

# SOMALILAND: AN INJUSTICE PERPETUATED

*Bruce Beckman*\*

## ABSTRACT

*The Republic of Somaliland announced its independence in 1991, and despite the fact that it established stability in an otherwise unstable region, its independence has gone unrecognized by the international community. While other surrounding East African states have had their independence recognized and respected by the international community (both before and after the formation of the Republic of Somaliland), Somaliland has not been afforded the same treatment. While ostensibly defensible, the international community's reasoning for not recognizing Somaliland is unjust. This article will argue that two specific tenets of international law support Somaliland's independence. Somaliland's independence is supported by the theory of*

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\* A native of Randolph, New Jersey, Bruce Beckman holds an Honors B.A. in History and a B.S. in Labor and Employment Relations with concentrations in organizational leadership, unions & collective bargaining, and human resources from The Pennsylvania State University. At Rutgers Law School in Newark, New Jersey, Bruce is the commentaries editor of the Rutgers Journal of International Law and Human Rights. In law school, Bruce has worked in the nonprofit sector and as a judicial intern for The Honorable Judge James Deluca, New Jersey Superior Court. After law school, Bruce will be working as an associate in the trusts & estates department of Levene Gouldin & Thompson in New York.

*dissolution and succession. By understanding Somaliland's history and formation compared to other East African countries whose independence has been recognized by the international community as a whole in combination with the theories of dissolution and succession in international law, it becomes clear that it is unjust to withhold from Somaliland its right to recognition.*

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## INTRODUCTION

Somaliland's desire and ability to function as an independent state, the historic persecution of Somalilanders, and Somalia's long-term instability follow a pattern of accepted state recognition under international law that creates a clear and unequivocal case for Somaliland's recognition as a state. On May 18, 1991, the leaders of the Somali National Movement and the elders of the major northern Somali clans, intent on reestablishing the sovereignty and independence once granted to them by Britain, announced the unilateral declaration of independence of the Republic of Somaliland.<sup>1</sup> Since Somaliland's announcement, its independence has gone universally unrecognized by the international community.<sup>2</sup> This lack of recognition occurred while Somaliland established a stability unseen in much of the surrounding region, holding democratic elections and rebuilding an economy and infrastructure devastated by warfare.<sup>3</sup> In East Africa, numerous African states have secured recognition of their independence, both before and after Somaliland's declaration of independence.<sup>4</sup> Somaliland's independence challenges the norms of state creation. Its lack of international recognition,

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<sup>1</sup> MARK BRADBURY, *BECOMING SOMALILAND 1* (2008).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; Marc Lacey, *The Signs Say Somaliland, but the World Says Somalia*, N.Y. TIMES (June 5, 2006), <http://www.nytimes.com/2006/06/05/world/africa/05somaliland.html>.

<sup>4</sup> Alistair Boddy-Evans, *Chronological List of African Independence*, THOUGHTCO., <https://www.thoughtco.com/chronological-list-of-african-independence-4070467> (last updated Jan. 25, 2020); Patrick Worsnip, *South Sudan Admitted to U.N. as 193rd Member*, REUTERS (July 14, 2011, 3:24 PM), <https://www.reuters.com/article/us-sudan-un-membership-idUSTRE76D6F920110714>.

placed in the context of other sovereignty claims in East Africa, presents the injustice of maintaining that lack of recognition.

This note will first provide the historical setting for independence movements in Somaliland, Somalia, and East Africa, both before and after Somaliland's claim for independence. Next, this article will lay out the factual history of Somaliland's independence and lack of international recognition in the context of other East African countries' claims to sovereignty, followed by a discussion about sovereign recognition by international states and organizations, comparing Somaliland to its East African neighbors. Finally, this article will discuss the principles underlying the international community's refusal to recognize Somaliland, while arguing that general international legal principles and politics are producing injustice for Somaliland and East Africa.

### *I. HISTORY OF SOMALILAND, SOMALIA, AND EAST AFRICA*

Somaliland is primarily a dry, arid, and sparsely populated region in the Northwest of Somalia.<sup>5</sup> Its capital, Hargeisa, is Somaliland's largest city.<sup>6</sup> It is a self-declared country whose independence is unrecognized by the

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<sup>5</sup> I.M. LEWIS, A MODERN HISTORY OF THE SOMALI: NATION AND STATE IN THE HORN OF AFRICA 1-4 (4th ed. 2002).

<sup>6</sup> *Visiting Somaliland*, SOMALILAND LIAISON OFFICE, <https://somalilandliaison.com/visiting-somaliland> (last visited Feb. 25, 2022).

international community, with few exceptions.<sup>7</sup> Somaliland considers itself the successor to British Somaliland and the briefly independent State of Somaliland, which was independent from June 26 to July 1, 1960.<sup>8</sup> Somaliland declared its independence following the collapse of Somalia in 1991.<sup>9</sup> Despite its brief status as an independent state, international and African legal principles about secession block its recognition, an issue discussed in Section IV.

Somaliland today is an oasis of calm in a nation wracked by decades of constant conflict.<sup>10</sup> In a nation consistently listed as among the most fragile states on Earth, Somaliland has consistently been a source of stability.<sup>11</sup> Since Somalia collapsed in 1991, numerous segments of Somalia have established self-declared governments, warlords, Islamist states, and domestic and international forces have made numerous attempts to attain some level of stability in Somalia.<sup>12</sup> In the north, conversely, Somaliland has successfully rebuilt following Somalia's state collapse, and it has held consistent and stable popular elections, without foreign aid.<sup>13</sup> Unrecognized by the global community since it declared independence in 1991, Somaliland has a unique status

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<sup>7</sup> *Somaliland*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Somaliland> (last updated Feb. 7, 2022).

<sup>8</sup> See generally Seth Kaplan, *The Remarkable Story of Somaliland*, 19 J. OF DEMOCRACY 143 (2008).

<sup>9</sup> *Id.* at 143.

<sup>10</sup> BRADBURY, *supra* note 1, at 1.

<sup>11</sup> *Global Data (2020)*, THE FUND FOR PEACE: FRAGILE STATES INDEX, <https://fragilestatesindex.org/data/> (last visited Mar. 16, 2022).

<sup>12</sup> BRADBURY, *supra* note 1, at 49.

<sup>13</sup> *Id.* at 1, 4.

in East Africa for achieving a stable and democratic state.<sup>14</sup> Its existence challenges traditional notions of nation-building.

Next, looking at the clan structure of Somaliland, the region is primarily composed of five major clans.<sup>15</sup> The largest clan prior to Somaliland's union with the south was the Isaaq clan.<sup>16</sup> The Isaaq, a minority in the unified Republic of Somalia, returned to power in Somaliland when Somaliland broke from Somalia in 1991.<sup>17</sup> Clans of Somaliland also inhabit lands surrounding the State, including land in Ethiopia and Djibouti.<sup>18</sup> From 1980 to 1990, during the waning days of the military rule that dominated Somalia, clan politics and conflict returned to the nation following decades of suppression by its government.<sup>19</sup> Conflict that was stoked by the Mogadishu government, and out of a desire to retain power, caused clans that spread across Somalia following the creation of the unified state to close ranks and return to the lands traditionally associated with their lineages.<sup>20</sup>

Historically, Somalia in general and Somaliland specifically were "classic examples" of stateless societies prior to colonization.<sup>21</sup> Early Somali society had an extraordinarily

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<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.* at 52-53.

<sup>16</sup> Kaplan, *supra* note 8, at 148; ACAD. FOR PEACE AND DEV., PEACE IN SOMALIA: AN INDIGENOUS APPROACH TO STATE BUILDING 17-22 (Michael Walls ed., 2008), <https://media.africaportal.org/documents/Peace-in-Somaliland-an-indigenous-Approach-to-State-building-.pdf>.

<sup>17</sup> BRADBURY, *supra* note 1, at 52-53.

<sup>18</sup> LEWIS, *supra* note 5, at 1.

<sup>19</sup> BRADBURY, *supra* note 1, at 52-53.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 15.

conspicuous lack of administrative order.<sup>22</sup> Elders, impromptu committees made up of adult males with equal voting right, governed Somali society by consensus.<sup>23</sup> Somali society traditionally relied on customary law, unwritten agreements between clans that governed social disputes, similar to social contracts.<sup>24</sup> States and empires throughout history failed to significantly alter the decentralized pastoralist society in most of Somalia, until colonization in the late 19<sup>th</sup> century.<sup>25</sup> British Somaliland was in a unique position as a colonial State in East Africa in that it did not significantly alter the existing systems of decentralized authority that relied heavily on customary law.<sup>26</sup> In much of the rest of colonial East Africa controlled by other colonial powers such as Italy, including other regions of Somalia, the colonial authorities upended local tribal customs and instituted centralized forms of authority.<sup>27</sup>

Limited elements of Islamic sharia law were interwoven with customary law throughout Somalia when Islam swept through the eastern region of Africa.<sup>28</sup> The interspersed elements of sharia law, however, acted a part of and did not override existing Somali customary law.<sup>29</sup> Colonization subsequently considerably altered sharia law and applied secular law to Somali society.<sup>30</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 16.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 16-17.

<sup>26</sup> *Id.* at 24-25.

<sup>27</sup> *Id.* at 23-24.

<sup>28</sup> *Id.* at 17; *see also* LEWIS, *supra* note 5, at 1.

<sup>29</sup> BRADBURY, *supra* note 1, at 17.

<sup>30</sup> *Id.*



In British Somaliland, British common law was introduced by the colonial government.<sup>31</sup> This system of law introduced secular law into Somali society and began vesting formal authority into clan elders, beyond their traditional customary authority.<sup>32</sup> British common law mainly existed in the urban areas during Somaliland's colonial era due to the decentralized nature of much of the territory and the lack of British involvement.<sup>33</sup>

Post-independence, the people and leaders of Somaliland overwhelmingly supported unification with Somalia.<sup>34</sup> The goal of uniting a common ethnicity and culture promised to uplift the development of the largely ignored former British colony.<sup>35</sup> Soon after unification, however, challenges emerged. The Somali peoples adopted four legal systems prior to unification: British common law, Italian law, Somali customary law, and Sharia law.<sup>36</sup> The British, French, and Italian Somalia colonies each adopted different tribal systems and languages.<sup>37</sup> Clans that had been the dominant political force in smaller colonies were now minorities in the new unified nation of Somalia.<sup>38</sup> For example, in British Somaliland the Isaaq clan used to be the dominant holder of

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<sup>31</sup> *Id.*; Tristan McConnell & Narayan Mahon, *The Invisible Country*, 85 VA. Q. REV. 1, 2 (2009).

<sup>32</sup> British common law mainly existed in the urban areas during Somaliland's colonial era. BRADBURY, *supra* note 1, at 17.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 31-32.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 32; Paolo Contini, *Integration of the Legal Systems in the Somali Republic*, 16 INT'L & COMPAR. L. Q. 1088, 1088 (1967).

<sup>37</sup> BRADBURY, *supra* note 1, at 32.

<sup>38</sup> *Id.* at 31-32.

key administrative posts, but in unified Somalia, the clan became a minority in the government.<sup>39</sup> Many southern Somalis held a majority not only in the government, but also in the military, where southerners dominated senior military positions.<sup>40</sup> The imbalance of power that favored the southern Somalis as opposed to the northern Somalis was a direct consequence of Britain's lack of involvement or hands-off policy toward their colony, and post-unification, much of the development and power was concentrated.<sup>41</sup>

Somaliland attained its status as an independent nation briefly in 1960, after gaining independence from Britain and then joining the unified Somali Republic.<sup>42</sup> Once it joined the Somali Republic, it could make its first argument for recognition of its independence, as it has a clear historical claim as an independent nation with clear borders, a defined government and population, and international recognition. Despite these issues and discontent with the unification process of the former colonies into an independent nation, the election of an Isaaq and Somaliland's former premier, Mohamed Ibrahim Igal, as Prime Minister of Somalia in 1967 quelled dissent in Somaliland and kindled a sense of national unity amongst all Somalis.<sup>43</sup>

Somalia's experiment with democracy lasted only nine years.<sup>44</sup> From 1969 until 1990, the collapse of the State,

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<sup>39</sup> *Id.* at 33.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Brad Poore, *Somaliland: Shackled to a Failed State*, 45 STAN. J INT'L L. 117, 117 (2009).

<sup>43</sup> *Id.*; LEWIS, *supra* note 5, at 29.

<sup>44</sup> LEWIS, *supra* note 5, at 34.

Somalia was under military rule.<sup>45</sup> From 1976 until 1990, Major-General Mohamed Siad Barre ruled Somalia.<sup>46</sup> Barre's rule was characterized by a concentration of political and economic power that sowed the seeds of state collapse, as well as nurtured Somaliland's independence claims.<sup>47</sup> The zenith of the military regime's goals was the elimination of clan and tribal identities in Somalia.<sup>48</sup> Beginning in 1969, the Barre government replaced the clans' customary laws with secular laws, introducing punishments such as the death penalty to society at large.<sup>49</sup>

Barre's government, however, eventually returned to clan relationships as the administration's power declined.<sup>50</sup> After a disastrous war with Ethiopia from 1977 to 1978, the goal of a unified Somalia began to wane.<sup>51</sup> The Soviet bloc, which supported Somalia with foreign aid and provided a key source of revenue for the Barre government, switched its support to Ethiopia during the conflict.<sup>52</sup> American and Italian aid helped sustain a unified Somalia for another decade.<sup>53</sup> By the late 1980s, however, with the Cold War concluding, Western strategic interests in Somalia declined, foreign aid evaporated, and disaster soon followed.<sup>54</sup> By pitting clan

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<sup>45</sup> *U.S. Relations with Somalia*, U.S. DEPARTMENT OF STATE (Dec. 19, 2019), <https://www.state.gov/u-s-relations-with-somalia/>.

<sup>46</sup> *Id.*

<sup>47</sup> BRADBURY, *supra* note 1, at 36.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 36-44.

