86 (1986) (considering alternative forms of self-determination for the Basque region and concluding that, in this specific case, preservation of separate cultural heritages is the dominant concern); William T. Webb, *The International Legal Aspects of the Lithuanian Secession*, 17 J. LEGIS. 309, 328 (1991) (comparing domestic to international legal aspects of Lithuania's attempt at self-determination).

133. See POMERANCE, *supra* note 119, at 74 (insisting that the United Nations formulations of self-determination are dangerously simple and do not provide a realistic balancing of interests).

134. See BUCHHEIT, *supra* note 73, at 15-16 (remarking that the emotional appeal of self-determination challenges the vague legal concept of the objective definition of national identity).

League of Nations gave an opinion on a dispute between Finland and Sweden over the Aaland Islands.<sup>135</sup> Finland objected to international jurisdiction, arguing that questions of territory were matters of internal jurisdiction, whereas Sweden argued that Aaland Islanders had shown their desire to be united with Sweden through their political and military struggles.<sup>136</sup> The Jurists rejected Finland's objections and set forth certain observations about the nature of self-determination.<sup>137</sup> While acknowledging the complementary nature of fact and law in sovereignty during normal times,<sup>138</sup> they applied a distinction between fact and law during political upheavals.<sup>139</sup> According to the Jurists, the "essential basis"<sup>140</sup> of law is sovereignty during normal times, but at cataclysmic moments of a sovereign's birth or death, the legal situation is "obscure and uncertain",<sup>141</sup> and there is a transition from fact to law.<sup>142</sup> During this transition, the right to self-determination of people may come into existence.<sup>143</sup> To determine how the right can be exercised, the Jurists recounted the historical facts that indicated the nature of sovereignty over the Aaland Island.<sup>144</sup> This argumentative pattern may be described as a mixture of subjective and objective views of "self". In order to explain subjective facts, the Jurists employed objective criteria. This method is uniquely applicable to the crisis in Somaliland where there is a transition from fact to law.

Verzijl remarked that the Somali protectorate enjoyed a quasi-international status.<sup>145</sup> Such status derived from an inherent sovereignty in people,<sup>146</sup> a sovereignty that lies dormant until it expresses itself through the medium of self-determination. This argument is analogous to

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135. Aaland Islands, *supra* note 76, at 3.

136. Aaland Islands, *supra* note 76, at 3-5.

137. See e.g. VERZIJL, *supra* note 23, at 329 n.18. (discussing commentators' traditional view of this decision as one that rejected the existence of the legal right of self-determination). The validity or otherwise of this view however, is not relevant for this Comment's purposes, which is to use a particular argumentative structure of self-determination to place concrete facts in perspective.

138. Aaland Islands, *supra* note 76, at 5.

139. Aaland Islands, *supra* note 76, at 9.

140. Aaland Islands, *supra* note 76, at 6.

141. Aaland Islands, *supra* note 76, at 6.

142. Aaland Islands, *supra* note 76, at 6.

143. Aaland Islands, *supra* note 76, at 6.

144. Aaland Islands, *supra* note 76, at 7.

145. VERZIJL, *supra* note 23, at 70.

146. See DE VATTEL, *supra* note 71, at 20-24 (discussing the obligations sovereigns and citizens owe to one another).

Judge McNair's opinion in the *International Status of West Africa*,<sup>147</sup> which discussed the nature of sovereignty over a mandated territory.<sup>148</sup> Judge McNair declared that the goal of the mandate system is to revive sovereignty in the dependent peoples.<sup>149</sup> Since the ultimate goal of the mandate system was the self-determination and independence of the peoples effected,<sup>150</sup> *a fortiori*, one can conclude that the denial of human rights leads to the people's revival of their sovereignty through self-determination. In other words, the denial of a people's *internal* self-determination<sup>151</sup> leads to the revival of their *external* right of self-determination.

As discussed above, this analysis of self-determination can be usefully employed in the political vacuum created by former Somalia's disintegration and Somaliland's declaration of independence. Objective criteria reveal the people of Somaliland to be ethnically distinct,<sup>152</sup> culturally separate,<sup>153</sup> and historically unique.<sup>154</sup> Subjective factors also exemplify the uniqueness of their battle, first against the British colonizers and then against Said Barre's despotic regime. Both the objective and subjective factors combine to influence the discussion concerning the right of the people of Somaliland to determine their legal status.<sup>155</sup>

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147. *International Status of South-West Africa*, 1950 I.C.J. 128 (July 11).

