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**Between self-determination and the African Union's position on *uti possidetis*:
A Legal Analysis of Somaliland's secession claim**

by

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Summary

This dissertation explores the complex legal tension between the right to self-determination and the African Union's (AU) principle of *uti possidetis*, with Somaliland's secessionist claim as the focal case. Since declaring its independence from Somalia in 1991, Somaliland has functioned as a *de facto* state with its own governance structures, yet it remains unrecognised internationally. The dissertation examines whether Somaliland's pursuit of self-determination under international law justifies its bid for statehood and assesses the AU's approach to territorial integrity as a significant obstacle to its recognition. In Africa, the AU upholds *uti possidetis*, a principle originally applied to post-colonial Latin America, which maintains colonial borders to preserve regional stability. This principle challenges movements like Somaliland by prioritising the inviolability of borders over the right to self-determination, especially when such claims threaten existing state boundaries. To understand the AU's stance, this dissertation reviews foundational documents such as the AU Constitutive Act, which stresses territorial integrity, and significant case law from the African Commission on Human and Peoples' Rights. The AU has consistently emphasised solutions that uphold existing borders, supporting internal autonomy but rarely endorsing secessionist movements. Examples from African cases, such as the Katanga separatist movement in Zaire, demonstrate the AU's reluctance to recognise claims that risk fragmenting member states. Somaliland's case for recognition is rooted in historical factors, including its brief period as an independent state before voluntarily uniting with Somalia in 1960. Its self-determination claim highlights a unique scenario: a stable, democratically governed region seeking recognition due to systemic repression and human violations in its past. However, the AU remains wary, as recognising Somaliland might set a precedent that could encourage other secessionist movements across the continent. In summary, while Somaliland meets the criteria for statehood, its quest for recognition faces substantial challenges due to the AU's strict adherence to the principle of *uti possidetis* and territorial integrity, necessitating a nuanced approach that accommodates both stability and the aspirations of self-determination.

Declaration of Originality



Declaration of originality¹ for a research output²

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¹ Annexure G to Postgraduate Administrative Processes for Registered Students – S1834/13 (amended).

² Research output, in this context, is defined as a mini-dissertation, dissertation or thesis.

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Abbreviations

ACHPR – African Charter on Human and Peoples’ Rights

ACHPR – African Commission on Human and Peoples’ Rights

AHG/Res.16(1) – 1964 Cairo Resolution

AU – African Union

CERD – 1965 International Convention on the Elimination of All Forms of Racial Discrimination

CPA – Comprehensive Peace Agreement

CSIS – Center for Strategic and International Studies

DIRCO – Department of International Relations and Cooperation

EPLF – Eritrean People’s Liberation Front

FRD – Friendly Relations Declaration

GGACC – Good Governance and Anti-Corruption Commission

ICJ – International Court of Justice

ICCPR – International Covenant on Civil and Political Rights

IGAD – Intergovernmental Authority on Development

KPC – Katangese Peoples’ Congress

KRG – Kurdistan Regional Government

NATO – North Atlantic Treaty Organization

OAU – Organisation of African Unity

Resolution 1514 – 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples

SFG – Somali Federal Government

SPLA/M – Sudanese People’s Liberation Army/Movement

TNG – Transitional National Government

UN – United Nations

UN Charter – Charter of the United Nations

UNAMET – United Nations Mission in East Timor

UNGA – United Nations General Assembly

UNMIK – United Nations Mission in Kosovo

UNSC – United Nations Security Council

UNTAET – United Nations Transitional Administration in East Timor

VCLT – Vienna Convention on the Law of Treaties

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Chapter 1

1.1 Introduction

Article 1(1) of the International Covenant on Civil and Political Rights ('ICCPR') stipulates that all peoples possess the right to self-determination.¹ This dissertation, therefore, investigates the legal tension between self-determination and the AU's principle of *uti possidetis* through the lens of Somaliland's secession claim. Somaliland declared its independence in 1991 and has functioned as a *de facto* state,² yet it lacks international recognition.

A *de facto* state can be defined as a breakaway region that enjoys substantial local support and establishes the necessary infrastructure to provide government services to a defined population within a specified territory, effectively administering this area over an extended period.³ According to Pål Kolstø, a *de facto* state is qualified by three criteria: (1) its leadership must exercise control over the majority of the territory it claims, (2) it must have sought but not achieved international recognition as an independent state, and (3) it must have maintained this status of non-recognition for more than two years.⁴

The Charter of the United Nations (UN Charter) and ICCPR uphold the right to self-determination. Still, the AU's adherence to colonial borders poses a significant obstacle to Somaliland's recognition. Nonetheless, the essence of the legal right to self-determination is rooted in the principle of freedom from oppression.⁵ The United Nations General Assembly's (UNGA) 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples asserts that subjecting peoples to foreign control, domination, and exploitation violates fundamental rights, contradicts the UN Charter, and hinders the advancement of global peace and cooperation.⁶

Self-determination necessitates some form of secession, as seen in the case of Somaliland, which is regarded as a "secessionist" entity in international law. This

¹ International Covenant on Civil and Political Rights art 1(1).

² Markus Virgil Hoehne, 'Somaliland: 30 Years of De Facto Statehood, and No End In Sight' (ISPI 2021) <https://www.ispionline.it/en/publication/somaliland-30-years-de-facto-statehood-and-no-end-sight-30363> accessed 4 May 2024.

³ Scott Peg, 'De Facto States in the International System' [1998] IIR 1, 1.

⁴ Pål Kolstø, 'The Sustainability and Future of Unrecognized Quasi-States' [2006] JPR 1, 27.

⁵ Matthew Saul, 'The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?' [2011] HRLR 610, 613.

⁶ Declaration on the Granting of Independence to Colonial Countries and Peoples art 1.

principle safeguards the right of people to freely decide their political status and pursue economic, social, and cultural development. Therefore, secession typically refers to separating from an existing state, detaching a portion of its territory, and the subsequent political withdrawal of that region.⁷ In summary, the AU's commitment to upholding the colonial-era borders within Africa is the principal reason for many African states' lack of recognition of Somaliland.⁸

1.2 Problem Statement

Somaliland's ambiguous legal status poses a significant barrier to its international recognition and complicates the issue of secessionist movements based on self-determination. Despite meeting the empirical criteria for statehood, such as having a permanent population, defined territory, government, and the capacity to engage with other states, these criteria are subject to debate and interpretation influenced by geopolitical dynamics.⁹

For instance, there was debate over whether Article 1 of the Montevideo Convention described a sociological fact or a legal theory.¹⁰ Over time, the Montevideo Convention has become closely linked with the declaratory theory of statehood and is the basis for most discussions.¹¹ In the *Western Sahara* case, the International Court of Justice (ICJ) determined that international law does not mandate a specific state structure, as demonstrated by the wide variety of forms of global state law.¹²

The ICJ's statement suggests that there are no universally accepted criteria for statehood, implying that the recognition of a state is mainly at the discretion of the international community. Therefore, it is argued that recognising Somaliland's secession could set a precedent for other African secessionist movements, often driven by governance issues. Additionally, Somaliland's engagement with Ethiopia raises concerns under the UN Charter regarding interference in internal affairs.

⁷ Redie Bereketeab, 'Self-Determination and Secession: A 21st Century Challenge to the Post-colonial State in Africa' [2012] TNAI 1, 3.

⁸ Hoehne, *Somaliland...* (n2).

⁹ Edward Newman & Gëzim Visoka, 'The Geopolitics of State Recognition in a Transitional International Order' [2021] 28(1) GEOPOLITICS <https://doi.org/10.1080/14650045.2021.1912018> accessed 13 February 2025.

¹⁰ Hennie Strydom and others, 'Statehood and recognition' in Hennie Strydom and Christopher Gevers (eds), *International Law* (Oxford University Press Southern Africa (Pty) Limited, Cape Town, 2016) 38.

¹¹ Strydom... *Statehood* (n10) 38.

¹² *Western Sahara* (Advisory Opinion) [1975] ICJ Rep 12.

In other words, Somaliland's relations with Ethiopia raise significant concerns under Article 2 of the UN Charter.¹³ This Article prohibits interference in the internal affairs of other states, including their domestic politics.¹⁴ Somalia views Somaliland as part of its territory, making Ethiopia's engagement with Somaliland a contentious issue that challenges Somalia's sovereignty. Therefore, Somaliland's secession claim may be considered a violation of the sovereignty of the state of Somalia; thus, the right to self-determination is one of the most serious issues in international politics.¹⁵

Yet, this engagement demonstrates Somaliland's capacity to function as a *de facto* state despite lacking formal international recognition. The situation calls into question the pressing need for legal clarity in addressing the complexities of secession and statehood in international law.

1.3 Research Questions

The dissertation addresses the following key questions:

- To what extent does Somaliland fulfill the legal requirements for statehood and secession under international law?
- How does the African Union's adherence to the principle of *uti possidetis* undermine the justification for self-determination?
- Is applying the principle of *uti possidetis* by the African Union consistent, or are there exceptions?
- Can Somaliland's claim for secession be justified under the principle of self-determination?

1.4 Research Objectives

This study's primary objective is to critically analyse Somaliland's claim for secession based on self-determination. The research will also evaluate the AU's position on *uti*

¹³ UN Charter art 2.

¹⁴ Abdurisaq Abdurahman Abdullah, 'Legal Basis for Unilateral Secession of Somaliland from Somalia' [2023] IJGG 55, 57.

¹⁵ Abdullah, *Legal...* (n14) 57.

possidetis and compare Somaliland's situation with other successful secession cases in Africa, such as South Sudan and Eritrea.

1.5 Literature Review

The main issue in international law regarding self-determination involves finding a balance between a state's territorial integrity and the hopes of dissatisfied groups.¹⁶ This is particularly relevant under the principle of *uti possidetis*, which emphasises the importance of maintaining territorial integrity.¹⁷ Therefore, the principle of self-determination is central to Somaliland's claim, even though the AU's commitment to *uti possidetis* complicates secessionist movements. Historical and contemporary examples, including South Sudan and Eritrea, provide context for understanding the complexities of secession in Africa. While *uti possidetis* aims to prevent conflict, it often neglects the aspirations of distinct political entities.

However, the argument that *uti possidetis* prevents armed conflict is contentious, particularly in Somaliland and the Horn of Africa. The principle of *uti possidetis* originated in colonial practices. In its early development, international law served as a tool for colonisers to legitimise their ambitions,¹⁸ including the demarcation of colonial borders.¹⁹ However, as noted above, the notion that *uti possidetis* ensures peace is an oversimplification, as the persistence of border conflicts contradicts this claim. The application of *uti possidetis* has not prevented conflicts in Africa, where border disputes remain prevalent, suggesting that its implementation does not make a substantial difference in resolving these issues.

Emerson argues that abolishing the right to secession in favour of prioritising states' territorial integrity significantly limits the potential for self-determination and the establishment of independent statehood.²⁰ He further notes that the transition from colonial status to independence is viewed not as secession, regardless of whether it involves force, but as restoring the rightful sovereignty that colonial powers

¹⁶ Redie Bereketeab, 'Self-determination and Secessionism in Somaliland and South Sudan: Challenges to Postcolonial State-Building' [2012] TNAI 4, 13.

¹⁷ Sheila Paylan, 'Remedial Secession and the Responsibility to Protect: The Case of Nagorno-Karabakh' (Opinio Juris 2020) <https://opiniojuris.org/2020/12/23/remedial-secession-and-the-responsibility-to-protect-the-case-of-nagorno-karabakh/> accessed 2 May 2024.

¹⁸ Aman Kumar, 'A relook at the principle of *uti possidetis* in the context of the Indo-Nepal border dispute' [2021] 12 (1) JGLR <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8183582/> accessed 4 May 2024.

¹⁹ Kumar, *A Relook...* (n18).

²⁰ Rupert Emerson, 'Self-Determination' [1971] AJIL 459, 465.

illegitimately denied the people.²¹ This perspective remains relevant even in the case of Somaliland, despite Somalia not being a colonial power over it.

However, Beyene contends that countries have historically interpreted and applied the Montevideo Convention in ways that serve their political and diplomatic interests.²² While some early cases of self-determination and secession have been resolved, many others remain unresolved, with new cases emerging continuously.²³ Notable examples include Somaliland, Puntland, Zanzibar, the Niger Delta, Biafra, Western Sahara, Casamance, Cabinda, Ogaden, Ormia (Oromo Liberation Front), Tuareg (Azawad), Comoros, Darfur, South Kordofan, Blue Nile, Abyei, and Mombasa.²⁴ This suggests that the specific contexts and interests of the states involved often influence the application of the Montevideo Convention.