<sup>51</sup> LEWIS, *supra* note 5, at 239-42.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> BRADBURY, *supra* note 1, at 36-44.

relationships against one another, the Somalian government was able to buy time and retain some power.<sup>55</sup> The short-term result was the continuation of the military regime.<sup>56</sup> The long-term consequence was a resurgence of clan-based polity and identity, and the severing of the unity that held the nation together.<sup>57</sup>

Fourteen internationally brokered peace talks failed to create a unified Somalia.<sup>58</sup> Successive governments centered in Mogadishu, all recognized by the United Nations and the African Union as the legitimate government of Somalia, failed to unify the nation.<sup>59</sup> Regular, ongoing attempts by foreign militaries to intervene on behalf of the governments in Mogadishu have failed to bring long-term stability.<sup>60</sup> In the absence of a successful central government in Mogadishu, Somalis have resorted to a number of attempts at self-government. These include the Puntland State of Somalia, the Republic of Somaliland in the Northern half of Somalia, and various Islamic governments and warlords in the south.<sup>61</sup> The most successful and stable government is the Republic of Somaliland.<sup>62</sup>

Following independence in 1991, Somaliland inherited a land devastated by a decade of warfare, one without a functioning economy, a population that lived in refugee camps,

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<sup>55</sup> LEWIS, *supra* note 5, at 260-61.

<sup>56</sup> BRADBURY, *supra* note 1, at 36-44.

<sup>57</sup> *Id.*

<sup>58</sup> Kaplan, *supra* note 8, at 143.

<sup>59</sup> *Id.*

<sup>60</sup> BRADBURY, *supra* note 1, at 49.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 1-4.

and little surviving infrastructure.<sup>63</sup> From 1991 to 1993, tens of thousands of refugees returned to Somaliland, and without diplomatic recognition and therefore no foreign support, a humanitarian crisis mushroomed.<sup>64</sup> Facing millions of unexploded landmines and contaminated water supplies, the refugee population returned to a land that was incapable of supporting them.<sup>65</sup>

Despite the numerous challenges Somaliland faced following independence in 1991, the unrecognized nation was able to achieve a level of stability unseen in Somalia's south.<sup>66</sup> Somaliland's assertion of independence did not lead to open conflict for numerous reasons, and the result was a return to the extreme decentralization not seen since pre-colonial Somalia.<sup>67</sup> Somaliland, in the absence of a central authority following the collapse of the Somalian state, returned power to its traditional source.<sup>68</sup> While Hargeisa, the capital of Somaliland, was still in the process of developing and exerting its authority, community elders<sup>69</sup> Somaliland's people were able to return to a tradition of decentralized governance that had persisted there.<sup>70</sup>

A number of factors were key to creating stability in Somaliland, factors that differentiate Somaliland from its less-

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<sup>63</sup> *Id.* at 77-79; Lacey, *supra* note 3.

<sup>64</sup> BRADBURY, *supra* note 1, at 77-79; Lacey, *supra* note 3.

<sup>65</sup> BRADBURY, *supra* note 1, at 85.

<sup>66</sup> *Id.* at 92-93; Lacey, *supra* note 3.

<sup>67</sup> BRADBURY, *supra* note 1, at 86.

<sup>68</sup> Kaplan, *supra* note 8, at 143.

<sup>69</sup> BRADBURY, *supra* note 1, at 86.

<sup>70</sup> *Id.*

stable neighbors in the south.<sup>71</sup> Unlike in the south, Somaliland did not have a large population of unemployed and disaffected youths, and its population was far less armed than the south.<sup>72</sup> The pastoralist economy of the north was also more mobile than the agricultural economy of the south.<sup>73</sup> As a result, during the Somali state collapse, the northern economy was able to avoid much of the devastation that would occur in the urbanized south.<sup>74</sup> Last, and possibly most critically, Somaliland's democratic government and lack of foreign backing meant no individual in the government in Hargeisa was able to build a power base and dominate the government.<sup>75</sup> Through numerous conferences, leadership returned to its traditional function for Somalis in Somaliland, mediating disputes between groups of people, with the central government essentially constituting a power sharing agreement between clans.<sup>76</sup>

Despite an initial success at forming a decentralized government, problems quickly developed that reflect the will of a populace committed to independence.<sup>77</sup> Somaliland's first attempt at establishing a government failed.<sup>78</sup> Led by President Abdirahman Ahmed Ali Tuur, attempted to ally with those in favor of unification, the government failed and was succeeded by Mohamed Ibrahim Egal, the Republic of Somalia's first president, who restored democratic governance to

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<sup>71</sup> *Id.* at 94-95.

<sup>72</sup> *Id.*

<sup>73</sup> LEWIS, *supra* note 5, at 7.

<sup>74</sup> BRADBURY, *supra* note 1, at 94.

<sup>75</sup> *Id.* at 94-95.

<sup>76</sup> *Id.* at 96-97, 100; ACAD. FOR PEACE AND DEV., *supra* note 16, at 17-22.

<sup>77</sup> BRADBURY, *supra* note 1, at 83-87.

<sup>78</sup> *Id.*

Somaliland.<sup>79</sup> The Turr government failed, at least in significant part, because President Tuur was uncommitted to the independence of Somaliland from Somalia.<sup>80</sup> Many Somalis and international observers have similarly viewed Somaliland's independence as less of a genuine attempt at independence and more of a temporary practicality to establish a modicum of stability.<sup>81</sup> In 2001, Somaliland held a constitutional referendum affirming independence from Somalia.<sup>82</sup> With nearly 100 percent of eligible voters participating, over 97 percent voted to affirm the constitution.<sup>83</sup>

Looking at the financial system, remittances are a key part of the modern Somaliland economy acting as a key contribution to the development of the unrecognized state.<sup>84</sup> Given the lack of access to foreign trade or aid for development, remittances are a vital lifeline to the global economy for many in Somaliland.<sup>85</sup> More recently, in 2020, the leaders of Somaliland and Somalia engaged in talks that

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<sup>79</sup> Kaplan, *supra* note 8, at 149.

<sup>80</sup> BRADBURY, *supra* note 1, at 83-87, 250-51.

<sup>81</sup> *Id.* at 250-51.

<sup>82</sup> *Somaliland Profile*, BBC NEWS (Dec. 14, 2017), <https://www.bbc.com/news/world-africa-14115069>.

<sup>83</sup> *Id.*

<sup>84</sup> Muse Abdi, *Somaliland: Pearl of Stability and Development*, HORN DIPLOMAT (May 30, 2019), <https://www.horndiplomat.com/2019/05/30/somaliland-pearl-of-stability-and-development/>.

<sup>85</sup> *Remittances to Somalia*, OXFAM, <https://www.oxfamamerica.org/explore/issues/economic-well-being/remittances-to-somalia/> (last visited Mar. 16, 2022).

Ethiopia sponsored, and Somaliland and Taiwan established diplomatic ties.<sup>86</sup>

## II. HISTORY OF EAST AFRICA AND ITS STATES

The history of State formation in East Africa is interlaced with the tribes and ethnicities of the region. From Burundi to South Sudan, as states began to move towards independence, they were confronted with a history of ethnic and tribal identities within their borders. Some states, like Tanzania, were confronted with innumerable ethnicities and tribes.<sup>87</sup> Others, like Rwanda, had only a few.<sup>88</sup> In each of these cases, however, these tribal and ethnic groups within their land played a considerable role in their move towards independence.

The African Union, a key continental authority in Africa, has been heavily involved in the political and security situations in East Africa and has also played a role in the formation of states in the region. East Africa's history both before and after the emergence of nation states is replete with tribal identities playing a key role in the formation and respect

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<sup>86</sup> *Somaliland Closer to Recognition by Ethiopia*, AFROL NEWS (June 5, 2007), <http://www.afrol.com/articles/25633>; *Somaliland and Taiwan Establish Diplomatic Ties*, THE ECONOMIST (Oct. 3, 2020), <https://www.economist.com/middle-east-and-africa/2020/10/03/somaliland-and-taiwan-establish-diplomatic-ties>.

<sup>87</sup> Max Fisher, *A Revealing Map of the World's Most and Least Ethnically Diverse Countries*, WASH. POST (May 16, 2013), <https://www.washingtonpost.com/news/worldviews/wp/2013/05/16/a-revealing-map-of-the-worlds-most-and-least-ethnically-diverse-countries/>.

<sup>88</sup> See GÉRARD PRUNIER, *THE RWANDA CRISIS, 1959-1994: HISTORY OF A GENOCIDE* at 16 (2nd ed. 1995).



of nation states. When examining each of the states in East Africa before and after independence, there are comparisons and similarities to Somaliland's case for independence that emerge. In subsequent sections, these comparisons will be fleshed out, and Somaliland's case for independence will become clear when considered in the context of independence movements in the East African region.

East Africa is a subregion of Africa with varying definitions of its geographical boundaries.<sup>89</sup> Generally, there are two areas accepted as part of the subregion: The Horn of Africa, including Somalia, Somaliland, Ethiopia, Eritrea, and Djibouti, and a number of the nations in the African Great Lakes, including South Sudan, Tanzania, Kenya, Uganda, Rwanda, and Burundi.<sup>90</sup> Some of the earliest modern humans were found in East Africa.<sup>91</sup> As a result, East African history stretches the span of the history of *Homo sapiens* on planet Earth.<sup>92</sup>

Bantu peoples, from a diverse group speaking hundreds of languages, migrated into East Africa, particularly in the Great Lakes region, 2500 to 3500 years ago, absorbing or

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<sup>89</sup> *Eastern Africa*, ENCYC. BRITANNICA, <https://www.britannica.com/place/eastern-Africa> (last updated Nov. 29, 2021); see also Emeka Chigozie, *East African Countries: List of Countries in East Africa*, ANSWERSAFRICA, <https://answersafrica.com/east-african-countries-list.html> (last visited Mar. 16, 2022).

<sup>90</sup> *See Eastern Africa*, ENCYC. BRITANNICA, <https://www.britannica.com/place/eastern-Africa> (last updated Nov. 29, 2021).

<sup>91</sup> Pallab Ghosh, 'First Human' Discovered in Ethiopia, BBC NEWS (Mar. 4, 2015), <https://www.bbc.com/news/science-environment-31718336>.

<sup>92</sup> *Id.*

displacing many of the existing people.<sup>93</sup> The Bantu developed contacts with their Arab neighbors, possibly resulting in the creation of the Swahili culture as a mix of the different communities in parts of East Africa including Kenya, Tanzania, and Uganda.<sup>94</sup> Arab traders in about 1000 A.D. recorded trading outposts in East Africa, with primary exports during this early period including slaves and ivory.<sup>95</sup> Arabic trade brought Islam, which soon became interwoven with African culture and custom in East Africa, creating a religious, cultural, and political institution that remains prevalent in much of East Africa today.<sup>96</sup> The Portuguese were the first Europeans to take an interest in East Africa in 1498, and their discovery would herald the interest and arrival of other European powers and several centuries of colonization in East Africa.<sup>97</sup>

When the Portuguese arrived in East Africa in 1498, they explored much of the region and initially focused their rule in the Great Lakes region.<sup>98</sup> They later built coastal forts and established trading routes, primarily to shift the spice trade from the Arabs and the Venetians.<sup>99</sup> Attacking the Portuguese forts and ships, Omani Arabs drove the Portuguese south to present-day Mozambique in the late 17<sup>th</sup> century, where they

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<sup>93</sup> See *Bantu peoples*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/Bantu-peoples> (last updated Oct. 4, 2011).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*; KENNETH INGHAM, A HISTORY OF EAST AFRICA 1-3 (1962).

<sup>96</sup> INGHAM, *supra* note 95, at 1-3.

<sup>97</sup> See generally *Africa, Portugal*, S. AFR. HIST. ONLINE, <https://sahistory.org.za/article/africa-portugal> (last updated Sept. 3, 2019).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

stayed in what became Portuguese East Africa until it became independent from Portugal in 1975.<sup>100</sup> The Omani Empire formed a relationship with the British Empire, with one result being the British putting pressure on the Omanis to end the slave trade in East Africa.<sup>101</sup>

In the 19<sup>th</sup> and 20<sup>th</sup> centuries, other European powers, including Britain, Italy, and Germany, colonized East Africa.<sup>102</sup> British East Africa consisted of Kenya, Uganda, and the northern fourth of Somalia, Somaliland.<sup>103</sup> From approximately the 1820s through the 1890s, Ottoman Turks and Egyptians governed Sudan under the auspices of the Ottoman Empire.<sup>104</sup> Following Egyptian separation from the Ottoman Empire 1922, British and Egyptian authorities governed Sudan, including South Sudan, from Cairo.<sup>105</sup> German East Africa consisted of Burundi, Rwanda, and Tanzania.<sup>106</sup> Lastly, Italian East Africa consisted of the southern three-quarters of Somalia and Eritrea.<sup>107</sup> During World War I, German East Africa was used as a base to attack

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<sup>100</sup> Jonna Kato, *Women's Memories of Food Offer Insights into Mozambique's Liberation Struggle*, THE CONVERSATION (Nov. 8, 2020), <https://theconversation.com/womens-memories-of-food-offer-insights-into-mozambiques-liberation-struggle-149003>.

<sup>101</sup> See James A. Oboh et al., *The Omani Empire and the Development of East Africa*, 6 INT'L. J. OF RESEARCH IN HUMANITIES SOC. STUDIES 25, 28-29 (2019).

<sup>102</sup> INGHAM, *supra* note 95, at 150-91.

<sup>103</sup> *Id.*

<sup>104</sup> *Egypt and The Sudan*, BBC: BBC WORLD SERV., <http://www.bbc.co.uk/worldservice/africa/features/storyofafrica/11chapter5.shtml>.

<sup>105</sup> See generally *id.*

<sup>106</sup> INGHAM, *supra* note 95, at 150-91.

<sup>107</sup> *Id.*

its colonial neighbors, and following that conflict the territory was divided between Belgium, Britain, and Portugal.<sup>108</sup> Before World War II, Italian forces invaded independent Ethiopia and occupied it from 1936 until 1941, when it was subsequently liberated by British and Ethiopian forces.<sup>109</sup> After World War II, East Africa became swept up in the decolonization of Africa, and one-by-one, the European colonies in East Africa became independent.<sup>110</sup>

Burundi gained its independence from Belgium in 1962, but can trace its independence to its history as an independent kingdom from the 1700s until Germany made it a colony in the 1900s.<sup>111</sup> Burundi is composed of Hutu, Tutsi, and Twa ethnicities, similar to its neighbor Rwanda.<sup>112</sup> Much of the conflict in Burundi, from independence in the 1960s until reconstruction began in 2006, was between the two primary ethnicities in Burundi, the Hutu and the Tutsi.<sup>113</sup>

After a referendum was held in Rwanda on July 1<sup>st</sup>, 1962 by the Belgians who took control of the land from the Germans following World War I, it was separated from

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<sup>108</sup> *Id.* at 245-70.