148. *Id.* at 154.

149. *Id.* at 150.

150. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Resolution 276, 1971 I.C.J. 16, 31 (June 21).*

151. *See CASSESSE, supra* note 84, at 137-65 (equating denial of human rights with denial of internal self-determination). The internal aspect of self-determination is a Wilsonian conception of democratic participation in government. *Id.*; *see also* Buchheit, *supra* note 73, at 14-16.

152. Abdulkarim Ahmed Guleid and Jack L. Davies, *A Summary of the Political Situation in the Republic of Somaliland and the Former Italian Somaliland*, at 7, Mar. 9, 1992 (on file with the American University Journal of International Law and Policy); *see* LAITIN, *supra* note 3, at 21-24 (discussing the importance of membership in clans to the Somali); *see also* Bongartz, *supra* note 90, at 11 (mapping out the distribution of clans in Somalia).

153. DRYSDALE, *ANATOMY OF SECESSION, supra* note 4, at 1-4. The northern clans, including the Isaq, are nomadic whereas the southern clans, in general, are farmers. LEWIS, *supra* note 28, at 23-24.

154. *Somalia, Economist Intelligence Unit Profile 1991-1992* at 32-34.

155. *See Western Sahara, 1975 I.C.J. 12, 100 (Oct. 16)* (separate opinion by Vice-President Ammoun) (employing both objective and subjective criteria in discussing the legal ties between Morocco and Western Sahara); *see also* *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa)*

Since Somaliland is entitled to exercise the right to self-determination, the appropriate mode of self-determination needs to be addressed. General Assembly Resolution 1514 provided for three legitimate methods of decolonization.<sup>156</sup> In addition a strong presumption exists in favor of independence and bestowal of statehood in self-determination situations.<sup>157</sup> There is no reason to deny Somaliland statehood. Somaliland's need for self-determination and independence is especially valid because nationhood may assist Somaliland in resolving longstanding regional disputes with Ethiopia and Djibouti.<sup>158</sup>

### C. INDIGENOUS RIGHTS

The U.N. Working Group on Indigenous Populations wants to declare 1993 as the Year of Indigenous Peoples.<sup>159</sup> The current interest in indigenous rights is not a fad,<sup>160</sup> but is traceable to Vitoria<sup>161</sup> and

notwithstanding Security Resolution 276, 1971 I.C.J. 16, 31 (separate opinion by Vice-President Ammoun) (interpreting the Covenant in light of the subjective criteria as well as objective criteria); Berman, *supra* note 98, at 96-103.

156. G.A. Res. 1514, 15 U.N. GAOR, Sess. 15, Supp. No. 16, at 29, U.N. Doc. A/4684 (1960) (delineating independence, free association, or integration with an existing state as the three modes).

157. See Berman, *supra* note 98, at 55 (examining the central elements of self-determination).

158. *Somalia: One State or Two?*, 32 AFRICA CONFIDENTIAL No. 12 (1991); see also DRYSDALE, ANATOMY OF SECESSION, *supra* note 4, at 32 (discussing the relations between Somaliland and Ethiopia and Djibouti).

159. See Raidza Torres, *The Rights of Indigenous Populations: The Emerging International Norm*, 16 YALE J. INT'L L. 127 (1991) (noting that 1993 may be declared the Year of Indigenous Peoples).

160. See WOLFGANG HEINZ, FREE UNIVERSITY BERLIN, INDIGENOUS POPULATIONS, ETHNIC MINORITIES AND HUMAN RIGHTS (Berliner Studien zur internationalen Politik, No. 10, 1988) (discussing the response of international human rights organizations to human rights violations against indigenous populations); INTERNATIONAL LAW AND ABORIGINAL HUMAN RIGHTS (Barbara Hocking ed., 1988) (commenting on territorial rights of Australia's aboriginal populations); S. James Anaya, *The Capacity of International Law to Advance Ethnic or Nationality Rights Claims*, 75 IOWA L. REV. 837 (1990) (commenting on the ability of international legal institutions to accommodate claims of indigenous groups for ethnic self-determination); S. James Anaya, *The Rights of Indigenous Peoples and International Law in Historical and Contemporary Perspective*, HARVARD INDIAN LAW SYMPOSIUM 191 (1990) [hereinafter Anaya, *Rights of Indigenous Peoples*]; Carter, *supra* note 132 (presenting a case study of the Basques as an example of an indigenous population struggling for a legal right to self-determination); Robert N. Clinton, *The Rights of Indigenous Peoples as Collective Groups Rights*, 32 ARIZ. L. REV. 739 (1990) (discussing human rights as a concept