International law presents a complex stance on secession, sometimes prohibiting it, other times authorising it, and in some cases, neither permitting nor prohibiting it.²⁵ In scenarios where secession is authorised, international law establishes specific procedural rules for state creation, territorial boundaries, governance, human rights, and state succession. Secession is prohibited under international law if it violates fundamental principles, such as when an entity is created through force or foreign intervention or threatens international peace and security, prompting the United Nations Security Council (UNSC) to uphold territorial integrity.²⁶

The principles guiding Somaliland's pursuit of international recognition and sovereignty are unclear. Secession, self-determination, and *uti possidetis* are not applied uniformly. Additionally, there is no universally accepted interpretation of these principles, leading to varying applications and limitations. For example, secession is not an absolute right, and self-determination can be interpreted in multiple ways. Ultimately, the political interests of states often prioritise stability and the maintenance

²¹ Emerson, *Self-Determination...* (n20) 465.

²² Temesgen Sisay Beyene, 'Declaration of Statehood by Somaliland and the Effects of Non-Recognition under International Law' [2019] 10 (1) BLR <https://www.scirp.org/journal/paperinformation?paperid=91206> accessed 20 May 2024.

²³ Bereketeab, *Self-determination...* (n7) 2.

²⁴ *Ibid.*, (n7) 2.

²⁵ Marcelo G. Kohen, 'The role of recognition in the law and practice of secession' in John Dugard and David Raic (eds) *Secession: International Law Perspectives* (Cambridge University Press, New York, 2006) 101.

²⁶ Kohen, *Secession...* (n25) 101.

of existing borders over the recognition of new states, complicating Somaliland's quest for international acknowledgment.

1.6 Methodology

This research employs a desktop-based analysis of a combination of the sources of international law. The study critically examines case studies and scholarly articles in light of international law's primary and secondary sources to address the research questions.

1.7 Chapter Outline

Chapter 1: Introduction.

Chapter 2: Secession and self-determination under international law: A theoretical framework.

Chapter 3: The African Union's normative position on the link between self-determination and secession.

Chapter 4: Somaliland's case for secession.

Chapter 5: Recommendations and Conclusion.

Chapter 2: Secession and self-determination under international law: A Theoretical Framework

2.1 Introduction

The principle of self-determination has a long history in international law, dating back to the era of decolonisation. As introduced above, self-determination lies at the heart of Somaliland's claim for secession and eventual recognition. This chapter is divided into four parts, including this brief introduction. The second part discusses the principle of self-determination, while the third examines the role of *uti possidetis* and how it is linked to secession claims through self-determination. The last part is a brief conclusion.

2.2 The principle of self-determination

The principle of self-determination, although discussed in Marxist and socialist debates before 1917, gained significant recognition after the Bolshevik Revolution and emerged as a central issue during the post-World War I peace settlements.²⁷ However, the concept of nationality existed before 1945.²⁸ Some argue that the idea of self-determination, even if not explicitly named, was a key motivating factor for the American revolutionaries during their secession from the British Empire in the 1770s.²⁹ Nonetheless, in the pre-UN Charter era, self-determination functioned more as a political ideology than a legal norm.³⁰

The Covenant of the League of Nations (CLN) did not reference self-determination, nor did any international treaty endorse this principle before the UN Charter.³¹ However, post-1945, self-determination has emerged as a primary mechanism for

²⁷ Jeremy Robert Charnock Smith, *The Bolsheviks and the National Question, 1917-1923* (PhD thesis, University of London 2016) 24, 115, 279. See especially chapter 2 and chapter 7 for discussions on self-determination and post-World War I settlements.

²⁸ James Crawford, 'International Law Conditions for the Creation of States: Statehood and self-determination' in James Crawford (ed) *The Creation of States in International Law* (Oxford University Press Inc., New York, 2006) 108.

²⁹ Ryan McMaken, 'A Short History of the Right to Self-Determination' (Mises Wire, 2 March 2024) <https://mises.org/mises-wire/short-history-right-self-determination> accessed 10 August 2024; Social Studies Help, 'The Foundations of the Constitution: The American Revolution Begins' (Social Studies Help 2025) <https://socialstudieshelp.com/american-history-lessons/the-revolution/> accessed 14 February 2025; *please see also* Nathaniel Parry, 'Beyond Liberty: Class Divisions in the American Revolution' (Revolutionary War Journal 2025) <https://revolutionarywarjournal.com/beyond-liberty-class-divisions-in-the-american-revolution/> accessed 15 February 2025.

³⁰ Milena Sterio, 'Chapter 1: Self-determination: Historical underpinnings' (Edgar Elgar Online 2018) https://www.elgaronline.com/monochap/9781785361210/09_chapter1.xhtml accessed 28 June 2024.

³¹ Sterio, *Chapter...* (n30).

decolonisation.³² Self-determination has evolved from a political ideology into a legal norm, notably through the adoption of the ICCPR in 1966 and several General Assembly resolutions.³³

As briefly outlined above, article 1 of the ICCPR stipulates that “all peoples have the right of self-determination. Under that right, they freely determine their political status and pursue economic, social, and cultural development.”³⁴ The 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514) asserts that “all peoples have the right to self-determination.³⁵ Under this right, they can freely determine their political status and freely pursue their economic, social, and cultural development.”³⁶

While the primary aim of Resolution 1514 was to facilitate decolonisation, its architects expanded its scope *ratione personae* to enhance its appeal on a global scale.³⁷ Towards 1970, the Friendly Relations Declaration (FRD) sought to codify the legal norm of self-determination within the UN framework by affirming that states must refrain from forcible actions that deprive peoples of their right to self-determination and that colonised peoples possess the right to self-determination under the UN Charter.³⁸

Self-determination is commonly categorised into internal and external forms.³⁹ Internal self-determination involves a group’s right within a state to manage its own political, economic, and social matters independently, without outside influence.⁴⁰ Internal self-determination can take the form of granting autonomy to regions or groups, allowing them to govern their own affairs while staying within the larger state.⁴¹

³² *Ibid.*, (n30).

³³ *Ibid.*, (n30).

³⁴ International Covenant on Civil and Political Rights article 1.

³⁵ 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples article 2.

³⁶ 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples article 2.

³⁷ Marcelo G. Cohen and others, ‘Secession and self-determination’ in Christian Tomuschat (eds), *Secession: International Law Perspectives* (Cambridge University Press, New York, 2006) p 23.

³⁸ Sterio, *Chapter...* (n28).

³⁹ Hurst Hannum, ‘Legal Aspects of Self-Determination’ (Princeton University, 2021) <https://pesd.princeton.edu/node/511> accessed 10 September 2024.

⁴⁰ Hurst Hannum, ‘Legal Aspects of Self-Determination’ (Princeton University, 2021) <https://pesd.princeton.edu/node/511> accessed 10 September 2024.

⁴¹ Peter Hilpold, ‘Self-Determination and Autonomy: Between Secession and Internal Self-Determination’ [2017] *IJMGR* (24) <https://www.jstor.org/stable/26557868>. Accessed 12 Sept. 2024.

It may also include safeguarding cultural, linguistic, and social rights, ensuring that groups can preserve their identity in a diverse society.⁴² On the other hand, external self-determination refers to a people's right to decide their political status and seek independence from an existing state.⁴³ This includes forming a new state or joining another, commonly linked with independence movements. External self-determination has played a key role in decolonisation, enabling colonised peoples to pursue sovereignty.⁴⁴

The principle of self-determination under contemporary international law remains subject to diverse interpretations by various actors in the international system, which is exemplified by the ICJ's advisory opinion emphasising the "Occupied Palestinian Territory" as a single territorial unit.⁴⁵ Before analyzing secession and its relation to self-determination, it is necessary to briefly examine the term "peoples" used in defining self-determination. Kresina and Kresin state that international law lacks a comprehensive definition of "people."⁴⁶

Instead, the concept of "people" is understood through its social and territorial attributes, distinguishing features, roles, and relationships with other classifications such as nation, state, population, national minorities, and indigenous peoples.⁴⁷ The concept of "peoples" often leads to an analysis of secession, as it is typically a "people" within a state that seeks to secede from the parent state. This is because "peoples" are the holders of the right to self-determination, and invoking this right often results in secession.

Archibugi contends that an objective criterion for defining a "people" has never existed and is unlikely to emerge, asserting that language, religion, race, and shared beliefs

⁴² Adv Hemant More, 'The Right of Self-Determination: A Third-Generation Human Right' (The Legal Quotient 2022) <https://thelegalquotient.com/legal-concepts/human-rights/the-right-of-self-determination-a-third-generation-human-right/5519/> accessed 16 February 2025.

⁴³ Hannum, *Legal...* (n37).

⁴⁴ Carlson Anyangwe, 'The normative power of the right to self-determination under the African Charter and the principle of territorial integrity: competing values of human dignity and system stability' [2018] AHRY 47, 50.

⁴⁵ Jean-Pierre Filiu, 'Occupied Palestinian "territories" or "territory"? ICJ insists on singular' (Le Monde 2024) https://www.lemonde.fr/en/international/article/2024/08/20/occupied-palestinian-territories-or-territory-icj-insists-on-singular_6718529_4.html accessed 16 February 2025.

⁴⁶ I. O. Kresina & O. V. Kresin, 'The People as a Subject of International Law' [2018] JILH 573, 577.

⁴⁷ Kresina & Kresin, *The People...* (n46) 577.

are insufficient for establishing clear boundaries.⁴⁸ Therefore, the principle of secession presents a conundrum in international law; while it is not explicitly prohibited, the international community often exhibits a cautious approach toward its application. In other words, critics of secession argue that international law lacks an explicit right to secession.⁴⁹ At the same time, secessionists maintain that it does not expressly forbid secession, leaving the interpretation open to perspective.⁵⁰

2.3 The link between self-determination and secession and the role of *uti possidetis* in maintaining territorial integrity

Self-determination and secession are interconnected by statehood recognition, as they play a role in the discourse surrounding this topic. The principle of self-determination is often invoked by groups seeking secession from a parent state, as typically, “peoples” within a state assert their right to self-determination.⁵¹ This connection suggests that self-determination can serve as a legal and moral justification for secession, particularly when a group feels oppressed or marginalised within an existing state structure.

This leads to uncertainty in identifying which groups are entitled to self-determination and the scope of this right.⁵² Decolonisation provided another impetus for secessionism, as the arbitrary borders drawn during the colonial era often divided linguistic and kinship groups.⁵³ As a result, newly independent states that had struggled against colonial powers found themselves facing their own secessionist challenges.⁵⁴ For instance, Eritrea sought independence from Ethiopia, Bangladesh from Pakistan, East Timor from Indonesia,⁵⁵ and Somaliland from Somalia.

⁴⁸ Daniele Archibugi, ‘A Critical Analysis of the Self-determination of Peoples: A Cosmopolitan Perspective’ (Constellations Volume 10, No 4, 2003) <https://www.files.ethz.ch/isn/18409/DP28.pdf> accessed 1 August 2024.

⁴⁹ Milena Sterio, ‘Introduction’ in Milena Sterio, *The Right to Self-Determination under International Law: “Selfistans,” Secession and the Rule of Law* (Edward Elgar Publishing 2013) https://www.elgaronline.com/monochap/9781785361210/07_introduction.xhtml accessed 3 August 2024.

⁵⁰ Sterio, *Introduction...* (n50).

⁵¹ Somto David Ojukwu and Osita Dominic Okoli, ‘A Critical Appraisal of the Right to Self Determination under International Law’ [2021] NAUJILJ 127, 127.

⁵² Freddy D Mnyongani, ‘Between a rock and a hard place: the right to self-determination versus *uti possidetis* in Africa’ [2008] TCILSA 463, 474.

⁵³ Tanisha Fazal and Ryan Griffiths, ‘A State of One’s Own: The Rise of Secession Since World War II’ [2008] BJWA 199, 202.

⁵⁴ Fazal and Griffiths, *A State...* (n54) 202.

⁵⁵ *Ibid.*, (n54) 202.

For instance, in 1971, Bangladesh's secession posed a significant challenge to established international norms.⁵⁶ Bangladesh's separation from Pakistan tested the principle of territorial integrity, as it involved a region within an existing state seeking independence rather than liberation from colonial rule.⁵⁷ This situation raised critical questions about applying self-determination beyond traditional colonial contexts. Additionally, the brutal suppression of the Bengali independence movement by the Pakistani military was widely condemned as genocide.⁵⁸

This violence introduced a moral and legal dilemma, prompting questions about the international community's responsibility to intervene in such circumstances, even at the expense of state sovereignty.⁵⁹ Castellino contends that although Bangladesh's secession was an exceptional case, it provides crucial insights into the limitations of international law.⁶⁰ He argues that while maintaining international order is vital, the Bangladesh case demonstrates the necessity for flexibility and a nuanced approach, especially in contexts involving human rights violations and the risk of genocide.⁶¹

Despite a people's desire to secede, the principle of *uti possidetis* often clashes with their right to self-determination. Self-determination challenges *uti possidetis*, particularly when it leads to secession, as it seeks to redefine colonial borders and infringes on a state's territorial integrity.⁶² Hence, in post-colonial Africa, efforts for self-determination persist, but they are often hindered by the emphasis on maintaining state territorial integrity. This tension is further complicated by the lack of a universally recognised definition of a "people" in international law.