<sup>109</sup> Webb Miller, *Italians Invade Ethiopia*, UNITED PRESS INT'L, Oct. 3, 1935, <https://www.upi.com/Archives/1935/10/03/Italians-invade-Ethiopia/2283815011741/>; *Italo-Ethiopia War*, ENCYC. BRITANNICA, <https://www.britannica.com/event/Italo-Ethiopian-War-1935-1936> (last updated May 27, 2020).

<sup>110</sup> INGHAM, *supra* note 95, at 403.

<sup>111</sup> *Kingdom of Burundi*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Kingdom-of-Burundi> (last updated Sept. 10, 2013).

<sup>112</sup> *Burundi*, CENTRAL INTELLIGENCE AGENCY: THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/countries/burundi/> (last updated Mar. 4, 2022).

<sup>113</sup> *See generally*, RENÉ LEMARCHAND, BURUNDI: ETHNIC CONFLICT AND GENOCIDE 118-160 (1996).

Burundi.<sup>114</sup> Rwanda can trace its unified states and population to pre-colonial times. This border resulted from either ethnic boundaries or pre-colonial kingdoms, not being drawn by colonial powers.<sup>115</sup> Regular violence overtook the country from 1962 until 1994, as the nation was divided by violent clashes between the two primary clans, the Hutu and Tutsi.<sup>116</sup> In 1990, Tutsi refugees invaded from outside Rwanda.<sup>117</sup> The Arusha Accords ended the War in 1993 and UN Security Council Resolution 872 supported this agreement by establishing a UN mission to Rwanda to oversee its implementation.<sup>118</sup>

On April 6<sup>th</sup>, 1994, a plane carrying the presidents of Rwanda and Burundi was shot down, sparking the Rwandan genocide.<sup>119</sup> Following this incident, the killings of Tutsis and Hutu moderates culminated in the death of an imprecise, but estimated 200,000-2,000,000 people.<sup>120</sup> The Tutsi rebels that invaded Rwanda during the Rwandan Civil War resumed their offensive, and the war ended once they captured all government territory.<sup>121</sup> Few international organizations and

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<sup>114</sup> PRUNIER, *supra* note 88, at 53.

<sup>115</sup> See *Kingdom of Rwanda*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Kingdom-of-Rwanda> (last updated July 19, 2017)

<sup>116</sup> See PRUNIER, *supra* note 88, at 48, 49.

<sup>117</sup> *Id.* at 93.

<sup>118</sup> *Id.* at 187, 190-91; S.C. Res. 872 (Oct. 5, 1993).

<sup>119</sup> *Hutus 'Killed Rwanda President Juvenal Habyarimana,'* BBC NEWS, <http://news.bbc.co.uk/2/hi/8453832.stm> (last updated Jan. 12, 2010).

<sup>120</sup> See André Guichaoua, *Counting the Rwandan Victims of War and Genocide: Concluding Reflections*, 22 JOURNAL OF GENOCIDE RESEARCH 125, 125-26 (2020).

<sup>121</sup> PRUNIER, *supra* note 88, at 312.

countries intervened in the conflict.<sup>122</sup> Since the end of the conflict, transitional justice efforts have included the formation of the International Criminal Tribunal for Rwanda, established in 1994 by UN Security Council Resolution 977 and dissolved in 2015, to judge those responsible for the Rwandan genocide and violations of international law.<sup>123</sup> Rwanda has since worked to rebuild its infrastructure and economy, reducing poverty and increasing life expectancy.<sup>124</sup>

On October 9, 1962, the British protectorate of Uganda became independent but retained the Queen of England as its head of state.<sup>125</sup> The following year, Uganda became a republic, which immediately ran into conflict with the nation's largest monarchy, Buganda.<sup>126</sup> Buganda did not move for independence from the Ugandan central government but it resented the close control over Buganda's affairs.<sup>127</sup> The conflict eventually came to a head with an assault on the Kakaba palace, and concluded with the abolition of kingdoms

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<sup>122</sup> ROMÉO DALLAIRE, *SHAKE HANDS WITH THE DEVIL: THE FAILURE OF HUMANITY IN RWANDA* 364 (Carrol & Graf, 1st ed. 2005) (2003).

<sup>123</sup> S.C. Res. 977 (Feb. 22, 1995).

<sup>124</sup> See UNITED NATIONS DEVELOPMENT PROGRAMME, TERMS OF REFERENCE (TOR) FOR THE RESEARCHER ON HEALTH AND HUMAN DEVELOPMENT ASSIGNMENT TO PREPARE NATIONAL HUMAN DEVELOPMENT REPORT IN RWANDA 2-3 (2018).; see also THE WORLD BANK, *GDP (current US\$)*, (2019) <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD>.

<sup>125</sup> See KEFA M. OTISO, *CULTURE AND CUSTOMS OF UGANDA* 7-35 (2006).

<sup>126</sup> See OGENGA OTUNNU, *CRISIS OF LEGITIMACY AND POLITICAL VIOLENCE IN UGANDA: 1890-1979* at 157-237 (Springer Nature 2016) (examining the initial years of Ugandan independence and early conflicts with Buganda).

<sup>127</sup> J. M. Lee. Uganda's first year of Independence *The Political Quarterly*. 35 (1): at 35-45 (January 1964).

in Uganda.<sup>128</sup> Uganda's early history as a state is therefore in many ways defined by its relationships with the tribal kingdoms within its state. Since 1986, Uganda has deployed troops to northern Uganda and Sudan to fight the Lord's Resistance Army, a rebel group responsible for the displacement of over a million people between 1990 and 2010.<sup>129</sup>

Tanzania became a democratic republic on December 9, 1962, following an incremental draw-down of British colonial rule.<sup>130</sup> At independence, Tanzania was among the most ethnically diverse states in Africa, with well over 100 spoken languages, and approximately 125 ethnic groups or tribes.<sup>131</sup> Julius Nyerere, Tanzania's first unified president, campaigned to erase the ethnic and identity differences of his citizens.<sup>132</sup> Nyerere's actions place Tanzania in a similar historical light to the actions of Siad Barre of Somalia, attempting to unite a nation with numerous tribes by suppressing tribal identities.<sup>133</sup>

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<sup>128</sup> David Kibirige, *Uganda: The Day Obote Abolished Kingdoms*, THE MONITOR (Sept. 19, 2004), <https://allafrica.com/stories/200409200404.html>; Uganda Today, *Obote's Attack on Kakaba's Palace at Mengo, Kampala (2006)*, YOUTUBE (Nov. 29, 2016), <https://www.youtube.com/watch?v=SG2NYdrUGKE>.

<sup>129</sup> *No End to LRA Killings and Abductions*, HUMAN RIGHTS WATCH (May 23, 2011, 8:27 AM), <https://www.hrw.org/news/2011/05/23/no-end-lra-killings-and-abductions#>.

<sup>130</sup> *Independence of Tanzania*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Tanzania/Independence> (last visited Mar. 16, 2022).

<sup>131</sup> Fisher, *supra* note 87.

<sup>132</sup> See PIERRE ENGLEBERT & KEVIN C. DUNN, *INSIDE AFRICAN POLITICS* at 81 (2013).

<sup>133</sup> BRADBURY, *supra* note 1, at 36.

Kenya became an independent state after declaring independence from Britain on December 12, 1963.<sup>134</sup> After the British bought out most of the white settlers, and they and the Indian minority left, mostly for Britain, Kenya was declared a Republic and elected its first president, Jomo Kenyatta.<sup>135</sup> Kenyatta divided and distributed much of the land held by the white colonizers.<sup>136</sup> Kenyatta's distribution of land was primarily to his favored tribe, the Kikuyu, and their tribal allies, exacerbating long-term ethnic conflicts.<sup>137</sup> In 2011, Kenya sent its military into Somalia to fight Al-Shabaab, an Islamic terrorist group.<sup>138</sup>

Djibouti is a nation at a geographic, cultural, and ethnic cross-section between Ethiopia and Somalia. Known as French Somaliland until 1977 when it became independent Djibouti, the nation's people elected twice to remain a French colony before declaring independence.<sup>139</sup> Having a large Somali population, Siad Barre sought to annex Djibouti as part of his plan to create a greater Somalia.<sup>140</sup> However, following the 1967-1968 war between Somalia and Ethiopia, the Ogaden

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<sup>134</sup> Robert Conley, *Joyful Kenya Gets Independence from Britain*, N.Y. TIMES, Dec. 12, 1963, at A1.

<sup>135</sup> See KEITH KYLE, THE POLITICS OF THE INDEPENDENCE OF KENYA 69-136 (1999).

<sup>136</sup> Conley, *supra* note 134, at A1.

<sup>137</sup> *Id.*

<sup>138</sup> Neal Conan, *Kenyan Troops Pursue Al-Shabab Militants in Somalia*, NPR, at 00:00-00:04 (Oct. 20, 2011), <https://www.npr.org/2011/10/20/141557118/kenyan-troops-pursue-shabab-militants-in-somalia>.

<sup>139</sup> *Djibouti*, CENTRAL INTELLIGENCE AGENCY: THE WORLD FACTBOOK <https://www.cia.gov/the-world-factbook/countries/djibouti/> (last updated Mar. 3, 2022).

<sup>140</sup> See generally, FANTAHUN AYELE, THE ETHIOPIAN ARMY: FROM VICTORY TO COLLAPSE, 1977-1991 101-127 (2014).



War, these plans never came to fruition.<sup>141</sup> Djibouti nationalists played a significant role in the independence of their State, and their attacks both encouraged French abandonment of the maintenance of the colony and indicated a shift in the populace towards the support of independence.<sup>142</sup>

Eritrea is amongst the most recent nations to become independent, in East Africa and globally.<sup>143</sup> After being annexed by Ethiopia from Italy in the 1950s, Eritrea attained independence from Ethiopia in 1993 after decades of armed and political resistance.<sup>144</sup> Since the State's independence in 1993, Eritrea has had only one legal political party, the People's Front for Democracy and Justice, and one president, Isaias Afewerki.<sup>145</sup> Eritrea is a member of the United Nations and the African Union.<sup>146</sup> Since its independence, Eritrea has had tense relations with its neighbor and former ruler, Ethiopia;

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<sup>141</sup> *Id.* at 101-127.

<sup>142</sup> See Abdo A Abdallah, *State Building, Independence And Post-Conflict Reconstruction in Djibouti*, Post-Conflict Peace-Building in the Horn of Africa 269, 271-72 (2008)

<http://www.sirclund.se/Conference%20report%202007.pdf#page=269>.

<sup>143</sup> Amber Pariona, *The World's Youngest Countries*, WORLDATLAS (May 28, 2018), <https://www.worldatlas.com/articles/which-are-the-youngest-countries-of-the-world.html>; Donatella Lorch, *Eritreans Voting on Independence from Ethiopia*, N.Y. TIMES, Apr. 24, 1993, at A1.

<sup>144</sup> Amber Pariona, *The World's Youngest Countries*, WORLDATLAS (May 28, 2018), <https://www.worldatlas.com/articles/which-are-the-youngest-countries-of-the-world.html>.

<sup>145</sup> Martin Plaut, *Eritrea's Isaias Afwerki: A Tactical Authoritarian Who Might Be President for Life*, THE CONVERSATION (Oct. 25, 2020, 5:50 AM), <https://theconversation.com/eritreas-isaias-afwerki-a-tactical-authoritarian-who-might-be-president-for-life-147963>.

<sup>146</sup> *Eritrea*, CENTRAL INTELLIGENCE AGENCY: THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/countries/eritrea/> (last updated Mar. 4, 2022).

for instance, a border conflict from 1998 to 2000 cost approximately 70,000 lives on both sides.<sup>147</sup> Stalemate resulting from the conflict persisted until 2018, when Ethiopia and Eritrea signed a peace agreement ending the conflict.<sup>148</sup>

The most recent state to be recognized in East Africa and globally is the Republic of South Sudan, gaining independence from Sudan in 2011.<sup>149</sup> Shortly after independence in 2011, fighting was reported in nine of ten states in South Sudan, including inter-ethnic and tribal conflicts that displaced large portions of the population.<sup>150</sup> In 2013, South Sudan entered into a Civil War between President Salva Kiir, the first president of South Sudan, and his deputy Riek Machar.<sup>151</sup> UN peacekeepers were dispatched to the nation during the conflict and numerous attempts to mediate ceasefires failed.<sup>152</sup> In February 2020, Kiir and Machar agreed

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<sup>147</sup> David Smith, *Ethiopian Raid on Eritrean Bases Raises Fears of Renewed Conflict*, THE GUARDIAN (Mar. 16, 2012, 10:28 AM), <https://www.theguardian.com/world/2012/mar/16/ethiopian-raid-eritrea-conflict>.

<sup>148</sup> Charlie Mitchell, *Historic Peace Between Ethiopia and Eritrea Ends Two Decades of Hostility*, THE NAT'L (Jul. 24, 2018), <https://www.thenationalnews.com/world/africa/historic-peace-between-ethiopia-and-eritrea-ends-two-decades-of-hostility-1.749015>.

<sup>149</sup> Pariona, *supra* note 143.

<sup>150</sup> Jeremy Clarke, *South Sudan Army Kills Fighters in Clashes*, REUTERS (Apr. 24, 2011, 8:16 AM), <https://www.reuters.com/article/us-sudan-south-violence/south-sudan-army-and-militia-clash-kills-55-minister-idUSTRE73N12P20110424>.

<sup>151</sup> Nicholas Kulish, *New Estimate Sharply Raises Death Toll in South Sudan*, N.Y. TIMES, Jan. 9, 2014, at A6.

<sup>152</sup> *UN Deploys Troops to New Base as Violence Surges in South Sudan*, THE DEFENSE POST (Sept. 2, 2020), <https://www.thedefensepost.com/2020/09/02/un-troops-south-sudan/>; Sam Mednick & Samy Magdy, *South Sudan's Warring Leaders Agree to Share*

to a peace deal and a power-sharing agreement.<sup>153</sup> South Sudan has had numerous border conflicts with its neighbors, particularly Uganda and Sudan, over its nine-year history.<sup>154</sup>

The African Union (AU) is a continental union with 55 member states, founded in 2001 and launched in 2002 as a replacement for the Organization for African Unity.<sup>155</sup> The AU has a number of objectives, including to defend the sovereignty and territorial integrity of its members and to promote peace and security on the continent, as well as numerous other economic and humanitarian goals.<sup>156</sup> Since its inception, the African Union has intervened militarily in a number of states, including in the Darfur conflict in Sudan, and in conflict following a military coup in Togo in 2005.<sup>157</sup> Currently, the African Union is dealing with a number of pressing issues throughout the continent. Importantly, the African Union is currently addressing peacekeeping and security issues in a number of African countries including Libya, Somalia, and

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*Power, Again*, ASSOCIATED PRESS (July 25, 2018), <https://apnews.com/article/0970d7455e904cf9b982e9b7dd30b92b>.

