

A SHADOW ON TOMORROW'S DREAMS: SOMALILAND'S STRUGGLE FOR STATEHOOD



UNREPRESENTED NATIONS AND PEOPLES WORKSHOP
LEWIS & CLARK LAW SCHOOL
PORTLAND, OREGON

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A Shadow on Tomorrow's Dreams: Somaliland's Struggle for Statehood

Editors:

Demi Jacques
Dayna Jones
Neda Shahram
A. Lee Stone
Julie Sugano

Communications Officer:

Neda Shahram

Graphic Designer:

Marija Boise

Contributors:

Marija Boise
Lekha Fernandes
Chris Huettmeyer
Demi Jacques
Dayna Jones
Julie Sugano
Michael Thomas
Ashlyn White

Unrepresented Nations and Peoples Workshop
Lewis & Clark Law School, 2016

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PREFACE

“Don’t let today’s disappointments cast a shadow on tomorrow’s dreams”

This report is the product of work undertaken by law students in the Unrepresented Nations and Peoples Workshop at Lewis & Clark Law School in Portland, Oregon, in association with the Unrepresented Nations and Peoples Organisation in The Hague. At the suggestion of UNPO, the Workshop undertook an investigation and legal analysis of the claim by the representatives of Somaliland to recognition as a sovereign and independent State.

This report will be used by UNPO in representing and promoting the interests of its member, Somaliland, in various international fora, and by the government of Somaliland in its increasing endeavors to attain recognition. After 25 years of *de facto* independence, with the attendant disappointment at not securing any recognition of its statehood, the Somaliland authorities are determined to realize their dream of *de jure* independence.

The authors express their gratitude to Jeroen Zandberg, Treasurer, and Johanna Green, Program Manager, both members of the UNPO International Secretariat, for their assistance and encouragement. Deep gratitude is extended toward a number of Somaliland representatives and correspondents for their provision of information and documentation, namely, Hassan Ahmed Yusuf, Executive Director of Somaliland Diaspora and Secretary of Somaliland National Recognition Committee; Michael Higgins, on behalf of the Independent Diplomat; attorney Ibrahim Hashi Jama, owner of *SomalilandLaws*; and Abdiqani Ahmed Hassan, Director of Political Department for the Somaliland Ministry of Foreign Affairs and International Cooperation. The authors also immensely appreciate Lisa Frenz, legal assistant at the Lenair Mulford Text & Image Production Services of Lewis & Clark Law School, for her production assistance. Finally, Professor John P. Grant must be mentioned for the exceptional guidance and encouragement he imparted to the authors of this work.

20 December 2016
Portland, Oregon

EXECUTIVE SUMMARY

For the past quarter of a century, Somaliland, formerly a British protectorate and later united with Italian Somalia in the Somali Republic, has governed itself as an independent State. Yet, it is not recognized as an independent State within the African Union or in the broader community of States; it is acknowledged as only an autonomous region of Somalia. Somaliland, an oasis of tranquility and order in a turbulent part of the African continent, and its peaceable and responsible people, deserve better.

The Somaliland argument for recognition as an independent State has substantial merit in international law. Somaliland claims an historic title to statehood, having been a sovereign State after independence from the United Kingdom until its union with Italian Somalia five days later. The agreement for that union was arguably imperfectly concluded and therefore invalid. More tellingly, Somaliland satisfies the tests for statehood as set out in the 1933 Montevideo Convention on the Rights and Duties of States; it has a permanent population, a defined territory, a government and a capacity to enter relations with other States. Indeed, the Somaliland authorities have been effective and fully functioning in governing the country and its people, to the exclusion of any other governing authority, and in establishing (limited) contacts with other States, for 25 years. While the Montevideo Convention explicitly declares statehood to be independent of any recognition by other States, the reality is that it is only through recognition that an entity can be a full member of the international community, with its attendant benefits.

The options available to Somaliland are, in essence, three in number. First, to remain in the shadow of non-recognition, the *status quo*, would leave Somaliland a *de facto*, but not a *de jure*, State, unable to join important international organizations and to access the inward investment and multilateral and bilateral aid that it needs. Secondly, Somaliland could seek formal status as an autonomous region of the Federal Republic of Somalia, along the lines already adopted for the neighboring region of Puntland. That option, while probably politically attainable, would not necessarily address Somaliland's trade and investment requirements, and moreover would lose for Somaliland its hard-won and long-standing independence of action to the world's leading failed State.

The third option for Somaliland is a continuation – but substantial intensification – of its existing efforts to seek recognition as an independent State. For that, it needs a clearly-focused and multi-faceted recognition-seeking strategy, mobilizing all its resources including the Somaliland diaspora. Central to securing recognition will be the role of a patron, a State or States with a special interest in and commitment to the recognition of Somaliland independence.



1. HISTORICAL CONTEXT

To understand the internal and international dynamics of Somaliland presently, its tumultuous history must be explained to contextualize the issues Somaliland has faced when seeking recognition. Like many of the countries with borders prescribed by colonial powers, Somaliland was established as one of five protectorates located on the Horn of Africa in 1897.¹ At that time, Somaliland was adopted as a British protectorate.²

Somalia, Ethiopia, Djibouti, Kenya, and Somaliland all share a similar cultural structure.³ This region, the Horn of Africa, supports six large clan groups: the Dir, Isaaq, Darood, Hawiye, Digil Mirifle, and Rahanweyn.⁴ Often the Digil Mirifle and Rahanweyn clans are considered similar to one another because of their cultivator lifestyles, while the other four clans are mostly nomadic pastoralists.⁵ Each clan has separate customs and culture, but each clan lineage also has dozens of sub-clans and follow different bloodlines through paternity.⁶ Tension exists not only between the larger clans, but also between these sub-clans.⁷ Geographically, Djibouti is made up of a variety of ethnic minorities and Somaliland is predominately populated by members of the larger Isaaq clan, while Ethiopia remains fairly diverse with clan members from Isaaq, Hawiye, Dir, and some ethnic minorities spilling over from Djibouti.⁸ Kenya is occupied by both the Haawiye and the Dir clans.⁹ The southern part of Somalia is a smorgasbord of all five clans.¹⁰