While international law emphasises the importance of preserving territorial borders, it is equally crucial to protect the rights of people who may be oppressed by the parent state. However, the international community's response has been inconsistent and unclear.⁶³ On the one hand, UN member states stress the need to maintain the unity

⁵⁶ J. Castellino, 'The Secession of Bangladesh in International Law: Setting New Standards?' [1998] AJIL 83, 85.

⁵⁷ Castellino, *The Secession...* (n57) 86.

⁵⁸ Rounaq Jahan, 'Genocide in Bangladesh' in Samuel Totten and William S. Parsons (eds), *Century of Genocide: Critical Essays and Eyewitness Accounts* (4th ed, Routledge 2013) 249, 250.

⁵⁹ Jahan, *Genocide...* (n59) 251.

⁶⁰ Castellino, *The Secession...* (n57) 88.

⁶¹ *Ibid.*, (n57) 88.

⁶² Berita Mutinda Musau, 'Uti Possidetis, Self-determination and Conflicts in the Horn of Africa: The Case of Eritrea's Secession from and Border Conflict with Ethiopia' [2022] JCMSD 218, 235.

⁶³ Steven R. Ratner, 'Drawing a Better Line: UTI Possidetis and the Borders of New States' [1996] TJIL 589, 590.

of states.⁶⁴ On the other hand, they often recognise breakups only after they have occurred, all while continuing to advocate for protecting minority rights.⁶⁵ Ratner, therefore, advocates for a more nuanced approach to self-determination and secession in the post-colonial context.⁶⁶

He argues that the straightforward application of the principle of *uti possidetis* may overlook the complexities of modern state breakups and potentially contradict the principles of democratic participation and minority rights that are central to contemporary understandings of self-determination.⁶⁷ Ratner suggests a context-sensitive approach that considers historical grievances, respects all parties' rights, and prioritises peaceful negotiation and fair solutions over the rigid enforcement of old administrative boundaries.⁶⁸

Ratner's approach offers a sensible pathway for a *de facto* state seeking recognition. Rather than rigidly adhering to the principle of territorial integrity, the AU should consider each secession case's unique circumstances. Specifically, in Somaliland's case, the AU should adopt a contextual and individualised approach rather than a "one-size-fits-all" policy.

2.4 Conclusion

This chapter has discussed the theoretical framework for understanding the complexities of secession, self-determination, and *uti possidetis*. The discussion defined the evolution of self-determination and secession, showcasing the linkage between these concepts and the principle of *uti possidetis*, which often complicates statehood recognition. The chapter highlighted the inherent conflict between the pursuit of self-determination and the established territorial integrity of states, particularly in post-colonial Africa.

⁶⁴ United Nations, 'UN Chief Calls for Urgent Action to Address Humanitarian Crisis in Sudan' (20 September 2023) <https://news.un.org/en/story/2023/09/1140967> accessed 22 October 2024.

⁶⁵ Ratner, *Drawing...* (n64) 616.

⁶⁶ *Ibid.*, (n64) 616.

⁶⁷ *Ibid.*, (n64) 616.

⁶⁸ *As above.*, (n64) 616.

Chapter 3: The African Union's normative position on the link between self-determination and secession

3.1 Introduction

This chapter explores the AU's decisions regarding self-determination as articulated by the African Commission on Human and Peoples' Rights (the African Commission) and its stance on some of the key principles of international law. The first section focuses on the AU's application of *uti possidetis*, territorial integrity, and the resolution of territorial disputes. It explores the AU's emphasis on preserving member states' sovereignty while addressing the tension between self-determination and territorial integrity. The final section analyses the African Commission's decisions on self-determination, highlighting significant cases such as Somaliland's pursuit of recognition, and concludes with a summary of the critical arguments discussed.

3.2 The normative foundation: The AU's stance on secession, territorial disputes, and the principle of *uti possidetis*

3.2.1 The OAU's principle of *uti possidetis* and territorial integrity

The OAU's adherence to the principle of *uti possidetis* and territorial integrity goes beyond a legal framework as it embodies the historical context and intricate challenges of post-colonial Africa.⁶⁹ The borders drawn during the colonial period, frequently disregarding ethnic or cultural distinctions, have evolved into significant sources of tension and conflict.⁷⁰ The OAU acknowledged that the arbitrary nature of these borders could provoke disputes and instability, necessitating a commitment to upholding the territorial integrity of member states.⁷¹

Briefly reflecting on the past, the Cairo Resolution of 1964⁷² marked a significant moment in African diplomacy, aiming to mitigate the potential for conflict stemming from border disputes. The resolution emphasised the necessity for African states to adhere to the boundaries in place at the time of their independence, thereby

⁶⁹ Andrew Small, 'An unintended legacy: Kwame Nkrumah and the domestication of national self-determination in Africa' [2017] AHRLJ 68, 71.

⁷⁰ Tasew Gashaw, 'Colonial Borders in Africa: Improper Design and its Impact on African Borderland Communities' (Wilson Center, November 2017) <https://www.wilsoncenter.org/blog-post/colonial-borders-in-africa-improper-design-and-its-impact-on-african-borderland-communities> accessed 25 August 2024.

⁷¹ P. Mwetia Munya, 'The Organization of African Unity and Its Role in Regional Conflict Resolution and Dispute Settlement: A Critical Evaluation' [1999] BCTWLJ 537, 553.

⁷² African Union, Cairo Resolution (1964) AHG/Res.16(I).

reinforcing the principle of *uti possidetis*.⁷³ This commitment was rooted in the intent to prevent state fragmentation and the rise of secessionist movements, which could destabilise the region.⁷⁴ The OAU sought to promote unity and cooperation among African nations, acknowledging the enduring challenges posed by the legacy of colonialism and apartheid.⁷⁵

Through the Cairo Resolution, the Organisation of African Unity adopted and reinforced the principle of *uti possidetis*.⁷⁶ It aimed to uphold the integrity of colonial boundaries and avoid conflicts that could arise from territorial disputes among newly independent African states.⁷⁷ Since the 1990s, successive decisions by the AU and its predecessor, the OAU, have consistently regarded Somaliland's pursuit of independent statehood as a separatist movement, a stance that the continental body has not favourably received.⁷⁸ The AU prioritises the principle of territorial integrity fundamental to the sovereignty of its member states.

This commitment to *uti possidetis* is reflected in Article 4(b) of the AU's Constitutive Act, which states that the borders existing at the time of independence must be respected,⁷⁹ formalising the 1964 Resolution on Border Disputes.⁸⁰ However, in his dissenting opinion on the *Frontier Dispute (Cameroon v Nigeria: Equatorial Guinea intervening)* case, Judge Yusuf argued that *uti possidetis juris* and territorial integrity are distinct principles despite the ICJ previously associating the two.⁸¹

⁷³ Malcolm N. Shaw, 'The Heritage of States: The Principle of "Uti Possidetis Juris" Today' (1997) *British Year Book of International Law* 76 <https://academic.oup.com/bybil/article/67/1/75/281947> accessed 25 August 2024.

⁷⁴ Shaw, *The Heritage...* (n74) 77.

⁷⁵ USAID, 'History' (USAID <https://www.usaid.gov/african-union/history#:~:text=The%20OAU's%20main%20objectives%2C%20as,States%3B%20rid%20the%20continent%20of> accessed 25 August 2024).

⁷⁶ Shaw, *The Heritage...* (n74).

⁷⁷ Babatunde Fagbayibo, 'South Sudan, uti possidetis rule and the future of statehood in Africa' (26 April 2012) *Africlaw* <https://africlaw.com/2012/04/26/south-sudan-uti-possidetis-rule-and-the-future-of-statehood-in-africa/> accessed 14 September 2024.

⁷⁸ PSC Report, 'The AU Should Support Somalia–Somaliland Talks' (24 July 2020) <https://issafrica.org/pscreport/psc-insights/the-au-should-support-somaliasomaliland-talks> accessed 21 August 2024.

⁷⁹ Constitutive Act of the African Union, art 4(b).

⁸⁰ Carlson Anyangwe, 'The normative power of the right to self-determination under the African Charter and the principle of territorial integrity: competing values of human dignity and system stability' [2018] *AHRY* 47, 66.

⁸¹ I. Yusuf, 'Dissenting Opinion in the Case Concerning the Frontier Dispute (Cameroon v Nigeria: Equatorial Guinea intervening)' (2002) *ICJ Reports* 2002, 1.

Judge Yusuf, while recognising that territorial integrity involves the protection of established boundaries, emphasised that this principle does not necessarily equate to *uti possidetis juris*. According to him, ‘inviolability’ is primarily intended to prevent forcible alterations of borders rather than to endorse the colonial-era administrative boundaries that *uti possidetis juris* seeks to elevate to international borders. He held that the inviolability principle, as promoted by the OAU, is focused on preventing forced border changes and encouraging peaceful resolutions through international law, consistent with the principles of the UN Charter.⁸²

Adherence to the principle of *uti possidetis* has not effectively brought peace to the African continent. Although the borders arbitrarily established by colonial powers at the 1885 Berlin Conference may have mitigated conflicts among those powers, they ultimately became the source of many ongoing conflicts and unresolved issues for Africans.⁸³ For instance, the continuing tension between the right to self-determination and the doctrine of *uti possidetis*, alongside the related right of states to maintain territorial integrity, has led to significant loss of life in Africa.⁸⁴

Although the principle of *uti possidetis* has been instrumental in promoting stability, it has also given rise to substantial challenges on the African continent, such as intrastate and interstate conflicts. An example of intrastate conflict is the crisis in Cameroon’s Anglophone regions, where demands for autonomy or independence arise from historical grievances of marginalisation following the 1972 shift to a unitary state.⁸⁵ Anglophones feel politically underrepresented, economically neglected, and culturally oppressed by the imposition of French language and legal codes.⁸⁶ These tensions have escalated into violent confrontations, marked by protests and a heavy-handed government response.⁸⁷

In the context of interstate conflicts, the India-Pakistani dispute serves as a notable example. The partition of British India in 1947, which failed to account for ethnic and

⁸² Yusuf, *Dissenting...* (n82).

⁸³ Tasew Gashaw, ‘Colonial Borders in Africa: Improper Design and its Impact on African Borderland Communities’ (Wilson Center, 2021) <https://www.wilsoncenter.org/blog-post/colonial-borders-in-africa-improper-design-and-its-impact-on-african-borderland-communities> accessed 23 August 2024.

⁸⁴ Berita Mutinda Musau, ‘Uti Possidetis, Self-determination and Conflicts in the Horn of Africa: The Case of Eritrea’s Secession from and Border Conflict with Ethiopia’ [2022] JCMSD 218, 222.

⁸⁵ International Crisis Group, *Cameroon’s Anglophone Crisis at the Crossroads* (Africa Report N°250, 2 August 2017) 5.

⁸⁶ International Crisis Group, *Cameroon’s...* (n86) 10.

⁸⁷ *Ibid.*, (n86) 10.

religious divisions, has led to enduring territorial disputes, particularly over the Kashmir region.⁸⁸ The conflict between India and Pakistan has led to multiple wars, including the 1965 war, which arose from a dispute over the status of Jammu and Kashmir.⁸⁹

The strict adherence to maintaining colonial-era borders has frequently clashed with the aspirations of various ethnic and cultural groups pursuing self-determination.⁹⁰ For instance, the case of Somaliland exemplifies the conflict between the right to self-determination and the principles of territorial integrity. Despite Somaliland's 1991 declaration of independence, its pursuit of international recognition has been repeatedly denied by the AU, which regards it as a separatist movement that threatens Somalia's territorial integrity.

3.2.2 The AU's stance on secession and territorial disputes

The AU has a clear and consistent stance on secession and territorial disputes, deeply rooted in its foundational principles and historical context. The AU's approach to secession is deeply rooted in its commitment to preserving the territorial integrity of its Member States. This commitment is clearly articulated in the AU's Constitutive Act, which emphasises the respect for borders as they existed at the time of independence.

This principle represents a pragmatic response to Africa's historical context, where colonial borders often disregard ethnic or cultural divisions.⁹¹ The AU views unilateral declarations of independence, like Somaliland's, as threats to the stability and unity of its member states, categorising such actions as separatist movements that undermine territorial integrity. The AU's position aligns with the broader international legal framework, which typically views secession as a legally neutral act, neither explicitly allowed nor prohibited.⁹²

However, the AU emphasises the importance of dialogue and negotiation in resolving disputes, advocating for peaceful solutions over unilateral actions.⁹³ This approach is

⁸⁸ CFR, 'Conflict between India and Pakistan' (Council on Foreign Relations 2024) <https://www.cfr.org/global-conflict-tracker/conflict/conflict-between-india-and-pakistan> accessed 22 October 2024.