<sup>153</sup> Nick Cumming-Bruce, *South Sudan's Leaders Announce Unity Deal, Amid War Crimes Report*, N.Y. TIMES (Feb. 20, 2020), <https://www.nytimes.com/2020/02/20/world/africa/south-sudan-peace-deal.html>.

<sup>154</sup> David Mayen, *Two Dead After Uganda, South Sudan Armies Clash Over Border Area*, THE EAST AFRICAN (Oct. 30, 2020), <https://www.theeastafrican.co.ke/tea/news/east-africa/two-dead-uganda-south-sudan-armies-clash-2726574>.

<sup>155</sup> *African Union*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/African-Union> (last updated Feb. 14, 2020).

<sup>156</sup> *Id.*

<sup>157</sup> See Chinedu Thomas Ekwealor & Ufo Okeke-Uzodike, *The African Union Interventions in African Conflicts: Unity and Leadership Conundrum on Libya*, 5 J. AFR. STUD. 63, 63-78 (2016).

Mali, dispatching peacekeeping missions to those nations over recent years.<sup>158</sup> The histories of the nations of East Africa illuminate how Somaliland and its struggle for recognition fit within a framework of independence in the region, and in understanding their stories, Somaliland's argument for recognition under international law begins to take shape.

### III. INDEPENDENCE AND NATIONAL STATEHOOD IN SOMALILAND

This section will examine the independence of Somaliland by explaining the agitating circumstances for independence in Somaliland and elucidating how those circumstances fit into the story of Somalia. It will then present reasons why Somaliland was not recognized by the international community.

Somaliland's narrative as an independent state begins not with its declaration of independence in 1991, but rather with the U.N.'s recognition of Somaliland as an independent state on June 26, 1960.<sup>159</sup> Only 5 days after the U.N. recognition, however, the independent State of Somaliland was incorporated into Somalia.<sup>160</sup> Somaliland's status as a British colony, separate from Somalia, would later help define the borders of Somaliland, as well as support its case for independence, as seen in section I of this note.<sup>161</sup> After

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<sup>158</sup> *Id.*

<sup>159</sup> McConnell & Mahon, *supra* note 31, at 2.

<sup>160</sup> LEWIS, *supra* note 5, at 164-65.

<sup>161</sup> President Muse Bihi Abdi, *Address on Somaliland-Somalia Relations at a Consultation Summit in Djibouti* (June 14, 2020), <https://www.americanrhetoric.com/speeches/musebihiconsulationsummits>

becoming part of Somalia, northern Somalia (formerly Somaliland) became an active part of the State, its population largely satisfied with becoming part of a State they assumed would eventually unite all ethnic Somalis under one flag.<sup>162</sup> This unity, between Somali peoples, was inverted by the Ogaden war, a conflict that would have “a critical impact on the lives and attitudes of people in the north.”<sup>163</sup>

The Ogaden region, the eastern portion of Ethiopia, is a region comprised primarily of ethnic Somalis, with over 30 clans.<sup>164</sup> The Isaaq clan, the primary tribe in Somaliland, has historically held pastoral land in the Ogaden.<sup>165</sup> As a result, when Somalia attempted to unite the ethnic Somalis in the Ogaden with Somalia, the Isaaq and many of the peoples in the north of Somalia supported the conflict as part of the struggle to unite all ethnic Somalis, just as they had been integrated in 1960.<sup>166</sup> The war went poorly, partly due to the Soviet Union shifting its backing to Ethiopia from Somalia, and the people of the north blamed the central Somali government for the failure.<sup>167</sup> Military support provided by the Somali government to the Ogaden enflamed clan tensions in the region by

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omaliland.htm; *see also* Khalid Sahid, *Somaliland Case: Reunion of Gaining the Long Awaited Independence*, SOMALILAND CHRON. (June 19, 2020), <https://somalilandchronicle.com/2020/06/19/somaliland-case-reunion-or-gaining-the-long-awaited-independence/>.

<sup>162</sup> BRADBURY, *supra* note 1, at 54.

<sup>163</sup> *Id.*

<sup>164</sup> PAOLO BILLI, LANDSCAPES AND LANDFORMS OF ETHIOPIA 324 (2015).

<sup>165</sup> DAVID CARMENT ET AL., WHO INTERVENES?: ETHNIC CONFLICT AND INTERSTATE CRISIS 75-76 (2006).

<sup>166</sup> BRADBURY, *supra* note 1, at 54.

<sup>167</sup> *Id.*

providing military means to solve land and resource disputes between clans.<sup>168</sup>

The Issaq clan saw the Somali central government under Siad Barre as siding with their rivals.<sup>169</sup> After the war, refugees from the Ogaden poured into Somalia's north.<sup>170</sup> Many of these refugees were Isaaq rivals, presumed to be allied with the Somali central government.<sup>171</sup> As a direct consequence, when the Somali government in Mogadishu began appropriating northern land for refugee use, northern resentment for the central government intensified.<sup>172</sup>

The Ogaden war divided the two unities that held Somalia and Somaliland together. First, the goal of uniting all ethnic Somalis was shattered by the failure of the war.<sup>173</sup> The people of Somaliland no longer felt that true unity was possible, and without that unity their desire to remain as a minority waned.<sup>174</sup> Second, the brutality of the war, particularly crimes against civilians and its aftermath, inflamed clan tensions and created a gulf of resentment between the people in the north of Somalia and the central government.<sup>175</sup> Not only was the perception of inequality enough to create tension, but the central Somali government's subsequent decision to arm refugees to maintain northern security, a

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<sup>168</sup> *Id.* at 54-55.

<sup>169</sup> *Id.*

<sup>170</sup> Gregory Jaynes, *Ogaden War Producing Little but Refugees*, N.Y. TIMES, Nov. 18, 1979, at P22.

<sup>171</sup> LEWIS, *supra* note 5, at 248.

<sup>172</sup> BRADBURY, *supra* note 1, at 54-56.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*; see HUMAN RIGHTS WATCH, EVIL DAYS: THIRTY YEARS OF WAR AND FAMINE IN ETHIOPIA 78-86 (1991) (available at <https://www.hrw.org/sites/default/files/reports/Ethiopia919.pdf>).

consequence of the tension, portrayed it as a land under foreign occupation.<sup>176</sup> Before long, northern resentment evolved into open rebellion and the formation of the Somali National Movement, or SNM, which declared war on the Barre government in Mogadishu in April, 1981.<sup>177</sup> Concomitant to that declaration, rioting ensued in Hargeisa, leading to a number of people killed or arrested, which Somalilanders frequently refer to as the beginning of the civil war.<sup>178</sup>

Issaq elders composed a memorandum to Siad Barre, the head of government, detailing the economic inequities between the North and South of Somalia.<sup>179</sup> The inequities were principally focused on government control of the Somali economy which increasingly restricted development in the north, worsening even more after the SNM insurgency began.<sup>180</sup> Once the insurgency began, the government seized Isaaq goods and restricted free movement in the north.<sup>181</sup> All of these factors led to high levels of migration from the north to other nations as people were marginalized by their own government, along with being pressured economically and militarily.

The SNM insurgency rapidly widened inequities Northern Somalis faced and created group discrimination that

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<sup>176</sup> LEWIS, *supra* note 5, at 252.

<sup>177</sup> Dominik Balthasar, *State-Making in Somalia and Somaliland: Understanding War, Nationalism, and State Trajectories as Processes of Institutional and Socio-Cognitive Standardization* 133-136 (Sept. 2012) (Ph.D. thesis, London School of Economics and Political Science) (LSE Theses Online).

<sup>178</sup> BRADBURY, *supra* note 1, at 55-56.

<sup>179</sup> LEWIS, *supra* note 5, at 252.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

would become a basis for Somaliland's independence.<sup>182</sup> Beyond economic discrimination and a harsh security apparatus, the Somali government adopted a scorched-earth tactic to fight the SNM insurgency in the 1980s.<sup>183</sup> Burning farms and killing livestock, the Somali government drove Northerners to the SNM.<sup>184</sup> Targeted attacks against Isaaq, particularly extrajudicial killings and a government memorandum describing a "liquidation of the Isaaq problem," created a foundation for a case arguing that the central government launched a genocidal campaign against the north.<sup>185</sup> The Somaliland War Crimes Commission in Hargeisa has documented this campaign, and the Somali government's actions during its conflict with the SNM help make the case for Somaliland's independence by documenting consistent marginalization and discrimination against the people of Somaliland by the Somali government.<sup>186</sup>

While the SNM had been a small and relatively ineffective fighting force for much of the 1980s, the Movement seized a portion of Hargeisa in 1988, and the Somali government responded with overwhelming force.<sup>187</sup> Targeting

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<sup>182</sup> *Id.*

<sup>183</sup> BRADBURY, *supra* note 1, at 62-63.

<sup>184</sup> *Id.*

<sup>185</sup> See CHRIS MBURU, PAST HUMAN RIGHTS at 26, 38 (2002); BRADBURY, *supra* note 1, at 60.

<sup>186</sup> Ismail Einashe & Matt Kennard, *In the Valley of Death: Somaliland's Forgotten Genocide*, THE NATION (Oct. 22, 2018), <https://www.thenation.com/article/archive/in-the-valley-of-death-somalilands-forgotten-genocide/>.

<sup>187</sup> Hussein Mohamed Nur, *The Rebirth of Somaliland (13): How the SNM Invaded the North*, HORN DIPLOMAT (Mar. 17, 2018), <https://www.horndiplomat.com/2018/03/17/the-rebirth-of-somaliland-13-how-the-snm-invaded-the-north/>.



civilians and SNM insurgents alike, and refusing humanitarian access to the north, the Barre government drove the northern population into the arms of the SNM, greatly increasing the Movement's control of northern lands.<sup>188</sup> In 1991, in concert with other anti-government factions, as Mogadishu was seized by anti-government insurgents, SNM ejected the Somali national army from the north.<sup>189</sup> The SNM, by manifesto, did not advocate for a separatism from the unity of Somalia, but the reality of the collapse of central government served as a catalyst for ideological change amongst SNM leadership.<sup>190</sup>

Over the course of the SNM's struggle against the Barre government, the idea of independence took hold.<sup>191</sup> Once other groups in the south began to fight the government, they began to explore possibilities of a united front.<sup>192</sup> Many insurgent groups had an authoritarian nature.<sup>193</sup> The SNM, by contrast, was founded with the goal of replacing the Barre government in Mogadishu with a democratic government.<sup>194</sup> As a result, the SNM was unable to establish comity with southern insurgencies sufficient to create an integrated and united front.<sup>195</sup> Over the course of the insurgency, the Barre government frequently encouraged inter-clan conflict and armed specific clans to maintain power, the corollary effect being an attitude in the SNM of separation from other Somali

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<sup>188</sup> Balthasar, *supra* note 177, at 134.

<sup>189</sup> *Id.* at 134-35.

<sup>190</sup> BRADBURY, *supra* note 1, at 63-65.

<sup>191</sup> Balthasar, *supra* note 177, at 135.

<sup>192</sup> *Id.* at 133.

<sup>193</sup> BRADBURY, *supra* note 1, at 67-68.

<sup>194</sup> Balthasar, *supra* note 177, at 133-34.

<sup>195</sup> BRADBURY, *supra* note 1, at 67-68.

clans, dominated by the Isaaq clan.<sup>196</sup> Lastly, the formal inclusion of Somali elders in SNM leadership positions reflected both a return to Somali cultural tradition and a popular movement supported by local leaders in the north.<sup>197</sup> Each of these elements-- the Somali government's discrimination against northerners; the targeting of civilians during the SNM insurgency; the inter-clan conflict propagated by the Barre regime; and the democratic and popular nature of the SNM-- created a groundswell of support for the northern independence and the establishment of Somaliland as a state.<sup>198</sup>

The last part of the story of the SNM relevant to the case for independence of Somaliland from Somalia are challenges in attempting to form a government following the collapse of the Barre regime in 1991.<sup>199</sup> The 'Grand Conference of Northern Peoples' was held post-insurgency, with the elders of many northern clans in attendance, key leaders together with the purpose of declaring independence.<sup>200</sup> Attempts by southern insurgents to establish a government in Mogadishu without consulting the SNM, combined with a lack of authority from a functioning central government, resulted in popular support in and out of the Conference for a separate northern government.<sup>201</sup> This first government, which lasted from 1991 to 1993, failed to establish an authority capable of

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<sup>196</sup> The World Peace Found., *Somalia: Fall of Siad Barre and the Civil War*, MASS ATROCITY ENDINGS (Aug. 7, 2015), <https://sites.tufts.edu/atrocityendings/2015/08/07/somalia-fall-of-siad-barre-civil-war>.

<sup>197</sup> BRADBURY, *supra* note 1, at 67-70.

<sup>198</sup> *Id.*

<sup>199</sup> LEWIS, *supra* note 5, at 283.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

administering, and effectively controlling, the north.<sup>202</sup> Its replacement, enabled by additional conferences of northern elders, established a second popular government with a capable administration that has persisted.<sup>203</sup>

#### IV. THE THEORIES OF STATE RECOGNITION OF INDEPENDENCE

Section IV will elucidate international law governing States and State recognition. It will begin by defining the elements of a State and explaining how Somaliland fits within that definition. The section will then explain leading caselaw governing State recognition, and explain how Somaliland fits or does not fit into each case. Finally, this section will illuminate the policy beyond the caselaw from organizational bodies relevant to Somaliland and explain how that policy has been inconsistent in its application.

There are four essential elements of statehood, as determined by the 1983 Convention on the Rights and Duties of States.<sup>204</sup> (1) A defined population; (2) its territory has clear borders; (3) it has a central government capable of administering its population; and (4) it must be capable of interacting with other states.<sup>205</sup> Throughout the rest of this section, it will become clear that Somaliland meets each element of this test.

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<sup>202</sup> *Id.*

<sup>203</sup> BRADBURY, *supra* note 1, at 96-105.