Stability in the region is often related to the relationships among the clans and sub-clans. Clan lineage is stressed in the traditions of Somaliland and around the Horn of Africa, stemming from the fact that these clans claim to be traced from the Prophet Mohammed.¹¹ While clan lineage is important, a member's friends and foes can vary depending on the interests at hand. In other words, family lineage does not bind a member to any specific loyalty, but can be mutable depending on regional, religious, or political affiliations.¹²

This clan structure and culture should be taken into account when considering the region's colonial history. From 1896 to the period before World War II, the partitioned sections of British Somaliland and Italian Somalia operated independently of one another.¹³ During the War, Somaliland was overtaken by the Italian army until its defeat. Following World War II and the defeat of the Italian army, Somalia was repartitioned with Somaliland reinstated as a

¹ Mark Bradbury, BECOMING SOMALILAND: (AFRICAN ISSUES), 26 (2008).

² *Id.*

³ Ioan Lewis, UNDERSTANDING SOMALIA AND SOMALILAND, IX (2008).

⁴ *Id.* at 3-5.

⁵ I.M. Lewis, A MODERN HISTORY OF THE SOMALIA, 7 (4th ed. 2002).

⁶ Lewis, *supra* note 3, at 4-13.

⁷ John Rabuogi Ahere, THE PARADOX THAT IS DIPLOMATIC RECOGNITION: UNPACKING THE SOMALILAND SITUATION, 17-18 (2013).

⁸ Seth Kaplan, Somalia's Complex Clan Dynamics, Fragile States, <http://www.fragilestates.org/2012/01/10/somalias-complex-clan-dynamics/>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Lewis, *supra* note 5, at 5.

¹² Lewis, *supra* note 5, at 11.

¹³ Lewis, *supra* note 3, at 27-31.

British protectorate.¹⁴ At that time, the greater part of Somalia was returned to the Italian government for ten years, but was then adopted as a U.N. Trusteeship territory until it gained independence. On independence, it was united with the British protectorate of Somaliland into the Somali Republic¹⁵ Ultimately, Somaliland assumed greater power over its own affairs by uniting in Somalia rather than continuing under as a Trusteeship territory.

In 1960, when the Somali Republic gained independence, its political structure was formed from European constructs of government, which unfortunately failed to observe the dispersed and decentralized nature of the culture in that region.¹⁶ Along with an ill-fitting governmental system, the boundaries between Ethiopia and Somalia were blurred, which led to clashes between nomadic Somalians and the Ethiopian military.¹⁷

By 1961, the Somali government held a referendum “to approve the provisional constitution under which the two ex-colonial territories had united at independence.”¹⁸ Only 100,000 people voted in the northern area, and of those northerners, only half approved the constitution. In that same year, some northern officers staged a coup, demonstrating the northerners’ disapproval of the administration and lack of integration between the clans.¹⁹

The last Somali government election occurred in 1969 and shortly after, the Somali president, Abdurashid Ali Shermarke, was assassinated. This event was followed by a swift military coup, which led to an attempt at the implementation of a different form of government. This new government used “Scientific Socialism” in order to break down clan divisions and foster nationalism.²⁰ Scientific Socialism encouraged wealth-sharing based on knowledge.²¹ One of the goals of practicing this governmental theory was to deter the nomadic lifestyle.²² Unfortunately, this coincided with one of the worst droughts in Somalia, which led to famine and unrest. The governmental experiment failed and Siad Barre took control of the region by military coup and instituted the Supreme Revolutionary Council.²³

In 1977, Djibouti forged its own path in the region and became an independent State. Simultaneously, Siad Barre’s regime became embroiled in a conflict with Ethiopia and invaded the Ogaden region with the help of Soviet Union arms.²⁴ Other country leaders attempted to mediate when these clashes between Ethiopia and Somalia flared.²⁵ Tensions continued to increase, however, leading to the Ogaden War over the disputed boundary of

¹⁴ Lewis, *supra* note 3, at 32.

¹⁵ Lewis, *supra* note 5, at 148.

¹⁶ Mikolaj Radlicki, Who really rules Somalia? – The tale of three big clans and three countries, Mail & Guardian Africa, May 19, 2015, <http://mgafrica.com/article/2015-05-18-who-really-rules-somalia-the-tale-of-three-clans>.

¹⁷ Seth Kaplan, The Remarkable Story of Somaliland, 18 J. of Democracy 146 (2008).

¹⁸ Lewis, *supra* note 3, at 35.

¹⁹ Lewis, *supra* note 3, at 35.

²⁰ Lewis, *supra* note 3, at 37.

²¹ Lewis, *supra* note 3, at 39.

²² Lewis, *supra* note 3, at 39.

²³ Joseph K. Nkaisserry, The Ogaden War: Analysis of its Causes and its Impact on Regional Peace on the Horn of Africa, Department of Defense, 9 (1997).

²⁴ Enough: The Project to End Genocide and Crimes against Humanity, Roots of the Crisis, http://www.enoughproject.org/conflict_areas/somalia/roots-crisis [hereinafter “Enough”]

²⁵ Lewis, *supra* note 3, at 39.