⁸⁹ U.S. Department of State, 'India-Pakistan War, 1965' (Office of the Historian) <https://history.state.gov/milestones/1961-1968/india-pakistan-war> accessed 22 October 2024.

⁹⁰ Gashaw, *Colonial...* (n84).

⁹¹ *Ibid.*, (n84).

⁹² Milena Sterio, 'Self-Determination and Secession Under International Law: The New Framework' [2015] LFAE 293, 299.

⁹³ African Union, 'Conflict Resolution, Peace & Security' (African Union) <https://au.int/en/conflict-resolution-peace-security> accessed 27 August 2024.

consistent with the AU's overarching goals of promoting peace, security, and stability throughout the continent.⁹⁴ The secession of South Sudan from Sudan exemplifies the intricate relationship between the right to secession and the principle of self-determination.

South Sudan's secession from Sudan in 2011 was influenced by internal divisions within the Sudanese People's Liberation Army/Movement (SPLA/M) and significant external involvement.⁹⁵ The SPLA/M was split on whether to pursue a "New Sudan" or outright secession, allowing outside actors to intervene. The United States, motivated by geopolitical interests, domestic lobbying, and a strategic goal to weaken Sudan's Islamist government, played a crucial part in the peace process that led to South Sudan's independence.⁹⁶

Influenced by US diplomacy, the 2005 Comprehensive Peace Agreement (CPA) set a six-year interim period for South Sudan, culminating in a self-determination referendum.⁹⁷ While the US supported secession, the Sudanese government failed to foster trust or development, leading to South Sudan's overwhelming vote for independence in January 2011.⁹⁸ This secession was achieved through negotiation, reflecting the AU's preference for consensual over unilateral actions.

In comparison, Eritrea's struggle for independence was rooted in a desire for self-determination and rejection of Ethiopian sovereignty, which Eritreans deemed illegitimate.⁹⁹ Following a period of Italian colonial rule, Eritrea was federated with Ethiopia in 1952, a decision opposed by Eritrean nationalists and leading to a 30-year war for liberation.¹⁰⁰ The Eritrean People's Liberation Front (EPLF) achieved *de facto* independence in 1991, and a UN-organised referendum in 1993 confirmed Eritrea's independence with 99.83% support.¹⁰¹ This marked the end of Eritrea's long struggle

⁹⁴ African Union, 'The African Union's Agenda 2063: The Africa We Want' (African Union) <https://au.int/en/agenda2063/overview> accessed 27 August 2024.

⁹⁵ Khalid Elagab Ahmed, 'Resolving Secessionist Wars in the Horn of Africa: A Call for a Critical Discourse' [2024] *African Security* <https://doi.org/10.1080/19392206.2024.2329855> accessed 28 August 2024.

⁹⁶ Ahmed, *Resolving...* (n96).

⁹⁷ *Ibid.*, (n96).

⁹⁸ *As above.*, (n96).

⁹⁹ Richard Sherman, 'The Rise of Eritrean Nationalism' [1980] NAS 121, 124.

¹⁰⁰ Terrence Lyons, 'Eritrea: The Independence Struggle and the Struggles of Independence' [2019] CSIS 36, 39.

¹⁰¹ Lyons, *Eritrea...* (n101) 44.

for self-determination and led to its international recognition, as it successfully seceded from Ethiopia, despite the then OAU's stance on *uti possidetis*.

In conclusion, the AU's adherence to *uti possidetis* and territorial integrity has played a key role in maintaining African unity and stability. However, it also poses challenges when balancing the desire for self-determination with the need to uphold territorial integrity. The continuing tensions and conflicts across Africa highlight the difficulty of applying these principles in a post-colonial setting, requiring a careful approach that considers both legal rules and the real-life experiences of African communities.

3.2.3 Jurisprudence from international bodies

The principle of *uti possidetis* has been scrutinised in multiple legal contexts, with the ICJ often invoking it to highlight its applicability in contemporary disputes.¹⁰² For example, in the *Frontier Dispute (Cameroon v. Nigeria)* case, the ICJ referenced the Cairo Resolution, holding that Nigeria could not contest a boundary recognised for decades before its independence.¹⁰³ This decision highlights the role of the *uti possidetis* principle in ensuring legal continuity and stability despite ongoing concerns about the legitimacy of colonial-era borders.

The legal status of secession under international law is unclear, with the ICJ suggesting that unilateral secession declarations are not inherently illegal. At the same time, the AU emphasises the importance of maintaining existing borders. In the *Georgia v. Russian Federation* case, Georgia accused Russia of violating the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD) during the 2008 Russo-Georgian war, alleging ethnic discrimination against Georgians in South Ossetia and Abkhazia.¹⁰⁴ Although secession was a relevant issue, the ICJ focused solely on CERD violations and did not address the legality of the secessionist movements in these regions.

Despite its foundational importance, the application of *uti possidetis* has not been without criticism. The biggest and most obvious criticism is that it perpetuates colonial

¹⁰² Brian Taylor Sumner, 'Territorial Disputes At The International Court of Justice' [2004] DLJ 1780, 1804.

¹⁰³ *Frontier Dispute (Cameroon v. Nigeria)* (Judgment) [2002] ICJ Rep 303.

¹⁰⁴ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* (Judgment) [2011] ICJ Rep 70.

injustices by prioritising state sovereignty over the desires of marginalised groups.¹⁰⁵ The persistent conflicts in areas such as the Great Lakes and the Horn of Africa highlight the shortcomings of strictly adhering to colonial-era boundaries.¹⁰⁶ In his dissenting opinion referred to above, Judge Yusuf emphasised the distinction between ‘*uti possidetis juris*’ and ‘territorial integrity,’ arguing that while borders warrant respect, there must be flexibility to address historical injustices and people’s rights.¹⁰⁷

3.3 The African Commission’s decisions on self-determination

Article 20(1) of the African Charter on Human and Peoples’ Rights (African Charter) stipulates that:

All peoples shall have a right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.¹⁰⁸

The African Charter aligns with the UN Charter on the principle of self-determination, reflecting a clear and consistent stance on this issue. Additionally, the African Charter implies that a specific segment of a state’s population, particularly those residing in a distinct territory, may be entitled to self-determination. However, this right is acknowledged only within the state’s territorial integrity.¹⁰⁹ Consequently, the exercise of such rights by this population segment excludes secession.¹¹⁰ Instead, within the state’s territorial integrity framework, these rights might encompass self-government, local governance, federalism, confederalism, unitarism, or other forms of political organisation.¹¹¹

The African Commission’s ruling in the *Katangese Peoples’ Congress v. Zaire* case is a pivotal reference in the discourse on self-determination and secession in Africa. In this case, Gerald Moke, the President of the Katangese Peoples’ Congress (‘KPC’),

¹⁰⁵ Mohammad Shahabuddin, ‘Post-colonial Boundaries, International Law, and the Making of the Rohingya Crisis in Myanmar’ [2019] AJIL 334, 338.

¹⁰⁶ Shaw, *The Heritage...* (n74) 88.

¹⁰⁷ I. Yusuf, ‘Dissenting Opinion in the Case Concerning the Frontier Dispute (Cameroon v Nigeria: Equatorial Guinea intervening)’ (2002) ICJ Reports 2002, 1.

¹⁰⁸ African Charter on Human and Peoples’ Rights, art 20(1).

¹⁰⁹ Solomon A Dersso, ‘The Jurisprudence of the African Commission on Human and Peoples’ Rights with Respect to People’s Rights’ (2006) 6 African Human Rights Law Journal <https://www.ahrlj.up.ac.za/dersso-s-a> accessed 18 August 2024.

¹¹⁰ Dersso, *The Jurisprudence...* (n110).

¹¹¹ *Ibid.*, (n110).

submitted a communication to the African Commission requesting recognition of the KPC as a legitimate liberation movement entitled to international support in its quest for Katanga's independence.¹¹² Additionally, the communication called for the formal recognition of Katanga's independence and assistance in facilitating the withdrawal of Zairian forces from the region.¹¹³

The African Commission affirmed that self-determination is a justiciable right, enforceable through legal channels.¹¹⁴ However, it also clarified that this right is interpreted within the confines of existing state boundaries, emphasising the importance of territorial integrity. The African Commission recognised the right to self-determination for all peoples, encompassing various forms such as independence, autonomy, and federalism.¹¹⁵ Ultimately, the African Commission denied the KPC's request for independence. The African Commission reasoned that the case lacked sufficient evidence to demonstrate any violations of rights protected under the African Charter.¹¹⁶

Consequently, the request for Katanga's independence was deemed unfounded under the provisions of the African Charter.¹¹⁷ However, the African Commission did grant the KPC 'autonomy,' a concept closely aligned with, though distinct from, independence and the essence of self-determination. The African Commission's decision appeared to carefully avoid the term "self-determination" to prevent conflicts with the principle of *uti possidetis*.

By granting the 'autonomy,' the African Commission sought to provide the Katangese people with a means to exercise self-determination without compromising the sovereignty of Zaire (modern-day Democratic Republic of Congo), thereby maintaining consistency with the AU's emphasis on territorial integrity.¹¹⁸ Regrettably, the African Commission addressed the *Katanga* case in less than half a page, leading to justified

¹¹² Katangese Peoples' Congress v Zaire (Communication No 75/92, African Commission on Human and Peoples' Rights, 1995).

¹¹³ Ibid., (n113).

¹¹⁴ Mhango, M.O., 'Recognizing a Right to Autonomy for Ethnic Groups under the African Charter on Human and Peoples' Rights: Katangese Peoples Congress v Zaire' [2007] Human Rights Brief 11, 13.

¹¹⁵ Mhango, M.O., *Recognizing...* (n115) 13.

¹¹⁶ Ibid., (n115).

¹¹⁷ *As above.*, (n115).

¹¹⁸ Mtendeweka Mhango, 'Governance, Peace and Human Rights Violations in Africa: Addressing the Application of the Right to Self-Determination in Post-Independence Africa' [2012] AJLS 199, 207.

criticism for failing to develop comprehensive jurisprudence on the right to self-determination.¹¹⁹

In the case of *Senegal v. Casamance*, the African Commission scrutinised the right to self-determination as it pertained to Casamance's separatist aspirations.¹²⁰ Upon evaluating the arguments presented by both the Senegalese government and the separatists, the African Commission dismissed the latter's claim for independence, deeming it insufficiently relevant.¹²¹ Despite criticising Senegal for its rigid and unyielding view of national unity, the African Commission emphasised that the matter should be resolved to maintain the cohesion and continuity of the unified Senegalese state, reflecting a shared community of interest and destiny.¹²²

In the case of the *African Commission on Human and Peoples' Rights v. Kenya*, the Ogiek people challenged the recognition of their land rights and their right to self-determination.¹²³ Although the term "self-determination" was not explicitly mentioned in this case, the discussion touched on similar themes. The case referred to the Ogiek people's right to "freely dispose of their wealth and natural resources," as outlined in Article 21 of the African Charter.¹²⁴ This case involved the Ogiek people, an indigenous group in Kenya, who claimed that the Republic of Kenya had violated their human rights by evicting them from the Mau Forest. For generations, they considered the forest their ancestral land, vital for their livelihood, culture, and religion.¹²⁵

The Kenya Forestry Service issued eviction notices, asserting that the forest was a protected water catchment zone and government property.¹²⁶ The Ogiek argued that under the African Charter, these evictions infringed upon their rights to land, life, religion, culture, natural resources, development, and non-discrimination. Conversely, the Kenyan government defended the evictions as necessary for conservation and national interest.¹²⁷ The African Court, therefore, determined that the Kenyan

¹¹⁹ Simon M Weldehaimanot, 'The ACHPR in the Case of Southern Cameroons' (2012) 16 SUR <https://sur.conectas.org/en/achpr-case-southern-cameroons/> accessed 16 September 2024.

¹²⁰ African Commission on Human and Peoples' Rights, Report on the Mission of Good Offices to Senegal (1-7 June 1996).

¹²¹ *Ibid.*, (n121).

¹²² *Ibid.*, (n121).

¹²³ African Commission on Human and Peoples' Rights v Republic of Kenya (2017) Application No 006/2012.

¹²⁴ African Charter on Human and Peoples' Rights, art 21.

¹²⁵ *Ibid.*, (n125).

¹²⁶ *As above.*, (n125).