<sup>204</sup> The Montevideo Convention on the Rights and Duties of States art. 1, Dec. 26, 1933, 49 Stat. 3097, 1933 L.N.T.S. 165.

<sup>205</sup> *Id.*

Somaliland's case for independence and self-determination stems from the history of Somaliland and Somalia, particularly in their fight for independence. Three of the most significant cases ruling on self-determination and secession are the Åland Islands, the dissolution of Yugoslavia, and Quebec.<sup>206</sup> Each of these decisions provides critical criteria for international recognition of a State.<sup>207</sup> Beyond the four requirements for statehood discussed at the beginning of this section, for a people to be granted external self-determination (to separate from a nation) they must meet specific criteria to justify that action. Each of these three cases illustrates these factors.

Because no clear treaty exists on secession, recognition of independence, or the right to secede, it is governed by customary international law.<sup>208</sup> Customary international law "refers to international obligations arising from established international practices, as opposed to obligations arising from formal written conventions and treaties. [It] ...results from a general and consistent practice of states that they follow from a sense of legal obligation."<sup>209</sup> As a result, in this specific case, the international law of Somaliland would be governed, under customary international law, by existing judicial decisions, as

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<sup>206</sup> See Aakash Kumbhat et al., *International Law and Self Determination*, ACADEMIKE (Feb. 14, 2015), <https://www.lawctopus.com/academike/international-law-and-self-determination/>.

<sup>207</sup> *See id.*

<sup>208</sup> See Lawrence S. Eastwood Jr., *Secession: State Practice and International Law After the Dissolution of the Soviet Union and Yugoslavia*, 3 DUKE J. COMP. & INT'L L. 299, 300 (1993).

<sup>209</sup> *Customary International Law*, CORNELL L. SCH.: LEGAL INFO. INST., [https://www.law.cornell.edu/wex/customary\\_international\\_law](https://www.law.cornell.edu/wex/customary_international_law) (last visited Feb. 27, 2022).

well as decisions by international organizations related to secession, independence, and international recognition. Prominent judicial decisions subsequently addressed will include the Åland Islands, Yugoslavia, and Quebec decisions. International organizations that weighed in on this issue include the United Nations and the African Union, whose positions will also be addressed subsequently.

The Åland Islands were, in essence, a part of Finland that was historically linked to Sweden and concerned about preserving its culture.<sup>210</sup> As a result, the Islands sought to separate from Finland.<sup>211</sup> The League of Nations stepped in, seeking to avoid likely conflict, finding that the question of self-determination was within the League's jurisdiction and not solely within the jurisdictional determination of Finland.<sup>212</sup> The League first recognized that introducing to minorities the right to withdraw from the community to they belong, simply because they wish to do so, would be to destroy order and stability within states and encourage anarchy on the international stage.<sup>213</sup> The League Council, a predecessor to the United Nations judiciary, held that although the right to self-determination exists, it does not automatically grant

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<sup>210</sup> Haakon Ikononou, *The Åland Islands Question – A League Success Story*, AARHUS UNIV.: THE INVENTION OF INT'L BUREAUCRACY BLOG (May 2, 2018), <https://projects.au.dk/inventingbureaucracy/blog/show/artikel/the-aaland-islands-question-a-league-success-story/>; See Stephen R. Fisher, *Towards "Never Again": Searching for a Right to Remedial Secession under Extant International Law*, 22 BUFF. HUM. RTS. L. REV. 261 at 281 (2016).

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

independence to any group that wants it.<sup>214</sup> An important principle of international law is preserving the existing borders and territories of States.<sup>215</sup> In this case Finland was not persecuting the Åland Islanders, and their culture and heritage were not endangered.<sup>216</sup> As a result, the Council found that the Islanders could not separate from Finland.<sup>217</sup>

Analogous to the Åland Island case, the League of Nations first established that it had jurisdiction over the question, meaning that Somaliland's independence cannot be solely decided by Somalia.<sup>218</sup> Although Somalia may wish to maintain its union with Somaliland, the Åland Island case dictates it cannot unilaterally block independence, and the United Nations can weigh in.<sup>219</sup> Because the United Nations defers to the African Union on questions of State recognition in Africa, the African Union holds key power to weigh-in on the recognition of Somaliland.<sup>220</sup> Beyond this, however, the League held that the Åland Islands should remain with Finland, finding no threat to the Islanders' culture.<sup>221</sup> The strong goal of preserving existing borders therefore informed their decision. While a right to secession under a basis of oppression may

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<sup>214</sup> *Id.*

<sup>215</sup> *Id.*; see generally Christopher Greenwood, *Sources of International Law: An Introduction*, U.N. AUDIOVISUAL LIBR. OF INT'L L. (2008), [https://legal.un.org/avl/pdf/ls/Greenwood\\_outline.pdf](https://legal.un.org/avl/pdf/ls/Greenwood_outline.pdf) (underlining sources of international law principles).

<sup>216</sup> Ikonomou, *supra* note 210.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> See Fisher, *supra* note 87, at 261.

<sup>220</sup> Ahmed J. Yassin, *Somaliland: Key to Winning America's Longest War*, SOMALILAND INTELL. INST. (Feb. 19, 2020), <https://sii1991.org/somaliland-key-to-winning-americas-longest-war/>.

<sup>221</sup> See Ikonomou, *supra* note 210; Fisher, *supra* note 87, at 261.

exist, it does not apply in this case.<sup>222</sup> This can be directly contrasted with the situation in Somaliland in a number of ways.

During the conflict between Siad Barre's central government and the SNM movement, government actions against people in north Somalia, or Somaliland, represented a pattern of targeted abuse and killing that went beyond quelling the SNM threat.<sup>223</sup> Even prior to that conflict, patterns of unequal treatment disproportionately affected north Somalis and the majority clan in the north, the Isaaq.<sup>224</sup> As discussed previously, there exists a strong case that the people of Somaliland were not treated equally to their fellow citizens in the south of Somalia.<sup>225</sup> This pattern of unequal treatment, combined with abuses suffered during the SNM conflict in the 1980s, create a compelling argument that, under the Åland Island decision, the people of Somaliland were denied self-determination within the existing structure of Somalia and were justified in declaring independence as a remedy to that injustice, unlike the Åland Islanders, who were free to pursue their own self-determination under the existing government of Finland.

This argument for self-determination was later illustrated by the dissolution of Yugoslavia, where numerous ethnic groups and minorities sought to form their own nations.

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<sup>222</sup> *Id.*

<sup>223</sup> See MBURU, *supra* note 185 at 26, 38; BRADBURY, *supra* note 1, at 60.

<sup>224</sup> BRADBURY, *supra* note 1, at 31-32; *infra* Section I.

<sup>225</sup> Hussein Mohamed Nur, *The Rebirth of Somaliland (9): Hargeisa Group Hospital (The UFO Group)*, HORN DIPLOMAT (Feb. 26, 2018), <https://www.horndiplomat.com/2018/02/26/the-rebirth-of-somaliland-9-hargeisa-group-hospital-the-ufo-group/>.

With many of these peoples geographically intertwined, the issue turned on who could declare independence under international law.<sup>226</sup> The European Community, predecessor to the European Union, formed an arbitration commission (Commission) to resolve the issue.<sup>227</sup> The Commission held that minorities in the newly formed nations, from the ethnicities of Yugoslavia, were entitled to certain rights under the theory of self-determination, but that those rights did not extend to independence.<sup>228</sup> The Commission concluded:

“that the Serbian population in Bosnia and Herzegovina and Croatia is entitled to all the rights concerned to minorities and ethnic groups . . . . Republics must afford the members of those minorities and ethnic groups all the human rights and fundamental freedoms recognized in international law, including, where appropriate, the right to choose their nationality.”<sup>229</sup>

Somaliland’s case has numerous parallels and some key differences to the dissolution of Yugoslavia. The European Community’s Conference on Yugoslavia first decided that

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<sup>226</sup> See Maurizio Ragazzi, “*Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising From the Dissolution of Yugoslavia*” 31 INT’L LEGAL MATERIALS 1488 at 1494 (1992); Benjamin R Farley, *Comment: Calling a State a State: Somaliland and International Recognition*, 24 EMORY INT’L L. REV. 777, 777 (2010); see also Peggy Hoyle, *Somaliland: Passing the Statehood Test?*, 8 IBRU BOUNDARY & SEC. BULL. 80 at 82-83 (2000).

<sup>227</sup> See Maurizio Ragazzi, “*Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising From the Dissolution of Yugoslavia*” 31 INT’L LEGAL MATERIALS 1488 at 1494 (1992).

<sup>228</sup> *Id.* at 1494-1499.

<sup>229</sup> *Id.* at 1498-1499.



Yugoslavia was dissolving.<sup>230</sup> The cases of Somalia and Somaliland differed. Although Somalia's government had collapsed, aside from Somaliland, the rest of Somalia descended into conflicts unrelated to permanent separation of the State.<sup>231</sup> Therefore, Somaliland's case for independence faces a more difficult path than states like Bosnia or Croatia, as Somalia remains as a State, (even if it is fractured by internal conflict).

Second, the Issaq clan was a minority long dissatisfied with its treatment under the union with Somalia.<sup>232</sup> The SNM movement, eventually forming the first breakaway government of Somaliland, primarily consisted of Isaaq clan members.<sup>233</sup> Following the reasoning of the Yugoslavia decision, the Isaaq clan, by their status as a minority alone, would not find support for independence.<sup>234</sup> Given the innumerable clans holding a minority status in nations throughout Africa, recognition on this basis would invite the very anarchy the League of Nations feared in the Åland Island decision.<sup>235</sup> Following the Yugoslavia reasoning, Somaliland's case must go beyond its status as a minority to justify a declaration of independence; it must be denied some fundamental right or freedom to have a case under international law for independence.<sup>236</sup>

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<sup>230</sup> *Id.* at 1494-1496.

<sup>231</sup> BRADBURY, *supra* note 1, at 49.

<sup>232</sup> *Id.* at 54-55.

<sup>233</sup> Balthasar, *supra* note 177, at 115.

<sup>234</sup> Ragazzi, *supra* note 227 at 1491, 1497-1499.

<sup>235</sup> Ikonomou, *supra* note 210.

<sup>236</sup> *See* Ragazzi, *supra* note 227 at 1491, 1497-1499.

Finally, in 1998 the Canadian Supreme Court ruled on the right of the people of Quebec to seek independence under the principles of self-determination.<sup>237</sup> Quebec, a Canadian province, unilaterally desired to secede from Canada.<sup>238</sup> Three key questions were referred to the Supreme Court of Canada.<sup>239</sup> The first question was whether the Canadian constitution and domestic laws permitted unilateral secession to be affected by Quebec's government or legislature.<sup>240</sup> The second question was whether international law gives the National Assembly, (the legislature or government of Quebec,) the right to unilaterally effect secession of Quebec from Canada.<sup>241</sup> The third question, if international law did permit such a right when domestic law did not, was whether international law would trump domestic law and permit unilateral secession to be directed by Quebec's government or legislature.<sup>242</sup>

The court defined the right to internal self-determination as the pursuit of political, economic, social, and cultural determination within a framework of an existing state.<sup>243</sup> It found that external self-determination via unilateral secession arises only in most extreme cases under carefully defined circumstances, and that threats to a state's territorial

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<sup>237</sup> Reference re Secession of Quebec, [1998] 2 S.C.R. 217, at para. 1-4 (Can.); see also Diba B. Majzub, *Does Secession Mean Succession? The International Law of Treaty Succession and an Independent Québec*, 24 QUEEN'S L.J. 411, at 411 (1998).

<sup>238</sup> Reference re Secession of Quebec, *supra* note 237, at para. 2.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.* at paras. 121, 126.

integrity or stability of relations between sovereign states must be prevented.<sup>244</sup> In answer to the first question, the court held that under the Canadian Constitution, unilateral secession was not legal, though if a referendum held favored independence, the rest of Canada could not deny that goal.<sup>245</sup> The second question was answered in the negative, i.e., that international law was not applicable to the Quebec question because international law does not specifically grant component parts of sovereign states the legal right to secede unilaterally from their 'parent' state.<sup>246</sup> The court held that the population of Quebec has not been denied access to government positions, that its residents make free political choices and are free to pursue economic, social, and cultural development, and as a result, Quebec is not being denied self-determination within the international definition. Consequently, international law is not applicable.<sup>247</sup> Lastly, the Court did not answer the third question because Quebec would be unable to unilaterally secede from Canada under international law or under domestic law.<sup>248</sup>

Somaliland's attempt to declare independence from Somalia is similar to the Quebec case in a number of ways. First, as a unilateral declaration, Somaliland must first address the Constitution of Somalia. Although a new Constitution was adopted in Somalia in 2012, when Somaliland declared independence, the Constitution in effect was the prior

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<sup>244</sup> *Id.* at paras. 119, 121, 126, 129.

<sup>245</sup> *Id.* at paras. 100-108, 148-154.

<sup>246</sup> *Id.* at paras. 136-146, 148-154.

<sup>247</sup> *Id.*

<sup>248</sup> *Id.* at para. 147.

Constitution adopted in 1979.<sup>249</sup> Similar to the Canadian Constitution, both the 1979 and the 2012 Constitutions of Somalia would likely be deemed by their language to not permit unilateral successions, although the two Constitutions are quite different.<sup>250</sup> The 1979 Constitution refers specifically to, and broadly supports, the rights of self-determination.<sup>251</sup> Under the 1979 Constitution, a strong case could be made that if self-determination was denied, the people of Somalia would have the right to obtain it, possibly even through secession.<sup>252</sup> Conversely, the 2012 Constitution explicitly refers to the unity of the Somali nation.<sup>253</sup> Because it was written over two decades after Somaliland's declaration of independence, it clearly was composed, in part, to address that declaration. Though numerous referendums have been held over the years approving, by wide margins, Somaliland's independence, Somalia's Constitution, in both cases, would likely still reject independence (although the 1979 Constitution offers a much stronger case for recognizing the independence of Somaliland than the 2012 Constitution).<sup>254</sup>

Somaliland's case for unilateral independence from Somalia differs in one broad aspect from Quebec: the right of the people of Somaliland to self-determination under the

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<sup>249</sup> THE CONSTITUTION Aug. 25, 1979 (Som.).

<sup>250</sup> *Id.*; PROVISIONAL CONSTITUTION Aug. 1, 2012 (Som.), (available at: <https://www.refworld.org/docid/51b6d0c94.html>).