Grotius.<sup>162</sup> The early decisions of Chief Justice John Marshall of the United States Supreme Court also contained these broad and universalist conceptions.<sup>163</sup> The wave of positivism that followed stifled interest in indigenous rights by stressing state-centered, consensual, sovereign bases of international law.<sup>164</sup> The positivist doctrinal tools used to exclude indigenous peoples included recognition<sup>165</sup> and occupation of *terra nullius*.<sup>166</sup> The efforts<sup>167</sup> to exclude indigenous peoples from the political decision making process were contrary to earlier international scholarship<sup>168</sup> and judicial decisions.<sup>169</sup> The reemergence of interest in in-

understood by indigenous populations to mean collective group rights); Phillip J. Smith, *Indian Sovereignty and Self-Determination: Is a Moral Economy Possible?*, 36 S.D. L. REV. 299, 320-23 (1991) (stating that the international community is starting to show signs of support for indigenous self-determination); Elizabeth A. Pearce, *Self-determination for Native Americans: Land Rights and the Utility of Domestic and International Law*, 22 COLUM. H. RTS. L. REV. 361, 385-389 (1991) (advocating an expanded right to self-determination for Native Americans).

161. See FRANCISCUS DE VITORIA, *DE INDIS ET DE IVRE BELLE RELECTIONES* 27-28 (Ernest Nys ed. & John Pawley Bate et al. trans., Carnegie Institute of Washington 1917) (n.p. 1557) (arguing that the Indians of the Americas were the true owners of their lands).

162. See HUGO GROTIUS, *THE FREEDOM OF THE SEAS* 1-2 (James Brown Scott ed. & Ralph Van Deman Magoffin trans., Oxford University Press 1916) (n.p. 1608) (arguing that every individual possesses an inherent right to self-determination); GROTIUS, *supra* note 71, at 550 (rejecting the concept that title to land is granted by virtue of discovery of land).

163. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832) (acknowledging native tribes as nations and analogizing discrete tribes to the feudal states of Europe).

164. See WESTLAKE, *supra* note 38, at 136-45 (discussing the territorial rights of Western settlers to lands occupied by uncivilized natives).

165. See LASSA FRANCIS LAWRENCE OPPENHEIM, 1 *INTERNATIONAL LAW* 134-35 (Ronald F. Roxburgh ed., 3d ed. 1920) (stating that the law of nations does not apply to "organized wandering tribes").

166. See CHARLES CHENEY HYDE, 1 *INTERNATIONAL LAW AS CHIEFLY INTERPRETED AND APPLIED BY THE UNITED STATES* 175 (1922) (explaining that because indigenous populations have no property rights a conqueror may occupy and assume title of the land); WESTLAKE, *supra* note 38, at 155-60 (examining treaty establishment and land titling as two means employed by Western settlers to gain possession of land occupied by uncivilized natives).

167. See *Cayuga Indians (Gr. Brit. v. U.S.)* 6 R.I.A.A. 173, at 174 (1926) (declaring that an Indian tribe is not a legal unit in international law); *Island of Palmas (Neth. v. U.S.)*, 2 R.I.A.A. 831 (1928) (denying international legal status to tribal treaties); *Legal Status of Eastern Greenland (Den. v. Nor.)*, 1933 P.C.I.J. (ser. A/B) No. 53 (dissociating the Eastern Greenland natives' presence from questions of territorial sovereignty).

168. See *supra* notes 161-71 and accompanying text (explaining earlier intellectual

indigenous rights is an effort to restore international law to its roots.

The inclusion of self-determination in the international legal lexicon and the anticolonialist drive in the 1960s are arguably the intellectual origins of this restorative process.<sup>170</sup> As a result of increased activity by advocacy groups, indigenous rights began to emerge as a legal norm after 1972.<sup>171</sup> The norm, as it emerged, emphasized cultural protection, aboriginal land issues, welfare programs and self-determination.<sup>172</sup> The International Labor Organization (ILO) amended an earlier 1957 Convention<sup>173</sup> to reject that Convention's assimilationist approach to indigenous populations.<sup>174</sup> Additionally, a Working Group on Indigenous Peoples by the Economic and Social Council was established in 1982.<sup>175</sup> A recent United Nations study<sup>176</sup> defines an indigenous population as non-dominant sectors of society, distinct from minorities, who emphasize their ties to territories based on their original occupation and historical experience.<sup>177</sup> The people of Somaliland fulfill all the criteria of an indigenous people. Somaliland is mainly comprised of one ethnic group, Isaq, that has lived there for more than 400 years.<sup>178</sup> Members of the Isaq clan possess a unique history and are culturally distinct.<sup>179</sup> As a

interest in recognizing the rights of indigenous populations to self-determination).