Somalia and Ethiopia, which in turn caused the exodus of ethnic Somalis from both Western Somalia and Eastern Ethiopia.²⁶ This war was caused by ethnic tension between the Ethiopians of the Ogaden region and the Somali government, aggravated by the Cold War tensions between the Soviet Russia and the United States.²⁷

The United States intervention to slow the growing communist bloc was fueled by the Soviet Union supplying arms to Ethiopian Marxists who defended the Ogaden region.²⁸ By the winter of 1977, Siad Barre realized that, in order to defeat Ethiopia, Somalia would have to renounce the Soviet Union and seek help elsewhere.²⁹ The Carter administration did not support the Barre regime outright, but it did support the suppression of Soviet power within Ethiopia.³⁰ By March of 1978, the Ethiopian military and its allies defeated the Somali army.³¹ This defeat ultimately led to the weakening of the Barre regime.³²

This war resulted in over 400,000 Ethiopians being housed in refugee camps on the border of Ethiopia and spilling into Somalia, and another 500,000 people who became invisible refugees, those who are taken in by relatives or friends.³³ This exodus led to an overly-strained economy, which was already under pressure through political conflict. The Barre regime was faced with growing opposition from the Somali National Movement (mostly composed of the Isaaq, who make up the majority of Somaliland) as well as the Somali Salvation Democratic Front (mostly of the Darod clan).³⁴ Following the loss of the Ogaden War, the debilitating drought, and the economic strain of the refugee crisis, Siad Barre was overthrown by clans opposed to his regime in Mogadishu.³⁵

Following the complete overthrow of the Barre regime in 1991, the government and general State of Somalia descended into chaos.³⁶ Simultaneously, the Republic of Somaliland declared its independence and subsequently convened the Borama Conference, which produced a peace framework and a national charter.³⁷ Somaliland created its own government, with the former Prime Minister of Somalia, Mohamed Haji Ibrahim Egal, at its helm, and a bicameral legislature which consisted of non-elected elders and elected “representatives.”³⁸ Somaliland continued to improve its economy, security, and relations with Ethiopia, though the U.N. disapproved of the nation-state and refused to engage with Somaliland.³⁹ The Republic of Somaliland, unlike the remainder of Somalia, has managed to

²⁶ Lewis, *supra* note 3, at 64.

²⁷ Nkaisserry, *supra* note 26, at 9.

²⁸ Donna R. Jackson, The Ogaden War and the Demise of Détente, 632 *Annals Am. Acad. Pol. & Soc. Sci.* 26, 28-29 (2010).

²⁹ *Id.* at 29-30.

³⁰ *Id.* at 30-31.

³¹ Nkaisserry, *supra* note 26, at 20.

³² Nkaisserry, *supra* note 26, at 24.

³³ Lewis, *supra* note 3, at 39.

³⁴ Lewis, *supra* note 3, at 39.

³⁵ Nkaisserry, *supra* note 26, at 9.

³⁶ Nkaisserry, *supra* note 26, at 9.

³⁷ Lewis, *supra* note 3, at 94.

³⁸ Lewis, *supra* note 3, at 94. (clarifying that Mohamed Haji Ibrahim Egal had served as Prime Minister for Somalia following the overthrow of Siad Barre by the SNM, which was associated with Somaliland, insofar as members were part of the same clan, the Isaaq).

³⁹ Lewis, *supra* note 3, at 96.

avoid continuous conflict between warlords and other militias.⁴⁰ Despite the absence of international support, the Somaliland government has managed to thrive.

Currently, the Somali government is still in the process of establishing state structures as well as stability and to this day remains the number one failed State in the *Fragile State Index*.⁴¹ Along with assistance from the United States, the African Union and the United Nations, Somalia continues to define its boundaries and attempts to improve its securities against extremist groups.⁴² Somaliland, on the other hand, is not only surviving, but also expanding its economy, solidifying its governance, and remaining secure despite its ambiguous status in the international community.

⁴⁰ Enough, *supra* note 24.

⁴¹ United States Institute of Peace, [The Current Situation in Somalia](http://www.usip.org/publications/2015/07/23/the-current-situation-in-somalia), July 23, 2015, <http://www.usip.org/publications/2015/07/23/the-current-situation-in-somalia>.

⁴² *Id.*

2. THE SOMALILAND LEGAL CASE

A. Historical Title

There are a number of documents identifying the legal case for Somaliland, but these documents are remarkably similar in that they all identify Somaliland's historical title to land and a fraudulent 1960 Act of Union with Somalia as foundational elements in making the case for independence from Somalia.⁴³ Having gained its independence from Britain in 1960, Somaliland was an independent nation before voluntarily entering into a failed union with Somalia.⁴⁴ The 1960 Act of the Union was deeply flawed. In June 1960, representatives from Somaliland and Somalia each signed different Acts of Union agreeing to different terms of unification.⁴⁵ Additionally, "The official Act of Union was passed retrospectively in January 1960 by the new National Assembly in which Somalia was overrepresented, [and] in the referendum of the new Constitution of the Somali State held in June 1961, the Somaliland population did not vote due to discontent with its intent, method, and management. Only less than 17% turned out and an overwhelming majority of them voted against the so-called Act of Union."⁴⁶ Although it was internationally recognized, the fraudulent "agreement" did not meet international standards for treaty recognition and did not reflect the will of the Somaliland people.

The fusion of Somaliland and Somalia into one State was based upon a mutual desire to create a Greater Somalia composed of French Somaliland, the State of Somaliland, the Trusteeship territory of Somalia, the Ogaden province of Ethiopia and the Northern Frontier Province of Kenya.⁴⁷ Together, people of Somali ethnic origin inhabited these five territories, as symbolized in the five-point star on the Somali Republic's flag. The goal in creating a Greater Somalia was to aggregate the political, economic and social power of the Somalis in these five regions as they gained independence from colonialism. On June 26, 1960, Somaliland gained its independence from Britain. A few short days later, on July 1, 1960, Somalia too gained its independence.⁴⁸

Upon both Somaliland and Somalia gaining their independence, representatives from both nations met and agreed to sign an Act of Union as a step toward a Greater Somalia. Subsequently, one day after its independence, on June 27, 1960, the legislative assembly of

⁴³ Republic of Somaliland: Ministry of Information, Somaliland: Demand for International Recognition, 1 (2001), http://www.somalilandlaw.com/Government_Recognition_Paper_2001.pdf, Republic of Somaliland Ministry of Foreign Affairs & International Cooperation, Legal Case, Sustainability, and Contributions, <http://www.slforeign.com/assets/legal-case-for-recognition.pdf>, [hereinafter *Somaliland Legal Case*]. See also Harun Maruf, Somaliland Petitions for Statehood, VOA News, Aug. 24, 2016, <http://www.voanews.com/a/somaliland-petitions-for-statehood/3478578.html>, Republic of Somaliland Ministry of National Planning & Development, Somaliland National Vision 2030, Dec. 2011, <http://www.slforeign.com/assets/somaliland-vision-2030.pdf>, [hereinafter *Somaliland Vision 2030*].