<sup>251</sup> *supra* note 250, at art. 15.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* at art. 1.

<sup>254</sup> *Id.* (identifying the boundaries of Somalia as clearly including Somaliland and plainly stating that the sovereignty and unity of Somalia is inviolable); *supra* note 249 (stating that Somalia's territory is inviolable, however specifically supporting the principle of self-determination and not specifically defining the national boundaries or borders of the Somali state).

existing structure of Somalia, at the time Somaliland declared independence.<sup>255</sup> As discussed previously, both before and after the SNM movement brought severe repression of rights and killings by Somalia's government to the north, the majority clan and many northern Somalians were treated unequally.<sup>256</sup> Because the people of north Somalia, or Somaliland, did not have the right of self-determination, their case should fall under international law, unlike Quebec's case. right to self-determination denied and a popular referendum supporting independence, the people of Somaliland should be able to pursue external self-determination.

The International Covenant on Civil and Political Rights that the United Nations General Assembly adopted in 1966 reaffirmed the following: "All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development."<sup>257</sup> Based on the decisions in the cases of the Åland Islands, Yugoslavia, and Quebec, the right to self-determination can, but does not automatically guarantee, the right to external self-determination via action such as a unilateral declaration of independence.<sup>258</sup> Key to these criteria, an inverse and opposite example vis-à-vis Quebec, is that those seeking independence

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<sup>255</sup> See Reference re Secession of Quebec, *supra* note 237 at paras.79-82 (finding that the minority rights of the people of Quebec were sufficiently protected such that they did not have a right to secede under international law on that basis alone).

<sup>256</sup> Nur, *supra* note 225.

<sup>257</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976).

<sup>258</sup> See Eastwood Jr., *supra* note 208, at 350.

must be denied self-determination as a matter of course.<sup>259</sup> In other words, the only way for them to achieve some measure of freedom and equality otherwise denied, is to seek independence.

The population of Somaliland unquestionably met the essential criteria for external self-determination upon their declaration of independence from Somalia. In each case for external self-determination, the essential criteria for independence included a defined population that did not have a right for self-determination, with active persecution being an aggravating factor in a determination under international law that a population as justified in seeking external self-determination via a move towards independence.<sup>260</sup> In 1991, the defined population of Somaliland, a defined population, was restricted from government and military positions, had its freedom of movement limited, and as an aggravating circumstance, was actively attacked economically and militarily by the majority government.<sup>261</sup> Despite the presence of an insurgency in northern Somalia, the government's response to the population of Somaliland clearly falls within the criteria creating a justification under international law for independence under the theory of external self-determination.

In both the Åland Islands and Quebec judicial decisions, the courts establish that an oppressed people may

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<sup>259</sup> Ikonomou, *supra* note 210; See Ragazzi, *supra* note 227 at 1494-1499; see Reference re Secession of Quebec, *supra* note 237 at para. 154 (explaining that a people must be “denied” a right to self-determination to have a right to secession).

<sup>260</sup> See Reference re Secession of Quebec, *supra* note 237 at para. 154.

<sup>261</sup> *Id.*

have a right to secede under international law.<sup>262</sup> However, the existence of a right to secede was not established in either case, and courts are tentative about its validity and use.<sup>263</sup> Because the people of Somaliland were clearly oppressed when they declared independence, their different status puts this issue at the forefront of their case.<sup>264</sup> In the case of both Finland and Eritrea, independent or separate entities were merged into a larger nation and then regained or gained status as an independent nation.<sup>265</sup> In each case, the United Nations supported the new status.<sup>266</sup> Somaliland, as a former independent State, falls squarely into this class of nations. Therefore, under the Åland Island and Quebec judicial decisions, Somaliland can make a clear case for international recognition.

Despite a justification of a declaration of independence under international law, there is another critical factor preventing Somaliland from being recognized by the international community: the policy of the African Union. The African Union is a continental union prioritizing, among other things, the territorial integrity of its members.<sup>267</sup> Somalia is a member of the African Union and has long desired the preservation of a united Somali State.<sup>268</sup> Without the recognition of Somaliland by the African Union, the United

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<sup>262</sup> Ikonomou, *supra* note 210; Reference re Secession of Quebec, *supra* note 237 at para. 154.

<sup>263</sup> Ikonomou, *supra* note 210.

<sup>264</sup> Einashe & Kennard, *supra* note 186.

<sup>265</sup> Farley, *supra* note 226, at 804-05.

<sup>266</sup> *Id.*

<sup>267</sup> *African Union*, *supra* note 155.

<sup>268</sup> Lacey, *supra* note 3.

Nations will not move for recognition of an independent Somaliland.<sup>269</sup> The African Union has long sought to preserve the colonial borders of African nations, with the goal of preventing continental anarchy that would result from attempts to alter borders should the policy be shifted.<sup>270</sup> The fourth section of this note will further address this argument, comparing the recognition of the other states of East Africa to Somaliland and explaining how the African Union's position is untenable under international law, particularly given the historical recognition of other East African States.

The African Union sent a fact-finding mission to Somaliland in 2005 to assess the current state of affairs in the unrecognized nation, listen to the concerns of the people, and make recommendations.<sup>271</sup> The African Union's fact-finding mission in 2005 acknowledged and clarified that Somaliland and Somalia did not ratify their merger of 1960, and that the Siad Barre regime committed genocidal acts against the people of Somaliland, a key justification for independence from Somalia confirmed by the continental organization.<sup>272</sup> Furthermore, the fact-finding mission found the four essential elements of statehood, as defined by the 1983 Convention on

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<sup>269</sup> *Id.*

<sup>270</sup> Ali Mohamed, *Why Not Recognize Independent Somaliland?*, POLITICO THE WORLD (May 22, 2012, 6:19 AM), <https://theworld.org/stories/2012-05-22/why-not-recognize-independent-somaliland>.

<sup>271</sup> See THE AFRICAN UNION FACT-FINDING MISSION TO SOMALILAND, 2005 AU FACT-FINDING MISSION TO SOMALILAND REPORT (May 4, 2005), [http://www.somalilandlaw.com/AU\\_Fact-finding\\_Mission\\_to\\_Somaliland\\_2005\\_Resume.pdf](http://www.somalilandlaw.com/AU_Fact-finding_Mission_to_Somaliland_2005_Resume.pdf).

<sup>272</sup> *Id.* at 2, 4



the Rights and Duties of States:<sup>273</sup> (1) Somaliland has a defined population of 3.5 million residents; (2) its territory is defined by its colonial borders; (3) it has a central government capable of administering its territory based out of Hargeisa; and (4) it was capable of interacting with other states.<sup>274</sup> The Mission also found that many of Somaliland's domestic problems result from either (1) the legacy of Somaliland's union with Somalia in 1960, or (2) its lack of international recognition.<sup>275</sup> Both of these factors have created persistent domestic problems, with lack of recognition by the international community creating financing and aid allocation barriers.<sup>276</sup>

Of particular importance, the Mission found that the union in 1960 between Somalia and Somaliland was never ratified.<sup>277</sup> In this regard, the AU mission confirmed that recognition of the Republic of Somaliland will not result in the opening of "Pandora's Box," meaning that Somaliland's territorial integrity and borders are not delineating new areas or threatening the existing borders on either Somalia's side or other neighboring countries.<sup>278</sup> This finding reaffirms the notion that Somaliland can be recognized without creating a basis for recognition of separatist movements. Somaliland is in a unique historical and international position as a result of its history and the lack of a ratification of its union, and

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<sup>273</sup> The Montevideo Convention on the Rights and Duties of States, *supra* note 204, at art. 1.

<sup>274</sup> AFRICAN UNION FACT-FINDING MISSION TO SOMALILAND, *supra* note 271, at 1-4.

<sup>275</sup> *Id.*

<sup>276</sup> *Id.* at 3-4.

<sup>277</sup> *Id.* at 4.

<sup>278</sup> *Id.*

consequently the fears of AU and UN members that its recognition would advocate separatism, are unfounded.<sup>279</sup> Somaliland has a unique status as a former independent colony of Britain, one whose union with its neighbor was incomplete and whose argument for independence is not based solely on separatism.<sup>280</sup>

Lastly, even though Somaliland declared independence in 1991, it can still be recognized under the current norms of State recognition, although the facts on the ground justifying that independence may have changed since that date. The best comparative example is the recognition of the Communist government of China. After the Communists won the Chinese Civil War, they went unrecognized by much of the international community for decades.<sup>281</sup> When the United States recognized China in 1978, it was decades after the war had ended, and the recognition was based on political considerations.<sup>282</sup> Although not a case of independence recognition, the recognition of China shows that under customary international law a state may be recognized by the international community long after the date of change occurs.

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<sup>279</sup> *Id.*

<sup>280</sup> *Id.* at 2, 4.

<sup>281</sup> Andrew Glass, *U.S. Recognizes Communist China, Dec. 15, 1978*, POLITICO (Dec. 15, 2018, 7:15 AM), <https://www.politico.com/story/2018/12/15/us-recognizes-communist-china-dec-15-1978-1060168>.

<sup>282</sup> *Id.*

## V. COMPARATIVE ANALYSIS OF THE INTERNATIONAL RECOGNITION OF EAST AFRICAN INDEPENDENCE

This section compares Somaliland's independence and international recognition to the recognition of other states in East Africa. This section builds on the prior sections by explaining how the history of Somaliland and the states of East Africa, the customary law relating to international law of state recognition, the policies of the African Union, and the practice of state recognition in East Africa, promote the recognition of Somaliland. Contrary to the existing lack of state recognition of Somaliland, this section sets Somaliland apart from other separatist movements and establishes a divergent argument for state recognition that does not call for universal recognition of separatist movements. It particularly focuses on South Sudan and Eritrea, the two most recent additions to the global community. However, it also addresses other states' recognition and independence in East Africa by providing both supporting and dissenting examples of state recognition in East Africa.

### *A. Eritrea and Ethiopia: A Return to Pre-Independence Borders*

Eritrean independence presents a clear case under international law for the recognition of Somaliland. UN Secretary General U Thant claimed that "the United Nation's attitude is unequivocal... The United Nations has never accepted and does not accept ... the principle of secession of a

part of its Member State."<sup>283</sup> Despite this statement, over 40 states have seceded, one of them being Eritrea.<sup>284</sup> The UN General Assembly decided that Eritrea was ethnically similar enough to Ethiopia that a union was the most favorable resolution.<sup>285</sup> This union was consummated in 1952, with long-term plans to separate the nations down the road.<sup>286</sup> The Eritrean people were so dissatisfied with this plan that, from 1961 to independence in 1991, they waged a thirty-year war against the decision.<sup>287</sup>

Eritrean independence presents a number of direct comparisons to the people of Somaliland. Both Eritreans and Somalilanders were oppressed by their respective governments.<sup>288</sup> To end this oppression, Eritreans and Somalilanders used force of arms and waged campaigns against their respective central governments, seeking to restore colonial or near-colonial borders.<sup>289</sup> The central governments of Somalia and Ethiopia eventually fell after conflict with forces seeking a change of government acting in concert with separatists in their respective nations seeking independence.<sup>290</sup>

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<sup>283</sup> Minasse Haile, *Legality of Secessions: The Case of Eritrea*, 8 EMORY INT'L L. REV. 479, 502 (1994).

<sup>284</sup> Farley, *supra* note 226, at 797.

<sup>285</sup> See A. Arthur Schiller, *Eritrea: Constitution and Federation with Ethiopia*, 2 AM. J. COMP. L. 375, 381 at 376, 381 (1953) (explaining that a pooled conception of Eritrea and Ethiopia was how the issue was seen).

<sup>286</sup> TERRENCE LYONS, *ERITREA: THE INDEPENDENCE STRUGGLE AND THE STRUGGLES OF INDEPENDENCE* 36, 39-40 (2019).

<sup>287</sup> *Id.* at 39-40.

<sup>288</sup> *Id.* at 40; see also LEWIS, *supra* note 5, at 252.

<sup>289</sup> LYONS, *supra* note 286, at 40-43; BRADBURY, *supra* note 1, at 52-53.

<sup>290</sup> See Haile, *supra* note 283 at 517 (explaining that the EPLF, Eritrean liberation forces, placed the government in Ethiopia in power via conflict); see also Farley, *supra* note 226, at 782.

Lastly, in both cases, Eritrean and Somalilander forces controlled the territory they sought to liberate, having ousted government forces in their respective regions.<sup>291</sup> Each of these comparisons illustrates important factors of international recognition of a state. In attaining independence and international recognition, Eritrea places these comparisons into a clear light; the recognition of Eritrea's independence and not Somaliland's is not only illogical and against the precepts of international law, but it denies Somalilanders the dignity of citizenship and self-determination in the global community. Eritrea's case provides an obstacle to the recognition of Somaliland. Following the dissolution of the Ethiopian government at the end of the Eritrean War of Independence, the United Nations, the Eritrean forces, and the transitional Ethiopian government agreed that Eritreans could have a referendum on independence, and Ethiopia would respect the result.<sup>292</sup> The referendum overwhelmingly supported independence.<sup>293</sup> Following the referendum, Eritrea became an independent state recognized by the African Union, the United Nations, and the international community.<sup>294</sup>

Somalia, however, accepted neither the Somaliland unilateral declaration of independence in 1991 nor the result of a referendum in 2001 under which Somaliland overwhelmingly voted for independence.<sup>295</sup> Much of this difference can be accounted for by the anarchy following the

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<sup>291</sup> See Haile, *supra* note 283 at 517.

<sup>292</sup> LYONS, *supra* note 286, at 43-45.

<sup>293</sup> *Id.* at 44

<sup>294</sup> *Id.*

<sup>295</sup> Lacey, *supra* note 3.

collapse of the Somali regime of Siad Barre.<sup>296</sup> The harm to international prestige and concern about repudiation from Somalis made UN recognition of Somaliland impracticable.<sup>297</sup> Successive weak and inconsistent authority in Mogadishu has made any reasonable concession for a Somali government impossible.<sup>298</sup> This key difference places Somaliland's most clear case for independence under the precedent of international law. However, despite the similarities which caused both Eritreans and Somalilanders to fight for independence, this difference blocks international recognition for Somaliland.