¹²⁷ *As above.*, (n125).

government had breached seven distinct articles of the African Charter, resulting in a systematic denial of the Ogiek people's land rights and their religious, cultural, and hunter-gatherer practices.¹²⁸

In *Kevin Mgwanga Gunme et al. v. Cameroon*, the Complainants, representing Southern Cameroonians, accused the Republic of Cameroon of violating their rights through marginalisation, discrimination, and multiple human rights abuses, including extrajudicial killings, torture, arbitrary arrests, detention, and a denial of a fair trial.¹²⁹ The Complainants sought recognition of their right to self-determination through secession, arguing that the option of independence was denied to Southern Cameroonians during the 1961 UN plebiscite.¹³⁰

The African Commission found Cameroon in violation of several articles of the African Charter, including those related to the right to life, freedom from torture, and the right to a fair trial. However, the African Commission did not support the Southern Cameroonians' claim to secession, emphasising that such a right is not recognised under the African Charter and could jeopardise Cameroon's sovereignty.¹³¹ Despite rejecting secession, the African Commission recognised Southern Cameroonians as a distinct people with collective rights.¹³² It urged Cameroon to address their grievances through national dialogue and constitutional reforms to recognise and protect their rights.¹³³

The African Commission views the right to self-determination as requiring states to actively involve affected groups in decision-making, especially regarding resource management and development.¹³⁴ This interpretation highlights the procedural aspect of self-determination, ensuring that marginalised groups have a role in determining their own future.¹³⁵

¹²⁸ Minority Rights Group, 'African Commission of Human and Peoples' Rights v Kenya (the 'Ogiek case')' <https://minorityrights.org/african-commission-of-human-and-peoples-rights-v-kenya-the-ogiek-case/> accessed 18 August 2024.

¹²⁹ *Mgwanga Gunme et al v. Cameroon*, Comm. 266/2003, African Commission on Human and Peoples' Rights, Decision of 27 May 2009.

¹³⁰ *Ibid.*, para 3.

¹³¹ *As above.*, para 190.

¹³² *As above.*, para 195.

¹³³ *As above.*, para 201.

¹³⁴ Stefan Salomon, 'Self-determination in the Case Law of the African Commission: Lessons for Europe' [2017] NVmbH 217, 237.

¹³⁵ Salomon, *Self-determination...* (n135) 237.

The decisions discussed above clearly demonstrate the African Commission's adherence to respecting colonial borders, as established by the OAU and currently upheld by the AU. This alignment with the doctrine of *uti possidetis* presents a significant challenge for Somaliland in seeking recognition through secession and self-determination. Ultimately, the African Commission consistently affirms the right to internal self-determination while rejecting claims of external self-determination.

3.4 Conclusion

The AU's strong commitment to territorial integrity significantly influences its approach to resolving territorial disputes among member states. The organisation has developed mechanisms for conflict resolution, such as mediation and peacekeeping initiatives, to prevent disputes from escalating into violence. This proactive strategy is essential in a continent where historical grievances and ethnic tensions frequently threaten stability. The AU's refusal to endorse border changes rooted in ethnic or historical claims underscores its dedication to preserving the territorial status quo established at independence. This principle is intended to prevent state fragmentation and avoid widespread conflict. However, it also presents challenges, as marginalised or oppressed groups within states may seek greater autonomy or independence.

Chapter 4: Somaliland's case for secession

4.1 Introduction

This chapter analyses recent and relevant secession cases, such as those of Eritrea and Kosovo, amongst others. It applies the normative theories discussed in previous chapters to the case of Somaliland, assessing the feasibility of its recognition. Additionally, this chapter will evaluate the legal criteria for statehood that Somaliland has met or has not met in light of relevant regional and international cases.

4.2 Application of the Theoretical Framework to the Case of Somaliland

Applying the theoretical framework involving self-determination, secession, and the principle of *uti possidetis* is essential for analysing Somaliland's pursuit of international recognition. As a core principle of international law, self-determination grants people the right to determine their political status and advance economic, social, and cultural development.

4.2.1 Somaliland's recognition through self-determination and secession

Since Somaliland is pursuing recognition, the declarative theory appears to be a plausible framework in its quest for statehood. Under this theory, a new state is considered to exist or is created by international law when it fulfills the criteria of statehood.¹³⁶ The recognition by other states merely acknowledges this fact and is not legally significant.¹³⁷ However, in reality, states do attach some significance to being recognised by other states.

The practical importance of recognition has given rise to a second theory known as the constitutive theory of statehood.¹³⁸ Followers of this theory claim that a state becomes a legal entity once other nations recognise it.¹³⁹ In other words, recognition occurs when a nation openly acknowledges the state's existence. However, the constitutive approach undermines the exercise of self-determination by prioritising the

¹³⁶ Strydom, *Statehood...* (n10) 42.

¹³⁷ *Ibid.*, (n10) 42.

¹³⁸ Aaron Kreuter, 'Self-Determination, Sovereignty, and the Failure of States: Somaliland and the Case for Justified Secession' [2010] MJIL 363, 365.

¹³⁹ Kreuter, *Self-Determination...* (n139) 365.

judgement of the recognising nation over the self-determination rights of the state in question.¹⁴⁰

Locating the right to self-determination in Somaliland, international practice acknowledges a right to internal self-determination, which means that disgruntled population members have the right to utilise established political mechanisms to achieve self-determination.¹⁴¹ Somaliland attained independence from Britain on 26 June 1960, but five days later, on 1 July 1960, it rescinded its independence to join the Somali Republic.¹⁴²

Somaliland nationalists contend that having entered the union voluntarily, they are equally entitled to exit it voluntarily.¹⁴³ However, the international community remains unconvinced by this argument and has thus far failed to recognise its claim to sovereign statehood.¹⁴⁴ Also, the population has consistently demonstrated a desire for independence from Somalia, especially following the civil war of the late 1980s.¹⁴⁵

This aspiration is evident through creating a distinct government and democratic institutions, which reflect the people's will to self-govern and preserve their cultural identity. Secession, though frequently debated in international law, may be justified when a group experiences systemic repression under a previous (Somali) regime, which subjected its citizens to significant violence and human rights violations.¹⁴⁶ Therefore, Somaliland's declaration of independence can be seen as a legitimate act of self-determination and secession in response to this oppression.

4.2.2 The principle of *uti possidetis*

The principle of *uti possidetis* is crucial to Somaliland's situation. Though not officially recognised as an independent state, Somaliland governs itself within the territorial boundaries set before Somalia's unification in 1960.¹⁴⁷ By adhering to these historical

¹⁴⁰ Ibid., (n139) 365.

¹⁴¹ As above., (n139) 369.

¹⁴² Bereketeab, *Self-Determination...* (n7) 4.

¹⁴³ Ibid., (n7) 4.

¹⁴⁴ As above., (n7) 4.

¹⁴⁵ Seth Kaplan, 'The Remarkable Story of Somaliland' [2008] JD 143, 147.

¹⁴⁶ E.B. Niyitunga, 'The Right to Remedial Secession and the Puzzle of Peace' [2017] AJPA 81, 86.

¹⁴⁷ Andrew Small, 'An unintended legacy: Kwame Nkrumah and the domestication of national self-determination in Africa' [2017] AHLJ 68, 84.

borders, Somaliland reinforces its claim to statehood and the legitimacy of its governing institutions.¹⁴⁸

Furthermore, as a former British Protectorate, Somaliland's voluntary union with Italian Somaliland to form the Somali Republic in 1960 arguably violated the principle of *uti possidetis*, as it failed to preserve its pre-existing colonial boundaries before unification. Poore contends that Somaliland constitutes an exception to *uti possidetis* because the Republic of Somalia's borders conflict with the boundaries established by Great Britain, France, Ethiopia, and Italy during the colonial era.¹⁴⁹

Reinforcing this perspective, it is argued that the Republic of Somalia's borders contravene the 1964 Cairo Resolution, given the rushed unification of the "two Somalias."¹⁵⁰ The Cairo Resolution, established by the OAU, emphasises adherence to colonial borders at the time of independence.¹⁵¹ Thus, linking the creation of the Republic of Somalia to a breach of this resolution strengthens the argument that Somaliland constitutes an exception to the *uti possidetis* principle. Furthermore, during its 2005 fact-finding mission to Somaliland, the AU acknowledged that the union between Somaliland and Somalia was never ratified and functioned inadequately from 1960 to 1990.¹⁵²

Applying this theoretical framework to Somaliland's case reveals that its pursuit of recognition is grounded in established principles of international law, particularly those advocating for self-determination and territorial integrity. This perspective strengthens Somaliland's claims and highlights broader implications for international norms on statehood and recognition, especially in regions facing historical injustices and ongoing autonomy struggles.

4.3 Legal criteria for statehood

The legal criteria for statehood are crucial in assessing Somaliland's bid for independence and international recognition. As discussed earlier, under the Montevideo Convention, a state must satisfy four fundamental criteria: a defined

¹⁴⁸ Small, *An unintended...* (n148) 84.

¹⁴⁹ Brad Poore, 'Somaliland: Shackled to a Failed State' [2009] SJIL 117, 142.

¹⁵⁰ Daniel R. Forti, 'A Pocket of Stability: Understanding Somaliland' (ACCORD 2011) 13
https://www.files.ethz.ch/isn/137755/op_2011_2.pdf accessed 5 October 2024.

¹⁵¹ OAU, 'Resolution on the Border Disputes among African States' (1964) AHG/Res. 1 (I), art 3.

¹⁵² African Union, *Fact-Finding Mission to Somaliland Report* (2005) 4, para 8.

territory, a permanent population, a functioning government, and the capacity to engage in relations with other states.¹⁵³

4.3.1 A defined territory

Somaliland maintains a well-defined territory encompassing the northern regions of Somalia based on the borders of the former British Somaliland protectorate, which gained independence in 1960.¹⁵⁴ Its administrative control over this area, consisting of six regions subdivided into districts,¹⁵⁵ demonstrates effective territorial sovereignty, despite ongoing border disputes with neighbouring Puntland.¹⁵⁶

4.3.2 A permanent population

Somaliland, with its permanent population comprising diverse ethnic groups, has fostered a solid national identity and a collective commitment to self-governance.¹⁵⁷ Although international law requires a State to have a permanent population, it does not specify a minimum population size necessary for statehood.¹⁵⁸ As of the time of writing, Somaliland has a population of 6,2 million,¹⁵⁹ demonstrating both population growth and the permanence required to satisfy the 'permanent population' criterion under the Montevideo Convention.

¹⁵³ The United Nations Office of Legal Affairs, *Montevideo Convention on the Rights and Duties of States* (League of Nations Treaty Series 1933).

¹⁵⁴ Department for Communications, Somaliland Presidency, 'Explaining Somaliland's Origins and Territorial Borders' (Saxafi Media) <https://saxafimedia.com/explaining-somalilands-origins-territorial-borders/> accessed 16 February 2025.

¹⁵⁵ Local Government Law, 'Somaliland Local Government Laws' (Somaliland Law) http://www.somalilandlaw.com/body_local_government_law.htm accessed 16 February 2025. Somaliland governs its territory through six regions: Awdal, Sahil, Maroodi Jeex, Togdheer, Sanaag, and Sooi. These regions are further divided into 22 districts, each with its own government structure. This administrative system is established under the *Regions and Districts Law (Law No. 23/2002)*, which defines the boundaries and governance framework of these regions.

¹⁵⁶ Omar S. Mahmood, 'The Various Layers to the Somaliland-Puntland Discord' (ISS Today, 2019) <https://issafrica.org/iss-today/the-various-layers-to-the-somaliland-puntland-discord> accessed 16 February 2025.

¹⁵⁷ Iqbal Jhazbhay, 'Somaliland: The Journey of Resistance, Reconciliation and Peace' [2003] ASP 50, 72.

¹⁵⁸ Lewis & Clark Law School, *A Shadow on Tomorrow's Dreams: Somaliland's Struggle for Statehood* (Unrepresented Nations and Peoples Workshop, Lewis & Clark Law School 2016) 15.

¹⁵⁹ M.A. Egge, 'Somaliland's Population Reaches 6.2 Million' (Horn Diplomat 2024) https://www.horndiplomat.com/2024/04/somalilands-population-reaches-6-2-million/#google_vignette accessed 16 February 2025.

4.3.3 A government

Additionally, Somaliland has established a functioning government that operates independently from Somalia's federal government.¹⁶⁰ This government is characterised by democratic elections, a constitution, and institutions that uphold the rule of law. Consequently, Somaliland has maintained relative stability and security, setting it apart from the ongoing conflict and instability in southern Somalia.¹⁶¹

4.3.4 Capacity to engage in international relations

Somaliland has shown its ability to engage in international relations by establishing informal diplomatic ties and trade agreements with various countries, such as Ethiopia, the United Arab Emirates (UAE), and Taiwan, among others,¹⁶² even without formal recognition. This capacity is crucial for a state's legitimacy on the global stage.¹⁶³

4.3.5 Final thoughts on legal criteria for statehood

By examining these criteria within Somaliland's distinct historical and political context, one can better understand the complexities surrounding its pursuit of recognition and the broader implications for international law concerning statehood. Somaliland clearly meets the Montevideo Convention's requirements for statehood, so its recognition should not be disputed. However, as discussed throughout this dissertation, the AU's strict application of *uti possidetis* remains a barrier to its recognition.