⁴⁴ *Somaliland Legal Case*, *supra* note 1.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Republic of Somaliland: Ministry of Information, *supra* note 1, at 1.

⁴⁸ Anthony J. Carroll & B. Rajagopal, The Case for the Independent Statehood of Somalia, 8 AM. U. J. Int'l. & Policy 653, 654 (1992-1993).

Somaliland enacted the Union of Somaliland and Somalia Law.⁴⁹ The Law was immediately effective in Somaliland, but, as set out in the Union agreement, it was supposed to be signed by the representatives of Somalia as well.⁵⁰ This never happened. Rather, on June 30, 1960, the legislative assembly of Somalia met and approved “in principle” an Act of Union significantly different from the Act of Union agreed upon and implemented by Somaliland. Summarily, the Union of Somaliland and Somalia Law and the Somalia Act of Union were both drafted in the form of bilateral agreements, but neither of them was signed by the representatives of the two territories.⁵¹

The legislative assembly of Somalia requested that its government and the government of Somaliland agree upon a definitive single text of the Act of Union and submit this single text to the legislative assembly for approval.⁵² Instead of comparing and negotiating the differing versions of the Act of the Union, on July 1, 1960, members of the Somaliland legislature and members of the Somali legislature met and drafted a Constitution for the Somali Republic.⁵³ This Constitution was adopted on the basis of an acclamation and a provisional President was elected.⁵⁴ This election of a provisional President was taken in direct contradiction to the Constitutional requirement that the Act of the Union be signed by both Somalia and Somaliland before the election of a Provisional President.⁵⁵

Subsequently, the unconstitutionally-elected Provisional President issued a decree to formalize the Union. Similar to the previous steps taken to formalize the Union, this decree did not meet the legal stipulations required for conversion into law. It was never presented to the National Assembly as is required under Article 63(3) of the new Constitution, but was nonetheless regarded as a *de facto* act joining the two formally-independent States of Somalia and Somaliland.⁵⁶

After much debate about the legitimacy of having two different versions of the Act of Union, the National Assembly approved a consolidated Act of Union on January of 1961. The Assembly, comprising 90 members of Somalia’s Legislative Assembly and 33 members of Somaliland’s Legislative Assembly, determined that this Act of Union should be applied retrospectively.⁵⁷ This new Act of Union did not encompass many of the protections the Somaliland version of the Act provided for its citizens, and it went so far as to repeal all legal documents inconsistent with the 1960 Somalia Constitution, specifically “the provisions of the Union of Somaliland and Somalia (Law No.1 of 1960)” except for Article 11(4).⁵⁸ A denial of recognition of the Constitution and Union was also expressed by an independent judiciary, when a British judge presiding over the Mogadishu Supreme Court of 1963

⁴⁹ Republic of Somaliland: Ministry of Information, *supra* at 4.

⁵⁰ Contini, Paolo, THE SOMALI REPUBLIC: AN EXPERIMENT IN LEGAL INTEGRATION (1969).

⁵¹ *Id.*.

⁵² *Id.*

⁵³ Somali, Somali Constitution, Dec. 31, 1963.

⁵⁴ Haji, N.A., THE LEGAL SYSTEM OF THE SOMALI DEMOCRATIC REPUBLIC, 133 (1972).

⁵⁵ Contini, *supra* note 50.

⁵⁶ *Id.*

⁵⁷ Mohamed Ali Abdi, Conflict Resolution and Nation-Building in Somalia, 2012, <http://digitalcommons.auctr.edu/cgi/viewcontent.cgi?article=1738&context=dissertations>.

⁵⁸ John Drysdale, SOMALILAND: ANATOMY OF SECESSION, 12 (1991).

acquitted all the accused in a case of treason on the grounds that there was no Act of Union between the North and the South (the alleged offence took place in the North).⁵⁹

The “fraudulent” ground upon which the Act of the Union was built gives light to the turmoil around the unification of Somalia and Somaliland. Somaliland existed as a sovereign nation-State until the Act of the Union, which fell short of legal treaty requirements mandated by international law.⁶⁰ Nonetheless, the two nations have been operating in the eyes of the international community under the premise that the Act of the Union unified the two States into one.

B. Somaliland’s Statehood

The second limb to Somaliland’s case is the assertion of *statehood*: “a notoriously vexing concept in international law. Though states have been the fundamental unit of the international system for over 400 years, there remains no generally accepted definition of statehood.”⁶¹ Despite the lack of consensus on a definition, the Montevideo Convention on the Rights and Duties of States of 1933 is generally cited as the primary international legal instrument defining the concept of statehood.⁶² According to the Convention, “[t]he state as a person of international law should possess” a permanent population, a defined territory, a government, and the capacity to enter into relations with the other States.⁶³ These classical criteria for statehood were built on the principle of effectiveness among territorial units—or stated differently, the effectiveness of the governing body.⁶⁴ Notably, “[t]he political existence of the state is independent of recognition by the other states.”⁶⁵ Thus, statehood is achieved when the four conditions are met, regardless of political recognition.⁶⁶ Recognition of a State, in contrast, “merely signifies that the state which recognizes it accepts the personality of the other with all the rights and duties determined by international law.”⁶⁷

The first criterion for statehood is that a territory must be able to demonstrate that it has a permanent population.⁶⁸ This is required because, although States are commonly thought of as territorial entities, importantly, States are also territorial *communities* comprised of individuals sharing a common allegiance.⁶⁹ Despite the requirement that a State have a permanent population, international law has no prescribed minimum population that a State must meet in order to achieve statehood.⁷⁰ Somaliland has an estimated population of 3.5

⁵⁹ Republic of Somaliland: Ministry of Information, *supra* note 1, at 5.