Eritrea had a clear case under international law for the recognition of its independence, and in affirming that case by recognizing Eritrea, the international community, the United Nations, and the African Union have sustained that case. Durham University IBRU Centre for Border Research reflected the African Delegation's opinion:

“The Eritrean story emphasizes the importance of the colonial experience as a boundary-defining exercise. Although in close physical proximity to Ethiopia, Eritrea's separate colonial experience solidified its discrete identity. In that way Somaliland, a former British colony, has perhaps as good a case as Eritrea for independence. Somaliland is defined by its unique and discrete colonial history

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<sup>296</sup> BRADBURY, *supra* note 1, at 49.

<sup>297</sup> Lacey, *supra* note 3.

<sup>298</sup> See *Weak Government Makes Security a Local Issue in Somalia*, WORLD POL. REV. (Feb. 29, 2016), <https://www.worldpoliticsreview.com/trend-lines/18075/weak-central-government-makes-security-a-local-issue-in-somalia>.

under the British, while the South is the product of an entirely different experience under Italy.”<sup>299</sup>

Assuming that the African Union delegation is correct, and the union in 1960 between Somalia and Somaliland was not properly consummated, Somaliland should, based on this and its legitimate grievances, be allowed to nullify its association with Somalia.<sup>300</sup> Eritrea, conversely, was not able to pursue this route as its joinder with Ethiopia was declared binding under international law.<sup>301</sup> Only after a vote to secede was passed and agreed to by a new Ethiopian government and the people of Eritrea was the nation recognized internationally.<sup>302</sup> This legal path to independence would avoid international concern for recognition of a singular minority as a state.<sup>303</sup>

Eritrea is a multiethnic state, and this characteristic informed its case for independence.<sup>304</sup> Many states around the world, including Spain and many African states, are reticent in their recognition of independence movements for minority ethnicities out of concern that recognition will create a basis under international law for their own minorities to secede.<sup>305</sup> Somaliland is primarily inhabited by the Isaaq Clan, and this key difference must be recognized as a barrier to the recognition of Somaliland under the same basis in which

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<sup>299</sup> Hoyle, *supra* note 226 at 84-85.

<sup>300</sup> AFRICAN UNION FACT-FINDING MISSION TO SOMALILAND, *supra* note 271, at 4.

<sup>301</sup> Haile, *supra* note 283, at 492-496.

<sup>302</sup> *See Id.* at 531.

<sup>303</sup> *See Id.*

<sup>304</sup> *Id.* at 490.

<sup>305</sup> *See Id.* at 479, 507, 535.

Eritrea's independence was recognized.<sup>306</sup> As addressed previously, however, Somaliland has a unique case for independence based on a combination of preexisting colonial borders retained when Somaliland briefly became independent, oppression from the central Somali government, and union with Somalia that was not ratified.<sup>307</sup> As a result, Somaliland, despite having a large primary ethnicity, the Isaaq, can still be recognized by the international community with a basis for recognition in-line with Eritrea's, without supporting international recognition of global separatism for minority peoples.<sup>308</sup>

Following the precedent of international law, Somalilanders should be recognized as an oppressed people whose choice to separate from Somalia was one of necessity, a decision reaffirmed by long-term and ongoing instability in Somalia;<sup>309</sup> an oppressed people may have a route to independence under international law if they are oppressed or their rights and opportunities are denied.<sup>310</sup> Because Eritrea's quest for self-determination has numerous aforementioned comparisons to Somaliland, it would be in accordance with prior decisions of international law to recognize that the similar

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<sup>306</sup> Kaplan, *supra* note 8, at 148; ACAD. FOR PEACE AND DEV., *supra* note 16, at 17-22.

<sup>307</sup> BRADBURY, *supra* note 1, at 31-32; LEWIS, *supra* note 5, at 252; AFRICAN UNION FACT-FINDING MISSION TO SOMALILAND, *supra* note 271, at 2-4.

<sup>308</sup> Kaplan, *supra* note 8, at 148; ACAD. FOR PEACE AND DEV., *supra* note 16, at 17-22.

<sup>309</sup> See Ikonomou, *supra* note 210.

<sup>310</sup> Reference re Secession of Quebec, *supra* note 237 at para. 154 (finding that a right to secede exists where a people are subjugated, dominated, or exploited).



situations justify the creation and recognition of Somaliland.<sup>311</sup> Even if Somalia, unlike Ethiopia, does not agree to the separation, this is a clarion call for the engagement of international law to free a people who seek independence due to a specific set of legitimate grievances which comports with prior decisions under international law and the recognition of a regional neighbor whose circumstances are wholly similar.<sup>312</sup>

*B. South Sudan, Sudan, and Yugoslavia: Dissolution and Separation without Internationally Recognized Borders*

When George W. Bush took office in 2000, the resolution of the ongoing conflict in Sudan was at the top of his list of foreign policy objectives.<sup>313</sup> Pursuant to this goal, President Bush took action to not only stop the killings in Darfur, but to resolve the longstanding conflict between the Sudanese government and the rebels in the south.<sup>314</sup> The result was that the American government, working with the U.K. and the United Nations, pressured the Sudanese government into

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<sup>311</sup> See Ikonou, *supra* note 210.

<sup>312</sup> *Id.*; see Farley, *supra* note 226, at 797.

<sup>313</sup> Zarina Fazaldin, *George W. Bush Remains an American Hero in Africa*, RICHMOND TIMES-DISPATCH (Jan. 25, 2009), [https://richmond.com/news/george-w-bush-remains-an-american-hero-in-africa/article\\_025034be-ae5b-53dd-95e9-65527c2f7e94.html](https://richmond.com/news/george-w-bush-remains-an-american-hero-in-africa/article_025034be-ae5b-53dd-95e9-65527c2f7e94.html).

<sup>314</sup> *Bush Blasts Darfur 'Genocide,'* DAILY MAIL, <https://www.dailymail.co.uk/news/article-458389/Bush-blasts-Darfur-genocide.html> (last updated May 29, 2007, 1:26 PM); Press release, George W. Bush, President, President Bush Discusses Genocide in Darfur, Implements Sanctions (May 29, 2007, 8:01 AM), <https://georgewbush-whitehouse.archives.gov/news/releases/2007/05/20070529.html>.

accepting a referendum whose outcome was guaranteed to result in the breakup of the south of Sudan into a separate nation.<sup>315</sup> Journalist Mark Landley asserts; “South Sudan is in many ways an American creation, carved out of war-torn Sudan in a referendum largely orchestrated by the United States, its fragile institutions nurtured with billions of dollars in American aid.”<sup>316</sup> The disregard for the policies of, or deference to the decisions of, the African Union regarding state recognition, and the ignorance of the historically accepted standard of rejecting separation without historical and/or clearly defined borders were met with applause and acceptance in Sudan, South Sudan, and the international community.<sup>317</sup> Given that Somaliland has at least as much precedent under international law for recognition as South Sudan did, rather than establish South Sudan’s recognition as an exception to normal state creation in Africa, it should be used as an example of how on a case-by-case basis, some states, even those bending the norms of state recognition under international law, can and should be recognized.

Both South Sudan and Eritrea, although ethnically diverse, have historically been tied to a parent, Sudan and Ethiopia respectively, because of their general cultural and

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<sup>315</sup> Mike Pflanz, *Sudan Referendum: What’s Being Voted on and What Will Happen?*, THE TELEGRAPH (Jan. 8, 2011, 8:30 AM), <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/sudan/8246615/Sudan-referendum-whats-being-voted-on-and-what-will-happen.html>.

<sup>316</sup> Mark Landler, *U.S. Is Facing Hard Choices in South Sudan*, N.Y. TIMES, Jan. 3, 2014, at A1.

<sup>317</sup> See generally Christian Knox, *The Secession of South Sudan: A Case Study in African Sovereignty and International Recognition* (May 2012) (B.A. thesis, College of St. Benedict / St. John’s University) (DigitalCommons@CSB/SJU).

ethnic ties.<sup>318</sup> Somaliland's separation from Somalia represents a continuation of this modern trend: a restoration of an informal or formal separation between similar peoples whose linkage has fostered hostility rather than unity.<sup>319</sup> Following the dissolution of Yugoslavia, as a state enters a process of dissolution, new states may emerge, separate, and be recognized under accepted international law.<sup>320</sup> In Ethiopia in 1993 and Sudan in 2011, a conceptual cousin of dissolution took place.<sup>321</sup> In each state, grievances long turned into aggression, resulted in internal change, and people oppressed by the former government sought to find dignity by separating from their oppressors.<sup>322</sup> Critically, under a theory of dissolution the breakup of the state does not need to be consensual, as was in the breakaway of Eritrea and South Sudan.<sup>323</sup>

Additionally, the dissolution of a state is the breakup of a state along its constituent parts, and this is simple in Somaliland's case as its boundaries can return to its pre-union lines.<sup>324</sup> Whether a government recognizes the separation or continues to claim control, realities on the ground should principally determine whether, under international law, the

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<sup>318</sup> *Eritrea*, *supra* note 287; *South Sudan*, ENCYC. BRITANNICA, <https://www.britannica.com/place/South-Sudan> (last updated June 7, 2019).

<sup>319</sup> Other examples include the peoples of the former Soviet Union, the breakup of Yugoslavia, and the separation of the Czechs and Slovaks after the breakup of Czechoslovakia.

<sup>320</sup> Ragazzi, *supra* note 226 at 1494-1497.

<sup>321</sup> See LYONS, *supra* note 286, at 43.

<sup>322</sup> See LYONS, *supra* note 286, at 40-46; Kaplan *supra* note 8, at 151, 156.

<sup>323</sup> Farley, *supra* note 226, at 777.

<sup>324</sup> *Id.*

secession of a people should be recognized.<sup>325</sup> Given the numerous similarities between South Sudan, Eritrea, and Somaliland, states should recognize that even if the current Somali government does not recognize secession, its long-term instability, historic persecution of Somalilanders, and Somaliland's desire and ability to function as an independent state, follow a pattern of accepted state recognition under international law that combines existing frameworks of international law qualifies as a state and should be recognized as such.

A seminal case on the dissolution of states, the former peoples of Yugoslavia did not vote as a unit for the succession of each new state.<sup>326</sup> Pointedly, some vigorously opposed the creation of new states.<sup>327</sup> Somalia was, and in many ways still is, a fractured state, one where numerous groups control vast swathes of the country, and the government has failed to establish order, even after about 30 years.<sup>328</sup> Consequently, given Somaliland's overwhelming support of secession, its people should be afforded the same recognition given to their East African neighbors. Concomitant to the recognition of South Sudan is Somaliland's case for independence. It provides a portico to the recognition of the state, a recognition that will not encourage a global outbreak of secessionist movements. It is therefore clear that Somaliland should be recognized. Recognition would enable aid and resources for a population denied the basic right of self-determination not

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<sup>325</sup> Ragazzi, *supra* note 227, at 1494-1497.

<sup>326</sup> *See Id.*

<sup>327</sup> *Id.* at 1494-1497, 1525-1526.

<sup>328</sup> *Somalia*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Somalia> (last updated Mar. 13, 2022).

afforded to them by the Somali government nor the international community.

### C. *Somalia: A State Lost*

Somalia has lost many of the criteria that define a state.<sup>329</sup> The United Nations arrived at that conclusion in the Secretary-General's Report of August 1999 on the Situation in Somalia, "Somalia, possessing no national government, lacks all of the attributes of statehood."<sup>330</sup> It is therefore reasonable to conclude that Somalia is in the process of dissolution.<sup>331</sup> Somalia's current stability is considerably worse than the period under which Eritrea separated from Ethiopia, in both the degree of lawlessness and state collapse that followed the overthrow of central government and the length of instability, which is ongoing.<sup>332</sup> The dissolution of Somalia and its union with Somaliland can be further justified under the theory presented by the African Union commission, i.e., that the union between Somalia and Somaliland was not properly ratified.<sup>333</sup> Therefore, Somaliland could be seen as following the accepted international law of dissolution following Somalia's collapse, supported by the lack of proper ratification to satisfy both legal

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<sup>329</sup> Farley, *supra* note 226, at 816-17.

<sup>330</sup> U.N. Secretary-General, *Report of the Secretary-General on the Situation in Somalia*, ¶ 62-3, U.N. Doc. S/1999/882 (Aug. 16, 1999).

<sup>331</sup> M. Bryden & Theodore M., *Somalia's Election Impasse: A Crisis of State Building*, GAROWE ONLINE (Feb. 16, 2021, 4:51 PM), <https://www.garoweonline.com/index.php/en/opinions/somalia-s-election-impasse-a-crisis-of-state-building>.

<sup>332</sup> *Id.*; see Haile, *supra* note 285, at 502.

<sup>333</sup> AFRICAN UNION FACT-FINDING MISSION TO SOMALILAND, *supra* note 271, at 4.

and political concerns regarding the recognition of Somaliland as an independent state.

*D. Djibouti: A Somali People Whose Independence Was Respected*

As one of the last European colonies to become independent in Africa, the example of Djibouti, formerly French Somaliland, offers some unique legal arguments and comparisons for the recognition of Somaliland.<sup>334</sup> Djibouti has historically been considered part of Greater Somalia, a concept embraced at various times by the people of Somalia, Somaliland, and the United Nations asserting that the formerly disparate Somali people should largely unite under one banner.<sup>335</sup> When the Italian and British colonies in Somalia were becoming independent from their European colonizers and forming a union, French Somaliland remained resolute in the continuation of their colonial status.<sup>336</sup> The United Nations, France, or other global powers could have stepped in and forced the union. The Somalis in French Somaliland could have voted to unite with their cousins in Somalia at any point before or after their independence. The respect accorded to their decision to remain a colony of France is a powerful example of the international community's inconsistent application of legal standards in East Africa and to the Somali people.

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<sup>334</sup> Boddy-Evans, *supra* note 4.

<sup>335</sup> See KEREN WEITZBERG, *WE DO NOT HAVE BORDERS: GREATER SOMALIA AND THE PREDICAMENTS OF BELONGING IN KENYA* (2017).

<sup>336</sup> *Djibouti profile - Timeline*, BBC NEWS (May 8, 2018), <https://www.bbc.com/news/world-africa-13232162>.

When Djibouti's people voted to remain a colony of France, that vote was respected; when Somaliland's people voted to unite with Somalia, that vote was respected.<sup>337</sup> But when each sought to become independent, only the people of Djibouti were allowed to do so.<sup>338</sup> Despite both being European colonies, both attaining the essential elements of a state, and both holding popular referendums that signaled a positive referendum on independence, only Somaliland was denied.<sup>339</sup> Therefore, some of the reasons given as to why Somaliland is denied independence under international law and by intergovernmental organizations can be flatly refuted by making a comparison to Djibouti.