4.4 Somaliland's quest for recognition: Challenges and opportunities

Despite establishing a stable government, democratic institutions, and a unique national identity,¹⁶⁴ Somaliland has struggled to achieve formal recognition as a

¹⁶⁰ Government of the Republic of Somaliland, 'The Government of the Republic of Somaliland reiterates its self-determination' (Government of the Republic of Somaliland 2024) <https://mfa.govsomaliland.org/article/government-republic-somaliland-reiterates-its-self-determina> accessed 3 September 2024.

¹⁶¹ Council on Foreign Relations, 'Somaliland: The Horn of Africa's Breakaway State' <https://www.cfr.org/backgrounder/somaliland-horn-africas-breakaway-state> accessed 3 September 2024.

¹⁶² Nationalia, 'Somaliland Sees First Recognition of Independence Closer' (Nationalia, 2024) <https://www.nationalia.info/new/11579/somaliland-sees-first-recognition-of-independence-closer> accessed 15 February 2025.

¹⁶³ Government of the Republic of Somaliland, 'Somaliland Asserts its Commitment to Peaceful Foreign Relations and Diplomacy' (Government of the Republic of Somaliland, 10 March 2024) <https://mfa.govsomaliland.org/article/republic-somaliland-reaffirms-its-unwavering-dedication-nurt> accessed 3 September 2024.

¹⁶⁴ Forti, *A Pocket...* (n151) 5.

sovereign state.¹⁶⁵ The absence of international acknowledgement has placed Somaliland in a vulnerable position, restricting its access to essential economic resources, foreign investments, and international diplomatic relations.

Additionally, Somaliland's recognition efforts are complicated by ongoing political tensions with the Federal Government of Somalia, which continues to assert territorial claims over Somaliland.¹⁶⁶ However, recent developments, such as a Memorandum of Understanding (MoU) with Ethiopia, have created new opportunities for Somaliland to strengthen its case for recognition.¹⁶⁷ This agreement offers potential economic benefits and establishes Ethiopia as a key ally in Somaliland's quest for international legitimacy.

By effectively navigating geopolitical dynamics and taking advantage of its unique historical context tied to colonial boundaries, Somaliland can strengthen its global advocacy for recognition. This section, therefore, briefly examines the challenges and opportunities influencing Somaliland's pursuit of statehood, stressing the critical role of strategic diplomacy and regional cooperation in realising its longstanding aspirations for international recognition.

As stated earlier, the primary challenge for Somaliland is the lack of formal recognition, which restricts its economic growth and global integration. Many businesses are hesitant to invest, viewing Somaliland's ambiguous legal status, tied to Somalia, as a potential risk.¹⁶⁸ Although it operates as a *de facto* state, Somaliland remains ineligible for international aid and is excluded from organisations like the AU and the UN, limiting its ability to engage internationally.¹⁶⁹

¹⁶⁵ Africanews, '30 Years On, Somaliland Still Struggles for International Recognition' (15 October 2021) <https://www.africanews.com/2021/10/15/30-years-on-somaliland-still-struggles-for-international-recognition/> accessed 30 September 2024.

¹⁶⁶ Alexis Arieff, 'De Facto Statehood? The Strange Case of Somaliland' [2008] YJIL 60, 62.

¹⁶⁷ Modern Diplomacy, 'Fostering Reciprocal Diplomacy: Building Bridges - The Somaliland-Ethiopia MoU' (31 July 2024) <https://moderndiplomacy.eu/2024/07/31/fostering-reciprocal-diplomacy-building-bridges-the-somaliland-ethiopia-mou/> accessed 30 September 2024. The MoU signed on 1 January 2024 between Ethiopia and Somaliland allows Ethiopia to lease 19 – 20 km of Somaliland's coastline near Berbera for sea access. In return, Ethiopia agrees to recognise Somaliland as an independent state. The MoU also covers economic and security cooperation, including port use and counter-piracy measures. Ethiopia aims to secure a naval base and expand access to the Red Sea, while Somaliland seeks international recognition.

¹⁶⁸ Edwin Mangéni Barasa and Kennedy Tetu, *Public-Private Partnerships in Fragile States: Reflection on the Practice, Challenges and Opportunities in Somaliland* (Food and Agriculture Organization of the United Nations 2018) 9.

¹⁶⁹ Isabel Bosman, Kendra Connock & Laura Rubidge, *Sahrawi Arab Democratic Republic and Somaliland: The Struggle for Recognition* (Policy Insights 148, November 2023) 9.

Somaliland's economy heavily depends on livestock exports; however, the absence of internationally recognised veterinary certifications complicates its access to broader markets, further hindering its economic prospects.¹⁷⁰ Even worse, Somaliland cannot become a signatory to international treaties, and the limitations of its Central Bank, which cannot issue letters of credit, pose significant economic obstacles.¹⁷¹ Although Somaliland introduced its own currency in 1994, it is not recognised internationally, and even within its borders, most substantial transactions are conducted using US dollars.¹⁷²

Despite Somaliland's efforts to establish a national democratic system, traditional clan dynamics continue to exert substantial influence.¹⁷³ The competition for resources, political power, and the necessity to balance clan interests create persistent governance and stability issues.¹⁷⁴ Securing the allegiance of eastern subclans, some of which advocate for a united Somalia, remains a significant obstacle.¹⁷⁵ Additionally, several neighbouring states, such as Ethiopia and Djibouti, oppose Somaliland's independence for geopolitical reasons, as they view a unified Somalia as a strategic counterbalance to Ethiopia's regional influence.¹⁷⁶

However, Somaliland's stability and democratic governance distinguish it from Somalia, enhancing its claim for international recognition. While lacking formal acknowledgement, it has been promised backing from Ethiopia.¹⁷⁷ Additionally, the UK and the Netherlands have bolstered development aid to Somaliland through the Somaliland Development Fund (SDF).¹⁷⁸

The international community's inability to establish a stable and unified Somali state, when contrasted with Somaliland's successful efforts in self-governance and peace-

¹⁷⁰ Arieff, *De Facto...* (n167) 63.

¹⁷¹ *Ibid.*, (n167) 63.

¹⁷² *As above.*, (167) 63.

¹⁷³ International Republican Institute, *Strategy for International Democratization Support to Somaliland* (International Republican Institute 2014).

¹⁷⁴ Kaplan, *The Remarkable...* (n146) 154.

¹⁷⁵ *Ibid.*, (n146) 154.

¹⁷⁶ *As above.*, (n146) 154.

¹⁷⁷ International Crisis Group, 'The Stakes of the Ethiopia-Somaliland Deal' (31 July 2024) <https://www.crisisgroup.org/africa/horn-africa/ethiopia-somaliland/stakes-ethiopia-somaliland-deal> accessed 20 September 2024.

¹⁷⁸ Mott MacDonald, 'Somaliland Development Fund' <https://www.mottmac.com/article/36825/somaliland-development-fund> accessed 17 September 2024.

building, may compel a reevaluation of Somaliland's legal status.¹⁷⁹ Its stability and counter-terrorism efforts present strong arguments for recognition, and despite lacking formal acknowledgement, it has established *de facto* relationships and agreements, suggesting increasing acceptance of its political reality.¹⁸⁰

In summary, although Somaliland encounters challenges due to political tensions with Somalia and regional complexities, recent developments offer opportunities for engagement. Capitalising on its stability and counter-terrorism role can strengthen its bid for recognition, with evolving geopolitics potentially paving the way for statehood and legitimacy.

4.5 Somaliland's unique characteristics

Somaliland's pursuit of secession from Somalia is supported by distinctive characteristics that set it apart from other self-determination movements. These factors are essential in assessing Somaliland's legal position and the legitimacy of its claim to statehood under international law.

4.5.1 Peaceful transition and stability

Somaliland's journey to stability starkly contrasts with the turmoil experienced in the rest of Somalia. While Somalia grappled with a failed state and ongoing conflict, Somaliland emerged as a beacon of relative peace and democracy in the Horn of Africa. Somaliland's peaceful transition was internally driven, beginning with local clan conferences (*shirs*) after the collapse of the Siad Barre regime in 1991.¹⁸¹ These *shirs*, deeply rooted in Somali tradition, fostered dialogue, built consensus, and laid the groundwork for a new, independent state.¹⁸² This approach enabled the establishment of a representative government that addresses the interests of different clans, thereby promoting a cohesive national identity.

Democratic elections and a multi-party system mark Somaliland's stability, but issues like the 2022 presidential term extension by the House of Elders have led to protests, highlighting that those elections are not always conducted regularly or without

¹⁷⁹ Hersi, Mohamed Farah, 'State Fragility in Somaliland and Somalia: A Contrast in Peace and State Building' (Commission on State Fragility, Growth and Development) [2018] 12.

¹⁸⁰ Kreuter, *Self-Determination...* (n139) 377.

¹⁸¹ Forti, *A Pocket...* (n151) 17.

¹⁸² *Ibid.*, (n151) 19.

controversy.¹⁸³ Additionally, there have been instances of election postponements and challenges. For example, the presidential election initially set for 2008 was delayed multiple times due to disputes and unrest.¹⁸⁴ However, the presidential election was eventually held on 26 June 2010.¹⁸⁵ Despite these issues, Somaliland's Constitution ensures fundamental rights and freedoms.¹⁸⁶

Somaliland's commitment to democratic governance, highlighted by its 2001 Constitution and elections, aligns with international standards and has attracted external support.¹⁸⁷ The region's stability, recognised since 1996, strengthens its internal legitimacy and capacity for self-governance.¹⁸⁸ These factors are key in its pursuit of statehood under international law. Somaliland functions effectively as a state due to its grassroots peace-building efforts and the establishment of inclusive democratic institutions founded on universal suffrage.¹⁸⁹ It has achieved significant progress as a self-governing entity.

In contrast to Somalia's continued conflict, Somaliland's peace stems from its inclusive peace processes between 1991 and 1995.¹⁹⁰ Unlike Somalia, where the UN-led peace efforts were conducted, Somaliland's processes were locally driven and involved major conferences that included all clan leaders.¹⁹¹ The initial major conference occurred in Berbera in February 1991, where clan representatives aimed to negotiate a ceasefire and foster peaceful coexistence.¹⁹²

¹⁸³ Hamdi I. Abdulahi, 'Elections and Electoral Processes in Somaliland: A Fading Democracy' [2022] JAE 76, 77.

¹⁸⁴ Jama I H, *Making the Somaliland Constitution and Its Role in Democratization and Peace* (2010) 89, 90.

¹⁸⁵ Interpeace, 'Somaliland Presidential Elections 2010 – First Ever Successful Democratic Transition in the Horn of Africa' (Interpeace 2010) <https://www.interpeace.org/2010/07/first-ever-successful-democratic-transition-in-the-horn-of-africa/> accessed 15 February 2025.

¹⁸⁶ Constitution of the Republic of Somaliland (31 May 2001) <https://www.refworld.org/legal/legislation/natlegbod/2001/en/72769> accessed 13 September 2024.

¹⁸⁷ International Republican Institute, *Strategy for International Democratization Support to Somaliland* (International Republican Institute 2014) <https://www.iri.org/wp-content/uploads/2022/01/Strategy-for-International-Democratization-Support-to-Somaliland.pdf> accessed 17 September 2024.

¹⁸⁸ *Ibid.*, (n188).

¹⁸⁹ Nima Elmi, 'What Somaliland Can Teach Africa About Peace and Stability' (World Economic Forum, 15 March 2016) <https://www.weforum.org/agenda/2016/03/what-somaliland-can-teach-africa-about-peace-and-stability/> accessed 17 September 2024.

¹⁹⁰ Misha Desai & Carl Ursing, 'Understanding Somaliland's regional stability: A comparative analysis on the prevalence and effects of spoilers on the contrasting situations observed in Somalia and Somaliland' [2015] DPS 1, 5.

¹⁹¹ Desai and Ursing, *Understanding...* (n191) 5.

¹⁹² Mohamed A. Mohamoud Barawani, 'Somaliland and Somalia Peace-Building Process: Actors, Interventions, and Experiences' [2017] IJDR 14248, 14251.