⁶⁰ Carroll, *supra* note 48, at 654.

⁶¹ Benjamin Farley, Calling a State a State: Somaliland and International Recognition, 24 Emory Int’l L. Rev. 777 (2010).

⁶² J. Crawford, *THE CREATION OF STATES IN INTERNATIONAL LAW*, 45-46 (2nd Ed. 2005).

⁶³ Convention on the Rights and Duties of States, art. 1, 165 L.N.T.S. 19 (Dec. 26, 1933).

⁶⁴ Crawford, *supra* note 62, at 46.

⁶⁵ Aaron Kreuter, Self Determination, Sovereignty, and the Failure of State: Somaliland and the Case for Justified Succession, 19 Minn. J. Int’l L. 363, 365 (2010).

⁶⁶ *Id.*

⁶⁷ Convention on the Rights and Duties of States, art. 6.

⁶⁸ Convention on the Rights and Duties of States, art. 1.

⁶⁹ Crawford, *supra* note 62, at 52.

⁷⁰ *Id.*

million people and therefore clearly meets the requirement of a permanent population.⁷¹ This remains true even in light of the fact that parts of the Somaliland population are nomadic pastoralists who practice trans-border migration.⁷² There are enough constant inhabitants that the nomadic people pose no threat to Somaliland's fulfillment of the 'permanent population' criterion.⁷³ "Whilst size of the population is irrelevant, in order to constitute a people, the group of persons in question must form a cohesive vibrant community."⁷⁴ Thus, a State has a duty to promote community life through the promotion of a people sharing a common destiny.⁷⁵ In Somaliland's case, its shared destiny is the realization of the struggle for international recognition as an independent State. One way that Somaliland has fostered a people that share this common destiny is through their "symbolic trappings of statehood."⁷⁶ Examples include its flag, currency, passports and even its own national anthem.⁷⁷ Together, these things have commanded the loyalty of a growing proportion of the territory's population.⁷⁸ This loyalty was recently corroborated by a report released in August 2016, by Somaliland's Ministry of Foreign Affairs and International Cooperation, which stated that it had successfully completed its goal of obtaining 1 million Somalilanders' signatures endorsing their Petition for Recognition.⁷⁹ The Ministry sent a strong message to the international community that the people of Somaliland maintain a commitment to their independence and that their aspirations need to be taken seriously.⁸⁰

The second criterion for statehood, a defined territory, is a similarly flexible criterion: although a State must possess some amount of territory, there is no rule proscribing the amount of territory.⁸¹ Somaliland claims a rather vast territory on the Horn of Africa totaling approximately 68,000 square miles.⁸² The borders of this vast territory, according to Somaliland, have been clearly demarcated since the European colonization of the Somali people in the late nineteenth century. Concerned with establishing its territory to the exclusion of others, Britain signed colonial treaties with the French (1888), Italians (1894), and Ethiopians (1897), thus creating the British Somaliland Protectorate.⁸³ The British maintained control over the region until June 26, 1960, when the nation declared its independence.⁸⁴ "For the next five days, the United Nations and thirty-five other countries,

⁷¹ Brad Poore, Somaliland: Shackled to a Failed State, 45 Stan. J. Int'l L. 117 (2009).

⁷² Peggy Hoyle, Somaliland: Passing the Statehood Test? IBRU Boundary and Security Bulletin 80, 82 (2000).

⁷³ Dimitrios Lalos, Between Statehood and Somalia: Reflections of Somaliland Statehood, 10 Wash. U. Global Stud. L. Rev. 789, 805 (2011).

⁷⁴ *In re Duchy of Sealand*, 80 I.L.R. 683, 684 (Admin Ct. Cologne 1978).

⁷⁵ *Id.* at 687.

⁷⁶ International Crisis Group, Somaliland: Time for African Union Leadership, 7, 2006,

<https://www.crisisgroup.org/africa/horn-africa/somalia/somaliland-time-african-union-leadership>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Ministry of Foreign Affairs and International Cooperation. Somaliland: "Over a Million Citizens Petition for International Recognition", *Somaliland Sun*, 2016, <http://www.somalilandsun.com/44-government/government/9429-somaliland-over-a-million-citizens-petition-for-international-recognition>.

⁸⁰ *Id.*

⁸¹ Convention on the Rights and Duties of States, art. 1.

⁸² Ieuan Griffiths, *THE AFRICAN INHERITANCE* 120 (2005).

⁸³ International Crisis Group, *supra* note 76, at 11.

⁸⁴ Hussein Adam M., Formation and recognition of new states: Somaliland in contrast to Eritrea, 21 Review of African Political Economy 21, 23 (1994).

including the United States, recognized Somaliland as an independent nation.”⁸⁵ On July 1, 1960, Somaliland united with its neighbor to the south, Italian Somalia.⁸⁶ After 31 years of being trapped in this regrettable union with Somalia, Somaliland revoked the Act of Union and reclaimed the colonial boundaries it inherited as a sovereign State in 1960.⁸⁷ Specifically, Somaliland claimed, and continues to claim, the territory that stretches from the Red Sea and the Gulf of Aden to the north, to Puntland in the east, Ethiopia in the west, and Djibouti to the northwest.⁸⁸

In support of the claims to these borders, Somaliland’s Ministry of Foreign Affairs maintains that Somaliland “adheres to the colonial borders of the former British Protectorate of Somaliland and does not violate the OAU Charter or the Consultative Act of the African Union principle which require that former colonial borders should be maintained upon independence.”⁸⁹ Crucially, the African Union’s fact-finding mission of 2005 affirmed these sentiments, noting that Somaliland was a unique case which should be judged “from an objective historical viewpoint and a moral angle vis-à-vis the aspirations of the people.”⁹⁰ It should be noted, however, that the autonomous region of Puntland claims a portion of Somaliland.⁹¹ As a result of this territorial conflict, the existence of clearly-defined borders in Somaliland’s case could be contested. Nevertheless, international law does not require definitively-drawn boundaries.⁹² Rather, a State may exist despite other claims to its territory as long as it effectively exerts control over a *certain coherent territory*.⁹³

Somaliland unquestionably exerts control over most of its territory in a number of ways. It collects customs duties from ships that enter its port of Berbera, its coast guard patrols its territorial waters to prevent piracy, and its armed forces have even engaged in an armed conflict to defend its borders.⁹⁴ The International Crisis Group supports this contention in a report that states Somaliland has “basic civil administration across roughly eighty percent of the territory.”⁹⁵ Notably, the statement not only supports the assertion that Somaliland meets the second criterion by effectively controlling a coherent territory, but similarly satisfies the third criterion for statehood discussed below.