#### *E. Uganda and Somaliland: Divergent Paths*

Somaliland's status in relation to Somalia is directly comparable to the conflict between the Ugandan government and Buganda. Whereas Buganda fought singularly and within the existing state structure of Uganda, therefore not seceding nor taking part in a dissolution, Somaliland fits the definition of a state that has seceded due to the many similarities between Somaliland and states that have been internationally

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<sup>337</sup> *Id.*; David H. Shinn, *Somaliland: The Little Country that Could*, AFR. NOTES (Ctr. for Strategic and Int'l Stud., Washington, D.C.), Nov. 2002, at 2.

<sup>338</sup> See *Djibouti profile - Timeline*, BBC NEWS (May 8, 2018), <https://www.bbc.com/news/world-africa-13232162>.

<sup>339</sup> See generally Ken Menkhaus, *State Failure, State-Building, and Prospects for a "Functional Failed State" in Somalia*, 656 THE ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 154 (2014).

recognized as seceded.<sup>340</sup> Somaliland, unlike Buganda, suffered from oppression and genocide at the hands of the central government.<sup>341</sup> These factors justify, under the Quebec and Åland Island decisions, separation and independence.<sup>342</sup> Furthermore, whereas Somaliland had clearly defined colonial borders prior to its union with Somalia, Buganda was not a colony and therefore did not.<sup>343</sup> This factor should be critical in the recognition of Somaliland. Whereas a minority like the people of Buganda may desire change under international law, Somaliland's quest for recognition is unique in East Africa—and likely the world—because it has clear colonial borders.<sup>344</sup> This structure not only creates the clearly defined borders necessary for a state, but satisfies the African Union's policy of maintaining the integrity of colonial borders.<sup>345</sup> The history

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<sup>340</sup> The Montevideo Convention on the Rights and Duties of States, *supra* note 204.; Mwan Maina, *Explainer: Is Somaliland a Republic?*, THE STANDARD, (Dec. 16, 2020), <https://www.standardmedia.co.ke/explainers/article/2001397465/explainer-is-somaliland-a-republic>; *supra* Section IV.

<sup>341</sup> Einashe & Kennard, *supra* note 186.

<sup>342</sup> *Id.*; see Reference re Secession of Quebec, *supra* note 237 at para. 154 (finding that a right to secede exists where a people are subjugated, dominated, or exploited); see Ikonomou, *supra* note 210.

<sup>343</sup> Muse Bihi Abdi, President of the Republic of Somaliland, Address at the Consultation Summit on Relations Between Somaliland and Somalia (June 14, 2020) (available at <https://gabiley.net/2020/06/somalilands-legal-case-for-independence-is-in-conformity-with-international-laws-said-h-e-bihi-at-djibouti-conference/>).

<sup>344</sup> Nwekwo Tochukwu, Pre-colonial and Post-Colonial African Diplomacy and the Influence of the African Union in Africa's Diplomatic History 16-17 (May 2015) (B.A. paper, Girne American University) (available at [https://www.researchgate.net/publication/281320392\\_PRE-COLONIAL\\_AND\\_POST-COLONIAL\\_AFRICAN\\_DIPLOMACY\\_AND\\_THE\\_INFLUENCE\\_OF\\_THE\\_AFRICAN\\_UNION\\_IN\\_AFRICA'S\\_DIPLOMATIC\\_HISTORY](https://www.researchgate.net/publication/281320392_PRE-COLONIAL_AND_POST-COLONIAL_AFRICAN_DIPLOMACY_AND_THE_INFLUENCE_OF_THE_AFRICAN_UNION_IN_AFRICA'S_DIPLOMATIC_HISTORY)).

<sup>345</sup> *Id.* at 16-17.



of Uganda and its conflict with Buganda, show not only how Somaliland has a case under international law for recognition, but also points to a clear and narrow path to recognition that will keep minorities like the people of Buganda from seeking independence on the same basis as Somaliland. Although Buganda was a kingdom prior to the formation and recognition of Uganda, its story provides a regional and legal counterweight to Somaliland, one where an entity once separate did not seek under force of arms nor international law to separate from its parent.<sup>346</sup>

*F. Rwanda, Burundi, and Somaliland: The Impact of Genocide on State Separation and Borders*

Rwanda, Burundi, and Somalia all suffered genocides in the 21<sup>st</sup> century.<sup>347</sup> United Nations Investigator Chris Mburu stated, “[b]ased on the totality of evidence collected in Somaliland and elsewhere, both during and after his mission, the consultant firmly believes that the crime of genocide was conceived, planned and perpetrated by the Somali Government against the Isaaq people of northern Somalia between 1987 and 1989.”<sup>348</sup> The campaign of violence took place in northern Somaliland, where the Somali forces not only killed the Isaaq, but also destroyed Hargeisa, the largest city in north Somalia,

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<sup>346</sup> See OTUNNU, CRISIS OF LEGITIMACY AND POLITICAL VIOLENCE IN UGANDA, 1979 TO 2016 31-77, 157-237 (2017).

<sup>347</sup> Guichaoua, *supra* note 120, at 125; MBURU, *supra* note 185, at 37; RENÉ LEMARCHAND, BURUNDI: ETHNIC CONFLICT AND GENOCIDE 118-131 (1996).

<sup>348</sup> MBURU, *supra* note 185, at 37.

and devastated the countryside.<sup>349</sup> With the vast majority of the killing occurring in the independent State of Somaliland, and perpetuated by the government in Mogadishu, northern Somalis saw rebellion and independence as their best option to end the killing.<sup>350</sup> International intervention in the genocide was nonexistent.<sup>351</sup>

Rwanda and Burundi also suffered from genocides.<sup>352</sup> In these cases, as well as in Somaliland, the international response was minimal.<sup>353</sup> Although during the Rwandan genocide the United Nations did have forces in the country, the killing in all three cases only ceased once the victims of the genocide, through force of arms, took key action that ended each conflict.<sup>354</sup> In the case of Rwanda and Burundi, replacing or modifying the central government was necessary to end the killings.<sup>355</sup> In Somalia's case, the Isaaq minority and the victims of the ongoing genocide in north Somalia chose to restore the formerly independent Somaliland to end the killings.<sup>356</sup> As a minority in Somalia, the Isaaq and northern Somalis would have always been under the heel of a hostile majority.<sup>357</sup> Therefore, the most practical means to end the

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<sup>349</sup> BRADBURY, *supra* note 1, at 77-79; Lacey, *supra* note 3.

<sup>350</sup> BRADBURY, *supra* note 1, at 52-53.

<sup>351</sup> Einashe & Kennard, *supra* note 186.

<sup>352</sup> Guichaoua, *supra* note 120, at 125; RENÉ LEMARCHAND, BURUNDI: ETHNIC CONFLICT AND GENOCIDE 118-131 (1996).

<sup>353</sup> *Id.*; Einashe & Kennard, *supra* note 186.

<sup>354</sup> Guichaoua, *supra* note 120, at 125; RENÉ LEMARCHAND, BURUNDI: ETHNIC CONFLICT AND GENOCIDE 118-131 (1996); MBURU, *supra* note 185, at 37.

<sup>355</sup> Guichaoua, *supra* note 120, at 125; *See generally*, RENÉ LEMARCHAND, BURUNDI: ETHNIC CONFLICT AND GENOCIDE 118-131 (1996).

<sup>356</sup> BRADBURY, *supra* note 1, at 52-53.

<sup>357</sup> *See id.* at 50-60.

killing was to restore Somaliland's statehood. This restoration following genocide falls within the separation concept under international law.<sup>358</sup>

During Rwanda and Burundi's respective genocides, the most practicable means of ending the killing was to alter the government of their particular state.<sup>359</sup> In Rwanda, this meant the military seizure of the capital and key military positions.<sup>360</sup> Neither Rwanda nor Burundi's genocide victims had the basis to separate from their oppressive governments and form new nations, as both nations existed as kingdoms prior to European colonialism in Africa.<sup>361</sup> Conversely, the people of Somaliland were formerly separate from their killers, and they had no realistic ability to move beyond that formerly defined territory to seize the capital as in Rwanda's case, given the size of Somalia and the smallness of the northern population compared to the rest of the Somali population.<sup>362</sup> As a result, the only realistic remedy was to secede from Somalia. Because this was the people of Somaliland's only option to end the killing and repression, it makes a clear case under international law for separation and the creation of a new

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<sup>358</sup> *See* Reference re Secession of Quebec, *supra* note 237 at para. 154 (finding that a right to secede exists where a people are subjugated, dominated, or exploited); *see* Ikonomou, *supra* note 210.

<sup>359</sup> Guichaoua, *supra* note 120, at 125; RENÉ LEMARCHAND, BURUNDI: ETHNIC CONFLICT AND GENOCIDE 118-131 (1996).

<sup>360</sup> *Id.*

<sup>361</sup> *Rwanda*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Rwanda> (last updated Aug. 10, 2021); *Burundi*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Burundi> (last updated Mar. 13, 2022).

<sup>362</sup> *Somaliland*, POPULATION DATA.NET, (Mar. 25, 2022), <https://en.populationdata.net/countries/somaliland/>.

state.<sup>363</sup> Whereas Rwanda and Burundi were able to end their genocides, absent successful international intervention of altering the central government, they would not be able to make a case under international law for separation. The people of Somaliland, under generally similar circumstances, should be recognized under the international law theory of separation. They not only meet the requirements for a state, but the ongoing chaos in Somalia combined with the historical lack of an alternative remedy creates a clear case under international law for recognized separation.<sup>364</sup>

*G. Tanzania: Where Minorities Did Not Seek  
Independence*

The recognition of the State of Tanzania is perhaps the most contrary in East Africa to the recognition of Somaliland. However, even in the international recognition of Tanzania there are reasons to support the independence of Somaliland. As previously explained, Tanzania is one of the most diverse states in Africa, with numerous tribes and ethnicities living within its borders.<sup>365</sup> In order to achieve state unity, the Tanzanian government engaged in a pattern and practice of ethnic repression.<sup>366</sup> Following the Åland Islands and Quebec decisions, establishing a standard that when repression

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<sup>363</sup>Somalia Population, WORLDOMETER, <https://www.worldometers.info/world-population/somalia-population/> (last visited Feb. 13, 2021).

<sup>364</sup> See generally *Somalia*, supra note 328.

<sup>365</sup> Tanzania, ENCYC. BRITANNICA, <https://www.britannica.com/place/Tanzania> (last updated Mar. 19, 2021).

<sup>366</sup> See ENGLEBERT & DUNN, supra note 132, at 81.

exists—though it did not in these cases—repressed groups may seek independence. Under this standard, Somaliland has a<sup>367</sup> right to seek independence. Although the minorities in Tanzania did not seek independence when they found their cultural identities under assault, their cultural suppression shows a pattern in many East African States confronted with a complex past and diverse population, where government actions and international response may create cases for secession.<sup>368</sup> A people oppressed and seeking independence, successfully attaining their goal, and therefore going a different route than the minorities of Tanzania were those of Eritrea, who successfully gained independence from Ethiopia in 1993.<sup>369</sup>

Even unrecognized, Somaliland has the functional aspects of a state and has been represented as a state by its population and leaders.<sup>370</sup> Although this does not have legal precedent as a basis for international recognition, doing so on this foundation would flow from the legal and policy criterion of state creation. By meeting the qualifications to be ordinarily considered a state, such as maintaining international relations, holding free elections, and achieving a level of economic and security stability rare in East Africa, Somaliland has shown it is a *de facto* state. Somaliland's people have shown that even without international recognition, they are capable of going it alone. Somaliland's actions should be considered as a dispositive policy justification, if not cushioning, for a legal

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<sup>367</sup> See Aakash Kumbhat et al., *supra* note 206.

<sup>368</sup> See *Tanzania*, *supra* note 365.

<sup>369</sup> LYONS, *supra* note 286, at 43-46.

<sup>370</sup> BRADBURY, *supra* note 1, at 1; Lacey, *supra* note 3.

argument under international law that Somaliland should be recognized as a state.

### CONCLUSION

The history of Somaliland illustrates a people with an inimitable story, one of both unique development and a connection to the wider Somali people. Made into a British colonial outpost, Somaliland maintained a decentralized and pastoralist culture as other Somalis left some aspects of that culture behind.<sup>371</sup> This was followed by unity and a hope in a united Somali nation that turned, instead, into a nightmare of warfare and genocide.<sup>372</sup> Seeking to escape their nightmare and find the basic rights they were denied, the people of Somaliland sought independence and an end to their union with Somalia.<sup>373</sup> Around them, both before and since, their neighbors attempted and succeeded in finding these basic rights, yet Somaliland has remained unrecognized. Somaliland's most compelling arguments for its independence can be found in the stories and histories of the nations of East Africa and under the basic tenets and cases of international law.

Somaliland's argument for the recognition of its independence under international law can follow two paths, both of which lead to a conclusion that Somaliland's independence should be recognized by the international community. Under the theory of dissolution, and following the Yugoslavia decision and the Vienna Convention on

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<sup>371</sup> BRADBURY, *supra* note 1, at 16-17.

<sup>372</sup> *Id.* at 31-32.

<sup>373</sup> Balthasar, *supra* note 177, at 132-145.

Diplomatic Relations, Somaliland was free to pursue its own path when the collapse of the Somali government was underway.<sup>374</sup> Under the theory of secession, given the genocide against the primary clans of Somaliland and the repression and other grievances occurring against the people of Somaliland, they had a right under international law to secede.<sup>375</sup> Both of these theories are supported by examples in East Africa, examples that reaffirm the uniqueness of the region and the ongoing injustice in maintaining Somaliland's attachment to Somalia.

By comparing Somaliland to the other nations of East Africa, it becomes clear that there are numerous parallels between the story of Somaliland and its case for the recognition of its independence. From Buganda's conflict with the Ugandan government to the recognition of South Sudan as an independent nation in 2011, East Africa is host to a history replete with comparisons to the story of Somaliland. Applying these narratives and the tenets of international law to Somaliland, its case for recognition becomes clear.

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<sup>374</sup> Ragazzi, *supra* note 227 at 1494-1497; Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95 at 1-2 (affirming the governance of customary international law over questions not expressly provisioned and outlining the principal of sovereign equality).

<sup>375</sup> Ragazzi, *supra* note 227 at 1491, 1497-1499; Einashe & Kennard, *supra* note 186.