Furthermore, the Burao Conference, held from April to June 1991, was crucial in establishing governance in Somaliland after the fall of Siyaad Barre.¹⁹³ It successfully achieved a ceasefire and trust among the clans and addressed grievances, particularly those of less powerful clans. The 1993 Borama Conference marked a critical step in Somaliland's peace-building efforts by consolidating earlier peace-making achievements.¹⁹⁴ This conference was instrumental in electing new leadership, including a President, a Vice President, and a bicameral Parliament, for a three-year term, establishing a more formal governance structure.¹⁹⁵

4.5.2 Stability and Governance

Somaliland's path to stability and effective governance presents a strong case for its recognition as an independent state. Since its 1991 declaration of independence from Somalia, Somaliland has developed a functional government, demonstrating autonomy and stability uncommon in the Horn of Africa region. In contrast to the ongoing conflict in southern Somalia, Somaliland has successfully established democratic institutions and maintained relative peace.

Furthermore, Somaliland's commitment to security is evident in its allocation of nearly half of its budget to defense,¹⁹⁶ reinforcing its role as a stabilising force in the Horn of Africa. Its effective governance and resilience amid regional challenges strengthen its case for international recognition. Supporting Somaliland could enhance regional stability and development, showcasing the benefits of backing a stable and positively contributing entity.

Somaliland's government has reconstructed cities devastated by the civil war, created its currency and effective taxation system, and developed key infrastructure such as an international airport.¹⁹⁷ It has signed the Universal Declaration of Human Rights and successfully prosecuted terrorists and pirates.¹⁹⁸ Additionally, Somaliland

¹⁹³ Academy for Peace and Development, *Peace in Somaliland: An Indigenous Approach to State-Building* (Hargeisa, Somaliland, 2007) 28.

¹⁹⁴ Barawani, *Somaliland...* (n193) 14251.

¹⁹⁵ *Ibid.*, (n193) 14251.

¹⁹⁶ Somaliland Budget Analysis Brief (August 2020)

<https://www.africaeducationhub.org/bitstream/handle/hesa/41/Somaliland%20Budget%20Analysis%20Obrief.pdf?sequence=1&isAllowed=y> accessed 20 September 2024.

¹⁹⁷ Forti, *A Pocket...* (n151) 21.

¹⁹⁸ *Ibid.*, (n151) 21.

operates a three-party democracy that respects civil liberties and upholds the rule of law.¹⁹⁹

Somaliland demonstrates a solid commitment to governance to sustain its democratic framework. The Good Governance and Anti-Corruption Commission (GGACC) seeks to establish an inclusive, participatory, just, and accountable governance system.²⁰⁰ This approach emphasises transparency and merit-based practices. Public sector reforms aim to create effective institutions guided by clear policies and legislation, fostering a vision of a corruption-free nation with capable, motivated public servants and results-oriented leadership.²⁰¹

This demonstrates that Somaliland can be formally recognised as a state. It fulfills the substantive criteria of a modern democratic state, and its *de facto* status further strengthens its position in pursuing international recognition.

4.5.3 Public support for independence

Public demonstrations that can turn deadly,²⁰² and surveys²⁰³ indicate substantial backing for Somaliland's independence, illustrating a desire for independence and cultural identity. In a 31 May 2001 referendum, 97% of Somaliland's electorate endorsed a draft constitution affirming its independence,²⁰⁴ coinciding with the establishment of the internationally supported Transitional National Government (TNG) in Mogadishu.²⁰⁵ This is driven by both past injustices and Somaliland's stable governance, contrasting with southern Somalia's instability. This overwhelming public backing strengthens its moral and political position as it seeks recognition.

4.6 Comparative analysis: Lessons from international secessionist movements

Studying international secessionist movements offers important lessons that can guide Somaliland's pursuit of recognition and statehood. Through an analysis of case

¹⁹⁹ *As above.*, (n151) 21.

²⁰⁰ Government of Somaliland, 'About Us' <https://ggc.govsomaliland.org/article/ggacc-about-us> accessed 20 September 2024.

²⁰¹ *Ibid.*, (n201).

²⁰² Al Jazeera, 'Several People Killed, 100 Hurt in Somaliland Protests' (12 August 2022) <https://www.aljazeera.com/news/2022/8/12/several-people-killed-100-hurt-in-somaliland-protests> accessed 20 September 2024.

²⁰³ International Republican Institute, 'IRI Releases New Survey of Somaliland Public Opinion' (2011) <https://www.iri.org/resources/iri-releases-new-survey-of-somaliland-public-opinion/> accessed 20 September 2024.

²⁰⁴ Arieff, *De Facto...* (n167) 66.

²⁰⁵ *Ibid.*, (n167) 75.

studies, including the dissolution of Czechoslovakia, Eritrea's independence, and Catalonia's struggle, key patterns and challenges emerge that have influenced the outcomes of these movements. These precedents provide critical insights relevant to Somaliland's efforts.

The 1992 peaceful separation of Czechoslovakia into the Czech Republic and Slovakia, commonly known as the "Velvet Divorce," demonstrates that secession can be achieved through diplomatic negotiations and mutual consent, avoiding violence.²⁰⁶ However, the Czech and Slovak republics, both of which had their own parliaments and governments within Czechoslovakia, opted to dissolve their voluntary union and become two independent states.²⁰⁷ This decision to withdraw from the federal structure and establish separate sovereignty exemplifies the secession principle. Similarly, Eritrea's independence from Ethiopia was formalised through a 1993 UN referendum, where a vast majority voted in favour of independence.²⁰⁸ This highlights the critical role of popular support and international supervision in legitimising secessionist movements.

However, Catalonia's continued efforts to gain independence from Spain highlight the challenges and resistance secessionist movements face within established states, where regional aspirations conflict with national unity.²⁰⁹ For instance, the Spanish Constitution vests sovereignty in the entirety of the Spanish people rather than in individual regions such as Catalonia.²¹⁰ The Spanish Constitutional Court has consistently affirmed this principle, which has ruled that no region has the legal authority to declare independence unilaterally.²¹¹

Kosovo's 2008 declaration of independence from Serbia illustrates the significance of international recognition and geopolitical factors in determining the success of such

²⁰⁶ Salvatore Massa, 'Secession by Mutual Assent: A Comparative Analysis of the Dissolution of Czechoslovakia and the Separatist Movement in Canada' [1995] WILJ 183, 190.

²⁰⁷ Darina Mackova, 'Some Legal Aspects of the Dissolution of Former Czechoslovakia' [2003] Zbornik PFZ 375, 382.

²⁰⁸ Lyons, *Eritrea...* (n101).

²⁰⁹ Jonathan Gorratt, 'Catalonia Can't Quit Madrid' (Foreign Policy 2023) <https://foreignpolicy.com/2023/05/20/catalonia-independence-movement-spain-municipal-general-elections/> accessed 23 September 2024.

²¹⁰ Jose Joaquin Fdez-Alles, 'Spanish Constitutional Jurisprudence: Secession in Catalonia' [2018] JCL 179, 182.

²¹¹ Fdez-Alles, *Spanish...* (n211) 182.

movements.²¹² Cerone argues that widespread recognition of Kosovo, even if initially viewed as unlawful by some, would eventually lead to the adaptation of international law, thereby solidifying Kosovo's statehood.²¹³ The UN Mission in Kosovo (UNMIK) and the North Atlantic Treaty Organization's (NATO) presence significantly influenced Kosovo's governance, indirectly aiding its path to self-governance.²¹⁴ NATO's 1999 intervention, though contested in legality, altered the geopolitical landscape, enabling Kosovo's independence declaration.²¹⁵

Another secession case was that of Timor-Leste, which seceded from Indonesia. The United States formally recognised Timor-Leste, previously known as East Timor, on 20 May 2002, when it gained independence.²¹⁶ The UN played a critical role in facilitating Timor-Leste's secession from Indonesia. Further, the UN Mission in East Timor (UNAMET) oversaw the referendum, where the East Timorese voted for independence.²¹⁷ Following the referendum, the UN Transitional Administration in East Timor (UNTAET) was established to oversee the state-building process. UNTAET was tasked with ensuring security, establishing an effective administration, and fostering sustainable development.²¹⁸

Then there is Kurdistan, which is not a state in international law. Still, it is a geographical and cultural region predominantly inhabited by Kurds, who are known as the largest, stateless peoples in the world.²¹⁹ Kurdistan extends into parts of southeastern Turkey, northern Syria, and northern Iran. It is an autonomous region governed by the Kurdistan Regional Government (KRG), and under the Iraqi Constitution, it is recognised as a "region" or federal unit within Iraq.²²⁰ Although the

²¹² Kosovo Declaration of Independence (Refworld, 2008) <https://www.refworld.org/legal/legislation/natlegbod/2008/en/56552> accessed 23 September 2024.

²¹³ John Cerone, 'The Legality and Legal Effect of Kosovo's Purported Secession and Ensuing Acts of Recognition' [2008] AFLB 60, 70.

²¹⁴ Cerone, *The Legality...* (n214) 70.

²¹⁵ *Ibid.*, (n214) 70.

²¹⁶ U.S. Department of State, 'U.S. Recognition of Timorese Independence' (U.S. Department of State) <https://history.state.gov/countries/timor-leste> accessed 23 September 2024.

²¹⁷ Oliver P. Richmond & Jason Franks, 'Liberal Peacebuilding in Timor Leste: The Emperor's New Clothes?' [2008] Int'l Peacekeeping 185, 186.

²¹⁸ Richmond and Franks, *Liberal...* (n218) 186.

²¹⁹ CFR, 'Timeline: The Kurds' Quest for Independence' (Council on Foreign Relations) <https://www.cfr.org/timeline/kurds-long-struggle-statelessness> accessed 23 September 2024.

²²⁰ Gopal Srihari, 'The Kurdistan Referendum: Overstepping the Right of Self-Determination?' (Centre for International Law and Justice, April 2018) <https://cilj.co.uk/2018/04/06/the-kurdistan-referendum-overstepping-the-right-of-self-determination/> accessed 24 September 2024.

Kurds have a compelling legal case for self-determination, this does not equate to an absolute right to secede and establish an independent state.²²¹

By analysing these cases, Somaliland can refine its strategy for recognition by adopting practical measures while addressing challenges faced by other secessionist movements. Lessons learned from these case studies include pursuing diplomatic negotiations, ensuring popular support through referendums, and adhering to legal frameworks governing secession within established states. Furthermore, securing international recognition remains vital to strengthen its claims for statehood, while engaging with international organisations can enhance the legitimacy of its efforts and facilitate the recognition process on the global stage.

4.7 Conclusion

In conclusion, this chapter has examined Somaliland's pursuit of international recognition, focusing on the distinctive attributes and challenges shaping its bid for statehood. Through applying theoretical frameworks such as self-determination and secession, the analysis demonstrates how Somaliland's historical context and governance structure align with recognised principles of international law. Furthermore, the chapter emphasised the substantial public backing for independence, reinforcing Somaliland's moral and political claims to statehood.

Additionally, this chapter highlights that Somaliland's pursuit of recognition draws on historical precedents, stability, and self-governance, distinguishing it within a conflict-prone region. Somaliland can refine its advocacy strategies by examining cases like Czechoslovakia's peaceful split and Eritrea's independence. Although it faces hurdles such as non-recognition and tensions with Somalia, recent diplomatic gains offer potential avenues for enhancing its international legitimacy. Consequently, Somaliland's quest for statehood is grounded in historical grievances and self-determination principles, making its claims significant in modern international law.

²²¹ Ove Bring, 'Kurdistan and the Principle of Self-Determination' [1992] GYIL 157, 159.

Chapter 5: Recommendations and Conclusion

5.1 Introduction

This final chapter concludes the dissertation by recapping the argument of Somaliland's claim being justified and why it matters beyond this specific case. It also highlights recommendations for this legal problem. In other words, the chapter discusses the potential pathways that may help navigate the legal discord surrounding Somaliland's secession claim.

5.2 Recommendations

5.2.1 The international law on *uti possidetis* should apply contextually

The AU stringently enforces the principle of *uti possidetis* to maintain respect for colonial borders. However, as previously argued, Somaliland presents unique circumstances, similar to other states seeking self-determination through secession. While the AU applies *uti possidetis* to uphold territorial integrity, the cases of South Sudan and Eritrea show its complexity.

Both nations gained independence through formal processes with their governing entities and international support. South Sudan's independence was secured through the CPA, influenced by US diplomacy, followed by a widely recognised vote for independence. Eritrea's secession was similarly legitimised through a widely acknowledged UN-organised referendum. These cases show that despite *uti possidetis* aiming for uniformity, political and international factors can create exceptions to the principle.

The principle of *uti possidetis* should, therefore, be applied contextually, considering the specific circumstances of each case. In the case of Somaliland, the AU must recognise that it substantively satisfies the Montevideo Criteria for statehood and has demonstrated governmental stability. Acknowledging Somaliland's statehood would not necessarily trigger a proliferation of secessionist movements across the continent, as Somaliland was established before its union with Italian Somaliland, forming what is known today as Somalia.