The third requirement for statehood under the Montevideo Convention is the requirement for a government, or more accurately, an *effective* government. This criterion is generally regarded as central to a State’s claim for statehood because an effective government is the

⁸⁵ Nora Y.S. Ali, For Better or For Worse? The Forced Marriage of Sovereignty and Self-Determination, 47 Cornell Int’l L.J. 417, 418 (2014).

⁸⁶ Adam, *supra* note 84, at 23.

⁸⁷ Marleen Renders, Consider Somaliland: State-Building with Traditional Leaders and Institutions, 26 African Social Studies Series (2012).

⁸⁸ Alison K. Eggers, When is a State a State? The Case for Recognition of Somaliland, 30 B.C. Int’l & Comp. L. Rev. 211, 218 (2007).

⁸⁹ Ministry of Foreign Affairs and International Cooperation, *Somaliland Foreign Policy 2016*, <http://www.slforeign.com/foreign-policy.html>.

⁹⁰ *Id.*

⁹¹ Farley, *supra* note 61, at 806.

⁹² Lalos, *supra* note 73, at 805.

⁹³ Crawford, *supra* note 62, at 53.

⁹⁴ Andrew McGregor, Somaliland Charges al-Shabaab Extremists with Suicide Bombings, 6 Terrorism Monitor 8-9, 2008, http://www.jamestown.org/uploads/media/TM_006_023_01.pdf.

⁹⁵ Enough, *supra* note 24, at 4.

basis for all the other criterion of statehood.⁹⁶ Ultimately, “[t]he existence of functioning administrative and legislative organs will generally be a good indicator for effective governance.”⁹⁷ Nonetheless, because “statehood is not simply a factual situation,” but rather, “a legally circumscribed claim of right” that is dependent on the facts of each case, government as a precondition for statehood is relative.⁹⁸ In Somaliland’s case, its governing body has evolved over the years from a traditional mode of tribal governance in Somalia, to a representative democracy.⁹⁹ It achieved this by constructing a set of governing bodies rooted in traditional Somali concepts of governance and through a series of clan-based conferences held since the late 1990s.¹⁰⁰ By using its own customary norms, values and relationships, Somaliland has been able to successfully develop its own cohesion and legitimacy.¹⁰¹ Moreover, it has been noted that Somaliland has succeeded in building a democratic administration conducive to ensuring the respect and promotion of fundamental human rights.¹⁰²

In contrast to the Federal Republic of Somalia, Somaliland functions on the basis of an effective and working constitution. The National Charter, approved in 1997, defined the political and institutional structures of government for a transitional three-year-period, until a constitution could be adopted.¹⁰³ After various amendments had been approved by the two Houses of Parliament in 2001, 97.1% of voters approved the provisional constitution and approved Somaliland’s independence.¹⁰⁴ In accordance with the Constitution, Somaliland is administered by a democratically-elected government that includes an executive branch, a legislative branch and a judiciary. The executive consists of the President, the Vice President and the Council of Ministers appointed by the President.¹⁰⁵ Pursuant to the Constitution, the legislative powers are vested exclusively in the Parliament, which consists of two Houses, the House of Representatives and the House of Elders¹⁰⁶ (*Guurti*).¹⁰⁷ The judiciary is independent and applies *Sharia* law as well as British and locally-enacted law.¹⁰⁸ As to the administrative structure of Somaliland on the regional level, Article 109 of the Constitution reinforces the principle of a decentralized administration consisting of both district and regional government.¹⁰⁹

⁹⁶ Crawford, *supra* note 62, at 55.

⁹⁷ Michael Schoiswohl, STATUS AND (HUMAN RIGHTS) OBLIGATIONS OF NON-RECOGNIZED DE FACTO REGIMES IN INTERNATIONAL LAW: THE CASE OF SOMALILAND, 16 (2004).

⁹⁸ Crawford, *supra* note 62, at 61.

⁹⁹ Farley, *supra* note 61, at 787.

¹⁰⁰ Michael Walls, State-building in the Somali Horn: Compromise, Competition and Representation, *Africa Research Institute*, 4 (2014).

¹⁰¹ Larry Diamond, Marc Plattner, DEMOCRATIZATION IN AFRICA: PROGRESS AND RETREAT 249 (2d ed. 2010).

¹⁰² Karen Clark, The (Un)importance of Somali Piracy, 63 *Crime L. Soc. Change* 269 (2015).

¹⁰³ Bradbury, M., Abokor, A.Y., & Yusuf, H.A., Somaliland: Choosing politics over violence, *Review of African Political Economy* 30 (2003).

¹⁰⁴ Michael Walls, Peace in Somaliland: An Indigenous Approach to State-Building, *Academy for Peace and Development*, 12 (2008).

¹⁰⁵ The Constitution of the Republic of Somaliland, art. 81.

¹⁰⁶ *Id.* at art. 38.

¹⁰⁷ Schoiswall, *supra* note 97, at 134.

¹⁰⁸ *Id.*

¹⁰⁹ The Constitution of the Republic of Somaliland, art. 109.