169. See *Worcester*, 31 U.S. (6 Pet.) at 521 (prohibiting non-natives from residing on land occupied by Cherokee Indian tribe); *Western Sahara*, 1975 I.C.J. 12, 39 (Oct. 16) (holding that land occupied by tribes is not *terra nullius*).

170. See Smith, *supra* note 160, at 320-21 (tracing principles established in the 1960s and 1970s of the United Nations that led to increased recognition of indigenous populations' right to self-determination).

171. See Torres, *supra* note 159, at 151 (discussing the role of advocacy groups played in obtaining human rights protection for indigenous populations).

172. Torres, *supra* note 159, at 157. During the 1970s and 1980s a number of resolutions and declarations were adopted at non-governmental and governmental levels. *Id.* at 156-57; see also Pearce, *supra* note 160, at 378-79 (reviewing the development of international instruments that protect the rights of indigenous peoples).

173. International Labour Organisation Convention (No. 107) Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries, June 26, 1957, 236 U.N.T.S. 247.

174. International Labour Conference Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, 38 I.L.M. 1384 (1989).

175. E.S.C. Res. 34, U.N. ESCOR, 1st Sess., E/1982/82 (1982).

176. Study of the Problem of Discrimination against Indigenous Populations, U.N. Subcommission on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub. 2/1986/7/Add. 1-4 (1987).

177. *Id.*

178. See LEWIS, *supra* note 28, at 23-24 (reviewing the history of the Isaq migration to the area in Somalia they now occupy).

179. See LEWIS, *supra* note 28, at 23-24 (describing the settlement of the Isaq in



result, the people of Somaliland can exercise the right of self-determination that inheres in every indigenous group.<sup>120</sup>

### III. The Arguments for Recognition

Recognition is one of the central elements of a consensual international order.<sup>181</sup> As a tool of international relations, recognition has played a critical part in the history of colonization by providing an exclusionary mechanism for European states.<sup>182</sup> In contemporary international law, the role of recognition is much less significant, and is pertinent only insofar as it allows a people to internationalize their claims.

#### A. THE ROLE OF RECOGNITION

Traditionally, two theories of recognition exist. Under the constitutive theory, new states derive their existence in accordance with the will of those already established,<sup>183</sup> so a state becomes an international person only through recognition.<sup>184</sup> The declaratory theory, on the other hand, holds that once a state satisfies the criteria of statehood it becomes a subject of international law,<sup>185</sup> and recognition merely serves as a political act of no legal significance.<sup>186</sup> The constitutive view as formulated, suffers from several defects. State practice seems to contradict the view that prior to recognition no legal person exists,<sup>187</sup> and the constitutive

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the Horn of Africa).

180. See Anaya, *Rights of Indigenous Peoples*, *supra* note 160, at 218-24 (explaining the debate in terms of the association of the word "people" with independent statehood). The lack of clarity in interpreting the word "people" should not deter the Isaq clans from exercising their right to self-determination. The Isaq's possession of this right clearly contemplates statehood, though not as a necessary corollary to self-determination. The Isaq clans must contemplate statehood in light of the disintegration of the former Somalia.

181. BLUM, *HISTORIC TITLES IN INTERNATIONAL LAW* 49 (1965).

182. See OPPENHEIM, *supra* note 165, at 134-39 (defining and discussing the concept of recognition in international law as it relates to civilized nations).

183. LAUTERPACHT, *supra* note 22, at 38.

184. See OPPENHEIM, *supra* note 165, at 121 (noting the quasi-judicial role existing states have in determining whether new states have satisfied the conditions of statehood).

185. LAUTERPACHT, *supra* note 22, at 41-42.

186. See LAUTERPACHT, *supra* note 22, at 41-42 (noting that the establishment of diplomatic relations is the only legal effect of recognition).