This demonstrates that the principle of *uti possidetis* operates more in a formalistic sense than in practical reality, leading to a need for re-evaluation. The principle of *uti possidetis* should be applied based on Somaliland's borders as defined during its

period as a British Protectorate. This historical context does not necessarily set a precedent for other secessionist movements. However, if such movements arise, the AU must apply *uti possidetis* on a case-by-case basis, considering the specific circumstances of each situation.

Regardless, South Sudan's case demonstrates that the principle of *uti possidetis* has exceptions, as it depends on the circumstances of each case. In other words, South Sudan's 2011 secession shows that formal legal processes, like the CPA and an overwhelming vote for independence, can lead to exceptions to the AU's principle of maintaining colonial borders.

5.2.2 A reassessment of the legal validity of the union

The historical background of Somaliland's brief period of independence before its union with Somalia is critical. According to legal scholars like Paolo Contini, this union was never legally solidified due to the improper execution of necessary agreements.²²² In other words, the union between Somaliland and southern Somalia violated international treaty law as it lacked genuine consent from the people of Somaliland.²²³

While there was an initial agreement to form the Somali Republic, the process did not comply with the Vienna Convention on the Law of Treaties (VCLT) requirements, which mandates valid consent from all parties.²²⁴ Somaliland could use this argument to assert that it is not seceding from a legitimate state but instead returning to its prior status as an independent entity. What sets Somaliland apart from other African entities seeking recognition is its enduring commitment to stability and governance since it declared its independence in 1991 and its efforts to establish democratic institutions. This approach positions the secession as a restoration of its sovereignty rather than a new claim to independence.

The historical context further supports the argument that Somaliland's claim to statehood is legitimate under the principle of *uti possidetis*. That is to say, it was once a distinct territory with internationally recognised borders for seven decades, gained

²²² Mohamed I Trunji, 'The Legal Wrangling Over the Act of Union Between the Two States of Somaliland and Somalia in 1960' (Hiiraan Online 2020) https://hiiraan.com/op4/2020/jun/178745/the_legal_wrangling_over_the_act_of_union_between_the_two_states_of_somaliland_and_somalia_in_1960.aspx accessed 15 February 2025.

²²³ Temesgen Sisay Beyene, 'Declaration of Statehood by Somaliland and the Effects of Non-Recognition under International Law' [2019] BJLR 196, 202.

²²⁴ Beyene, *Declaration...* (n224) 202.

brief independence in 1960, and was recognised by thirty-five states.²²⁵ Its leaders argue they are dissolving a failed union with Somalia, not seceding, drawing parallels to the dissolutions of Senegambia and the United Arab Republic, as well Eritrea's independence from Ethiopia.²²⁶

5.2.3 The legal framework of self-determination and remedial secession

Somaliland should refine its legal argument by emphasising that its secession is not just a break from Somalia but a remedial act of self-determination due to systemic human rights violations under the Siad Barre regime from 1960 to 1991.²²⁷ It can build its case by drawing parallels to successful remedial secession claims like South Sudan and Eritrea.

Furthermore, Somaliland may assert its right to secede by invoking the principle of self-determination, as recognised in international law. This argument could be bolstered by showing that the people of Somaliland have been consistently excluded from meaningful political participation within Somalia and that their rights have been systematically violated.²²⁸

Such circumstances could justify Somaliland's pursuit of external self-determination. In addition, the concept of remedial secession could be employed. If Somaliland can provide sufficient evidence that it has faced such circumstances at the hands of the Somali government, this argument could be persuasive in its quest for recognition.

5.2.4 International recognition and political will

Securing international recognition is crucial for Somaliland's pursuit of legitimacy. By engaging with international organisations like the UN, Somaliland could build support for its cause. Efforts to emphasise Somaliland's stability, particularly in contrast to the turmoil in southern Somalia, might resonate with other nations and encourage them to recognise Somaliland's statehood.

A Center for Strategic and International Studies (CSIS) report recommends that Somaliland prioritise garnering support from key African states within the AU.²²⁹ If

²²⁵ Kaplan, *The Remarkable...* (n146) 152.

²²⁶ *Ibid.*, (n146) 152.

²²⁷ Barawani, *Somaliland...* (n193) 14249.

²²⁸ *Ibid.*, (n193) 14253.

²²⁹ Poore, *Somaliland...* (n150) 122.

persuaded of its legitimacy, strategic nations such as South Africa, Algeria, and Senegal could significantly influence Somaliland's quest for recognition.²³⁰ Notably, in its legal opinion, the South African Department of International Relations and Cooperation (DIRCO) concluded that:

Somaliland does indeed qualify for statehood, and it is incumbent upon the international community to recognise it.²³¹ Any efforts to deny or delay would not only put the international community at risk of ignoring the most stable region in the Horn, it would impose untold hardship upon the people of Somaliland due to the denial of foreign assistance that recognition entails.²³²

This situation suggests an inclination to recognise Somaliland as a state, given its potential role as a stabilising force in the Horn of Africa. Somaliland has consistently demonstrated stability and democratic governance, which are key attributes of statehood under international law. This starkly contrasts with the ongoing instability in Somalia, which, despite its turmoil, remains an internationally recognised state. The international community must have enough political will to acknowledge the clear distinction between Somalia, a recognised but unstable state, and Somaliland, a stable *de facto* state that meets the fundamental criteria for statehood.

5.2.5 A declarative framework for Somaliland's recognition

It has already been argued that Somaliland fulfils all the necessary criteria for statehood as outlined in the Montevideo Convention and should, therefore, be recognised under the declarative theory of recognition. The Montevideo Convention, closely linked to the declaratory approach, is the foundational reference for discussions on statehood,²³³ further supporting Somaliland's claim for international recognition.

This approach asserts that a state exists once it meets the Montevideo Convention, irrespective of recognition by other states. As Somaliland satisfies these criteria, it does not require the unanimous consent of the international community to achieve

²³⁰ Presidency of Somaliland, *The Recognition of Somaliland: Growing International Engagement and Backing* (Hargeisa, Somaliland) 2.

²³¹ *Ibid.*, (n231) 2.

²³² *Ibid.*, (n231) 2.

²³³ Strydom... *Statehood* (n10) 38.

recognition. By adhering to this approach, Somaliland could advance and establish itself as a stabilising force within the Horn of Africa.

However, this approach is not without its criticism. While it posits that a state can exist by meeting the objective criteria for statehood, allowing it to exercise international rights and obligations, recognition by other states introduces further complexity.²³⁴ This is where the constitutive theory becomes relevant, as it holds that a state's legal recognition by others is essential for it to fully assert its international standing.²³⁵

Therefore, Somaliland must carefully navigate its reliance on the declarative approach. While this approach has merit, it is subject to criticism due to the importance of the constitutive approach. A balanced strategy that acknowledges both theories would strengthen Somaliland's case.

5.2.6 Negotiation and dialogue

Establishing a negotiation platform with Somalia could provide a viable path to peacefully resolving Somaliland's status. Despite Somalia's opposition, initiating dialogue on autonomy, governance, and potential areas of cooperation could lay the foundation for eventual recognition or a formal settlement. As a stable state, Somaliland could argue that it is better positioned to contribute to regional stability in the Horn of Africa than Somalia.

Somaliland could further assert that remaining tied to Somalia risks undermining its own stability, potentially exacerbating regional instability. Somalia must recognise Somaliland's stability and understand that its engagement with Ethiopia poses no threat to Somalia's territorial integrity. As Ethiopian Foreign Minister Taye Atske-Selassie clarified, "Ethiopia's memorandum of understanding with Somaliland is based on existing political dispensation in Somalia."²³⁶

As he emphasised,

²³⁴ Law Bhoomi, 'Recognition of States Under International Law' (LawBhoomi, 2023) https://lawbhoomi.com/recognition-of-states-under-international-law/#Criticism_of_the_declaratory_theory_of_state_recognition_in_International_Law accessed 12 October 2024.

²³⁵ Ibid., (n235).

²³⁶ Mohamed Olad Hassan, 'Somalia-Ethiopia tensions escalate; UN urges diplomatic resolution' (Voice of America 2024) <https://www.voanews.com/a/somalia-s-security-dilemma-ethiopia-tensions-dominate-discussions-on-au-peacekeeping/7811115.html> accessed 8 October 2024.

our objective is a shared growth and prosperity in the region. Similar agreements have been concluded by other states, and there is no reason for the government of Somalia to incite hostility that obviously intends to cover internal political tensions.²³⁷

The Ethiopian Minister's comments affirm that Ethiopia's cooperation with Somaliland is consistent with regional development objectives and does not infringe upon Somalia's sovereignty, thereby reinforcing the need for constructive dialogue on their respective legal status and mutual interests.

In terms of mutual cooperation, Somaliland could offer its governance model to assist Somalia in strengthening its own institutions and enhancing its standing within the international community while receiving reciprocal support for its recognition efforts. Such cooperation could also incentivise the AU to reconsider Somaliland's status, promoting broader regional peace and stability.

5.2.7 Seek an advisory opinion from the International Court of Justice

Somaliland could pursue engagement with the ICJ to clarify its legal status and contest the idea that its secession infringes on Somalia's territorial integrity. A petition should be submitted to the ICJ for an advisory opinion on Somaliland's legal status. Although not legally binding, such an opinion would offer authoritative guidance and strengthen Somaliland's claim for recognition, particularly if it affirms that Somaliland meets the Montevideo Convention's statehood criteria.

An advisory opinion of this nature could significantly influence the international community, potentially making it more feasible or compelling for states to recognise Somaliland as a legitimate state. Since 1991, Somaliland has demonstrated a successful peace-building and state-building process. It has established a functioning government, conducted democratic elections, and maintained internal peace and security. This record of stability and governance starkly contrasts Somalia's ongoing instability and may strengthen Somaliland's position in seeking international recognition.

²³⁷ Ibid., (n237).

5.2.8 The AU should find a special method of dealing with Somaliland's outstanding case

One of the methods to bolster Somaliland's quest for recognition is its admission to the AU. Supported by Ethiopia, Kenya, and Israel,²³⁸ Somaliland currently lacks eligibility for international aid and participation in organisations like the AU and the UN due to its status as a self-declared independent state.²³⁹ AU membership would validate its key state characteristics, such as democratic elections, improve regional security by addressing issues like terrorism and piracy, and align with the AU's commitment to human rights. Moreover, Somaliland meets the established criteria for statehood, further justifying its inclusion in the AU.

Given Somaliland's distinct characteristics and the historical context of its invalid union with Somalia, the applicability of *uti possidetis* is questionable. In this regard, the AU is positioned to support Somaliland in its pursuit of recognition. The AU should recognise that Somaliland exhibits greater stability compared to its parent state, Somalia, which should motivate the AU to reconsider the strict application of *uti possidetis* in this instance. An objective assessment of this case indicates that it should not be perceived as a catalyst for "opening a Pandora's box."²⁴⁰ Therefore, the AU is urged to develop a special method to address Somaliland's unique case.

Regarding the implementation of this "special method," it would necessitate a cautious and tailored approach to Somaliland's situation. This could involve engaging with regional organisations such as the Intergovernmental Authority on Development (IGAD) to build consensus regarding Somaliland's status. Such a cautious approach is essential to mitigate the risk of fostering secessionist movements across Africa.

5.3 Conclusion

This chapter offers an overview of recommendations aimed at assisting Somaliland in securing its sovereign independence from Somalia and achieving international recognition. These recommendations are specifically tailored to Somaliland's unique situation, with several already acknowledged by scholars supporting its claim. As the concluding chapter of the dissertation, it consolidates the recommendations drawn

²³⁸ Forti, *A Pocket...* (n151).

²³⁹ *Ibid.*, (n151).

²⁴⁰ *Ibid.*, (146) 4, para 8.

from the preceding arguments, offering a cohesive reflection on the steps Somaliland could take toward achieving its goal of statehood.

The discussion of the theories underpinning this dissertation has highlighted how Somaliland's recognition can be argued within the framework of secession, self-determination, and the principle of *uti possidetis*, all of which are key principles in international law. The dissertation contends that the application of *uti possidetis* has been inconsistent across Africa and globally, demonstrating that international law is not a fixed or rigid system but rather one that adapts to varying geopolitical interpretations and circumstances.

The dissertation notes that Somaliland's claim for recognition poses a significant challenge in the international community. Although the principles of the Montevideo Convention are generally accepted, political factors and the emphasis on territorial integrity frequently take precedence over these criteria. In conclusion, by prioritising internal stability and effective governance, enhancing diplomatic efforts, addressing economic issues, and maintaining dialogue with the Somali Federal Government (SFG), Somaliland can bolster its prospects for gaining international recognition and securing a more prosperous future for its nationals.

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