The staging of local elections in 2002, presidential elections in 2003 and 2010, and parliamentary elections in 2005, provide strong evidence that Somaliland has maintained its commitment to the representative democracy it had in mind when it developed its Constitution.¹¹⁰ In its first presidential election, the 2003 winner was decided by just seventy-two votes, and yet, President Dahir Rayale Kahin was confirmed without violence.¹¹¹ Moreover, in Somaliland's second presidential election in 2010, power was peacefully transferred to the current president, Ahmed Mohammed Silanyo, making Somaliland "just the fourth state in Africa to witness a peaceful transfer of power from a defeated incumbent president to a victorious challenger."¹¹² Pursuant to Article 88 of the Constitution, the President is to hold office for 5 years.¹¹³ A third presidential election should therefore have occurred in May 2015. Nevertheless, in 2015, the upper house of parliament announced a postponement of presidential and parliamentary elections to April 2017. The delay contradicted the wishes of opposition parties which had previously agreed to a 12-month election postponement to allow more time for voter registration.¹¹⁴ They expressed concern that the government was delaying election preparation, especially voter registration, in order to extend Silanyo's term.¹¹⁵

In order to provide internal and external security, Somaliland has formed a regular police force, as well as a national armed force, consisting of approximately 12,800 men.¹¹⁶ The police and other forces in the security sector are often regarded as being "more respected, effective, and constrained than anywhere else in the eastern horn."¹¹⁷ Moreover, in 2009, Human Rights Watch stated that Somaliland was largely peaceful and had generally avoided "serious internal conflict" since 1996.¹¹⁸ It also stressed that given the fact that "Somaliland is surrounded by the chronic instability and violence of Somalia, including Puntland, the long-running insurgency across the border in Ethiopia's Somali region, and the interminable border dispute between Ethiopia and Eritrea," Somaliland has been remarkably successful at preserving the peace.¹¹⁹ According to Somaliland's Ministry of Foreign Affairs and International Cooperation, this peace and stability at home is all possible because of a culture of community self-policing.¹²⁰

In stark contrast to its Somalia, Somaliland's central government also proactively confronts transnational terrorism and piracy.¹²¹ In 2005, for example, Somaliland pursued and

¹¹⁰ Christopher Clapham et al., The Consequences of Somaliland's International (Non) Recognition, The Brenthurst Foundation, (2011), http://www.thebrenthurstfoundation.org/Files/Brenthurst_Commissioned_Reports/BD-1105_Consequences-of-Somalilands-International-Recognition.pdf.

¹¹¹ Adam, *supra* note 84, at 23.

¹¹² William Wallis, Election Victor Takes Power in Somaliland, Finland Times, 2010, <http://www.ft.com>.

¹¹³ The Constitution of the Republic of Somaliland, art. 88.

¹¹⁴ Freedom House, Somaliland: Country Report, <https://freedomhouse.org/report/freedom-world/2016/somaliland>.

¹¹⁵ *Id.*

¹¹⁶ Schoiswall, *supra* note 97, at 135.

¹¹⁷ Ken Menkhaus, State Failure, State-Building, and Prospect for a "Functional Failed State" in Somalia, 656 *Annals, AAPSS* 154, 164 (2014).

¹¹⁸ Human Rights Watch, "Hostages to Peace": Threats to Human Rights and Democracy in Somaliland, 11, 2009, <https://www.hrw.org/sites/default/files/reports/somaliland0709web.pdf>.

¹¹⁹ *Id.*

¹²⁰ Ministry of Foreign Affairs and International Cooperation, *supra* note 1.

¹²¹ Farley, *supra* note 61, at 788.

intercepted an al-Qaeda cell trying to establish itself in Hargeisa.¹²² Ultimately, the judiciary tried fifteen alleged terrorists the following year. With regard to its anti-piracy campaign, Somaliland established a small Coast Guard that has seized numerous pirates that have passed through its waters.¹²³ Working alongside coastal communities and other governments, the Somaliland Coast Guard continues to ensure that Somaliland's maritime zones are free from piracy, trafficking and other criminal activities, thus allowing the Gulf of Aden to remain the main trade route linking Europe and the Middle East to Asia and Africa.¹²⁴ Somaliland has also cooperated with neighboring States to implement the 2009 Djibouti Code of Conduct on Piracy.¹²⁵ Accordingly, Somaliland works with U.N. member States and international organizations to address piracy, migration, maritime security and maritime governance issues.¹²⁶

An effective government has to do more than just provide its people with security. "A State must play a decisive role in serving the vital human needs of people from their birth to their death. These needs include education and professional training, assistance in all the eventualities of life and the provision of subsistence allowances where necessary."¹²⁷ Quite apparently, in order to provide these services to its people from their birth until their death, a State must have the financial means to do so. As of 2012, the Somaliland Government had an annual budget of approximately 18 million dollars.¹²⁸ An estimated 70% of that was spent on the salaries of the State's 26,000 employees.¹²⁹ This would suggest that Somaliland does not have an exorbitant amount of money to provide Somalilanders with services. Nonetheless, Somaliland has been diligent in its efforts to make strides in these areas.¹³⁰ Illustrative of these efforts are Somaliland's two universities and several vocational colleges.¹³¹ Moreover, "on a day-to-day basis, the government has effectively reconstructed large parts of the infrastructure, including the establishment of telephone lines, the installation of traffic lights and the expansion of the airport. It has also recently adopted a comprehensive health-policy framework."¹³² Summarily, as the economy of Somaliland continues to improve, so will its social services.

After years of trying to obtain statehood through the satisfaction of the Montevideo Convention's criteria, Somaliland's development of an effective government has not gone unnoticed by the international community. The U.N. High Commission for Refugees described Somaliland's central administration as "maintain[ing] functional control over the national army; the police force and courts maintain public order; customs officials collect taxes at the port; the two houses of the legislature convene and debate bills; and at least some

¹²² Farley, *supra* note 61, at 78.

¹²³ *Id.*, at 79.

¹²⁴ Ministry of Foreign Affairs and International Cooperation, Somaliland Foreign Policy (2016).

¹²⁵ Djibouti Code of Conduct: The Code of Conduct Concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, <http://www.imo.org/en/OurWork/security/piu/pages/dcoc.aspx>.