187. Aaland Islands, *supra* note 76, at 8; BROWNLIE, *supra* note 19, at 94 (ob-

view does not cope with the status and obligations of an unrecognized state.<sup>188</sup> The main weakness of the declaratory view is that it relegates the act of recognition to that of a mere act of political will and makes it superfluous.<sup>189</sup> Other variants of these theories exist. Lauterpacht suggested that once a state satisfies the criteria of statehood, a legal duty to recognize arises,<sup>190</sup> but state practice does not evidence this duty.<sup>191</sup> Nevertheless, as long as recognition remains discretionary, it remains outside the scope of law and, as a result, the characterization of recognition as constitutive or declaratory lacks utility.<sup>192</sup> Nonetheless, even though a duty to recognize may not exist, if an entity possesses attributes of statehood, other states may put themselves at risk if they fail to recognize the entity.<sup>193</sup>

This discussion of recognition leads to the question of whether Somaliland possesses the indicia of statehood. The 1933 Montevideo Convention on the Rights and Duties of States provides the classic definition of a state.<sup>194</sup> Under this convention, a state should possess a permanent population, a defined territory, a government, and the capacity to enter into relations with other states.<sup>195</sup> One may also add the qualification of self-determination to this definition.<sup>196</sup> Somaliland clearly possesses all of the above qualifications.

Finally, one must consider the question of whether the recognition of Somaliland constitutes premature recognition.<sup>197</sup> Many states consider

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servicing that recognition is often part of a state's political policy); *see also* AKEHURST, *supra* note 70, at 57-61 (noting that states use recognition to express approval of new states, or to take sides in a civil war).

188. *See* BROWNLIE, *supra* note 19, at 92 (noting that an unrecognized state is still considered by other states to be subject to rules of international law such as rules against the use of force).

189. *See* LAUTERPACHT, *supra* note 22, at 42 (discussing the lack of legal significance of recognition under the declaratory theory).

190. *See* LAUTERPACHT, *supra* note 22, at 73-75 (arguing that recognition simultaneously declares the fact of existence and is constitutive of legal consequences).

191. *See* BROWNLIE, *supra* note 19, at 94-95 (stating that express, public recognition is optional).

192. *See* LAUTERPACHT, *supra* note 22, at 76 (suggesting that recognition is an indispensable prerequisite for statehood).

193. BROWNLIE, *supra* note 19, at 94.

194. Convention on Rights and Duties of States Adopted by the Seventh International Conference of American States, Dec. 26, 1933, 165 L.N.T.S. 19, 25.

195. *Id.* art. 1.

196. *See* BROWNLIE, *supra* note 19, at 593-96 (discussing several resolutions and opinions accepting self-determination as a legal principle).

197. *See* LAUTERPACHT, *supra* note 22, at 7-12 (defining premature recognition as

premature recognition an unfriendly act amounting to intervention.<sup>193</sup> The situation in Somaliland defies even a consideration of premature recognition, because a mother state does not exist to reassert control, and the SNM clearly has effective control over the territory.<sup>199</sup>

#### B. CONFORMITY WITH INTERNATIONAL LAW

Given Somaliland's strong claim for recognition under international law, one must briefly consider the possible objections to such recognition. For example, dismemberment of an existing state violates the Organization of African Unity's (OAU) policy of adherence to colonial boundaries<sup>200</sup> for recognition may trigger a Balkanization which would completely upset the existing boundary arrangements. Such a fear, however, is unfounded for many reasons. First, the OAU doctrine seeks to preserve colonial boundaries; the 1960 Somaliland "colonial" boundaries do coincide with the boundaries of Somaliland as it exists today.<sup>201</sup> Second, the OAU doctrine concerns itself with the preservation of boundaries and not with units of self-determination.<sup>202</sup> In other words, as long as there is no threat to interstate peace, OAU policy remains irrelevant to the discussion. Third, even if the colonial boundary policy is relevant, Somalia had rejected this OAU doctrine by its irredentist policies regarding the French Territory of the Afars and Isaas (Djibouti), the Ogaden (Ethiopia) and the North Eastern region of Kenya.<sup>203</sup>

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a term of art).

198. See LAUTERPACHT, *supra* note 22, at 8; see also OPPENHEIM, *supra* note 165, at 126 (noting that untimely recognition of a new state may offend the mother state). The test for premature recognition lies either in the fact that the revolutionary state has utterly defeated the mother state, or that the mother state has ceased to make efforts to subdue the revolutionary state, or even that the mother state, in spite of its efforts, is apparently incapable of bringing the revolutionary state back under its sway. OPPENHEIM, *supra* note 165, at 126; see also LAUTERPACHT, *supra* note 22, at 8 (discussing conditions of permanency for revolutionary states seeking recognition).

199. See *supra* note 16 and accompanying text (illustrating the SNM's exercise of control by declaring the former British Somaliland independent in 1991).

200. See OAU Resolution 16(1) of July, 1964 (holding that the colonial boundaries are sacrosanct and that new state boundaries should coincide with the colonial boundaries).

201. See Peter Biles, *Going It Alone*, 37 AFRICA REPORT 58, 61 (Jan.-Feb., 1992) (observing that the boundaries which divided British and Italian Somaliland have been used again in the creation of the new republic).

202. See LOUIS FITZGIBBON, *THE EVADED DUTY* 51 (1989) (recognizing the belief that the OAU charter freezes existing boundaries, but arguing that the charter does not prohibit boundary claims).

203. See MAKONNEN, *supra* note 42, at 462-69 (discussing boundary conflicts

Somaliland's emergence conforms with the OAU policy and could contribute to much needed regional stability, cooperation and economic development.<sup>204</sup>

Some experts argue that the recognition of Somaliland may violate the territorial integrity of Somalia, an act that international law prohibits.<sup>205</sup> Such an objection also seems to have no basis. First, the question of whether recognition will violate territorial integrity is necessarily bound with the issue of whether such recognition will be premature, and the previous section answered that question in the negative.<sup>206</sup> Second, when claims of territorial integrity clash with those of self-determination, United Nations practice allows the latter to trump the former.<sup>207</sup> This means that in self-determination situations, the wishes of the people concerned are the only relevant factor. Therefore, it is incumbent upon the international community to recognize Somaliland. Any effort to deny or delay 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 recognition entails.

### Conclusion

The tragedy in Somalia is apocalyptic in its dimensions and yet the international community has not stirred from its soporific stance of apathy. Andrew Natsios, the Assistant Administrator for Food and Humanitarian Assistance has expressed disappointment in the United Nations' failure to become engaged in Somalia.<sup>208</sup> While such humanitarian concerns continue to mount, the reduced strategic value that So-

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between Somalia and its neighbors).

204. See *Oil Hopes Hinge on North Somalia*, PETROLEUM ECONOMIST 19 (Oct. 1991) (noting the SNM's favorable policy towards foreign oil investment). A United Nations study determined that the region the SNM claims is oil prone. *Id.* at 19-20. The SNM has maintained contact with the oil companies that previously operated in the area before hostilities with the central government began. *Id.*

205. See U.N. CHARTER, art. 2, para. 4 (prohibiting the threat or use of force against the "territorial integrity or political independence" of member states); see also *id.* art. 2, para. 7 (proscribing United Nations intervention in domestic affairs).

206. See *supra* notes 197-99 and accompanying text (discussing recognition of states).

207. S.K.N. Blay, *Self-Determination Versus Territorial Integrity in Decolonization*, 18 N.Y.U.J. INT'L L. & POL. 441, 472 (1986).

208. Jane Perlez, *U.S. Increases Aid to Somalia After U.N. Balks*, N.Y. TIMES (Dec. 15, 1991), at § 1, p.6.

malia holds after the end of the Cold War explains the neglect displayed by the Western powers.<sup>209</sup> Such factors, however, should not obstruct the recognition of Somaliland as an independent state due to the internal and external peace-generating potential it holds.

The birth of Somaliland inevitably resulted from a combination of a distinct colonial experience, extreme economic exploitation and human suffering.<sup>210</sup> The irredentist policies of Somalia and the systematic discrimination bordering on genocide alienated the northern populations which never acceded to the Union in the first place. The international community has a rare opportunity to bring peace and prosperity to the Horn, before the warlords of butchery in Mogadishu wipe out the evanescent hopes of independence in Somaliland.<sup>211</sup> By a single act of recognition, the international community can end the sad saga of human suffering, enhance the prospects for peace in the region by putting an end to the Greater Somalia concept, and enable the people of Somaliland to reclaim their future.

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209. *Id.*

210. Biles, *supra* note 201, at 60 (quoting the Red Cross' description of the situation in Somalia as "a humanitarian disaster of the worst magnitude").

211. Letter from Omar Arteh Qalib, Prime Minister, Somalia, to his defense minister (on file with the authors). This letter discusses the "matter of ensuring continuous instability in Mogadishu" and refers to some "notables" who have been sent to Somaliland for the same purpose.