¹²⁶ Ministry of Foreign Affairs and International Cooperation, *supra* note 89.

¹²⁷ *In re Duchy of Sealand*, 80 I.L.R. 683, 687 (Admin Ct. Cologne 1978).

¹²⁸ James Tyler Dickovick, *AFRICA* 2012, 228 (47th Ed. 2012).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Schoiswohl, *supra* note 97, at 136.

of the ministries are making serious attempts to play a constructive role in their assigned sector.”¹³³ When compared to the rest of the Horn of Africa, the international community seems to agree that “in many ways [Somaliland] is the strongest political entity within the internationally recognized borders of Somalia.”¹³⁴ In addition, the U.N. Secretary-General described conditions in Somaliland as being “calm” in contrast to the rest of Somalia, which he described as being “anarchic.”¹³⁵ Somaliland’s Ministry of Foreign Affairs intends to maintain the country’s sovereignty and territorial integrity by, amongst other things, sustaining its status “as a peaceful neighbor that properly manages its borders, shelters refugees instead of producing them, [and] denies safe haven to terrorists and pirates.”¹³⁶

The final criterion for statehood is the capacity to enter into international relations.¹³⁷ This capacity is no longer, “if it ever was, an exclusive State prerogative.”¹³⁸ It is based on the international community’s desire that States have sufficient and independent power to fulfil their obligations in accordance with accepted international law. A State thus needs to have “competence, within its own constitutional system, to conduct international relations with other States, as well as the political, technical, and financial capabilities to do so.”¹³⁹ Despite the international community’s skepticism, Somaliland has made a concerted effort to garner recognition, and in doing so has exhibited the capacity to enter into relations with other States.¹⁴⁰ Over the past 25 years, Somaliland has been scrupulous in its efforts to cultivate the formal and informal relationships it has with States such as Ethiopia, the United Kingdom, Denmark, Sweden, Kenya, Djibouti and Dubai.¹⁴¹ As a result of these relationships, Somaliland has been able to open liaison offices in Ethiopia, Djibouti, the United States and the United Kingdom,¹⁴² and has even “hosted delegations from states like Pakistan, and from international organizations like the World Bank and the African Union.”¹⁴³ Yemen has engaged in increasingly warm relations with Somaliland, largely for inter-regional political reasons.¹⁴⁴ The United States has transferred former Guantanamo detainees into the custody of Somaliland’s government.¹⁴⁵ And “conveniently, in 2003 a German court recognized Somaliland as a State for purposes of asylum law.”¹⁴⁶

¹³³ Kenneth Menkhaus, Somalia: A Situational Analysis and Trend Assessment, 37, 2003, <http://www.unhcr.org/refworld/pdfid/3f7c235f4.pdf>.

¹³⁴ Dr. Stig Jarle Hansen, Private Security & Local Politics in Somalia, Review of African Political Economy 585, 585 (2008).

¹³⁵ U.N. Security Council, Report of the Secretary General on the Situation in Somalia, S/2000/1211, 2000, <http://www.refworld.org/docid/3ae6afd30.html>.

¹³⁶ Ministry of Foreign Affairs and International Cooperation, *supra* note 89.

¹³⁷ Convention on the Rights and Duties of States, art. 1.

¹³⁸ Crawford, *supra* note 62, at 61.

¹³⁹ Schoiswohl, *supra* note 97, at 16.

¹⁴⁰ Farley, *supra* note 61, at 788.

¹⁴¹ The Recognition of Somaliland: The Legal Case – The Presidency, Hargeisa, Somaliland, pogc@somalilandgov.com.

¹⁴² International Crisis Group, *supra* note 76, at 11.

¹⁴³ Farley, *supra* note 61, at 808.

¹⁴⁴ Alison K. Eggers, When is a State a State? The Case for Recognition of Somaliland, 30 B.C. Int’l & Comp. L. Rev. 211, 213 (2007).

¹⁴⁵ Dickovick, *supra* note 128, at 228.

¹⁴⁶ Crawford, *supra* note 62, at 418.

Ethiopia, however, has arguably gone the furthest of all States in its unofficial recognition of Somaliland by entering into bilateral agreements for cooperation in various arenas.¹⁴⁷ One arrangement, for example, allowed Somaliland to open liaison offices in Ethiopia, in exchange for allowing Ethiopia opening a trade office in Hargeisa.¹⁴⁸ This seemed to be a more lucrative arrangement for Ethiopia, as the agreement granted Ethiopia access to Somaliland's port of Berbera with the expectation that as much as 20 per cent of Ethiopia's trade would flow through the port.¹⁴⁹ In addition, there were agreements formalizing trade relations between Somaliland and Ethiopia, and a plan to establish customs offices along Somaliland's border with Ethiopia.¹⁵⁰ Perhaps even more groundbreaking, though, was a recent 30-year deal with Dubai to develop and manage a cargo port in Somaliland. The agreement between the Dubai and the Somaliland government stipulates that Dubai will control 65 percent of the project.¹⁵¹ Ultimately, although Somaliland has struggled to establish diplomatic ties, this inability does not limit its *capacity* to enter into relations.¹⁵²

Somaliland clearly fulfills all the requirements of statehood as set out in the Montevideo Convention and developed by practice, and it could be convincingly argued that it has done so for all twenty-five of the years that it has been independent from Somalia. Virtually the entire international community agrees that Somaliland meets all four criteria of the Montevideo Convention.¹⁵³ In addition to meeting the Montevideo Convention criteria, Somaliland has all the outward attributes of a State; it has a flag, a coat of arms, a constitution, currency, stamps and territorial boundaries.¹⁵⁴ It also acts like a State: it issues passports, engages in formal and informal cooperative arrangements with a variety of states and intergovernmental organizations, and has a police and military.¹⁵⁵ Somaliland even sounds like a State: it has its very own national anthem. Despite all this, it seems that Somaliland will not effectively become a State until it is recognized as one. It is apparent, therefore, that fulfilling the criteria of statehood, or even functioning as a *de facto* State, are not enough to be a full member of the international community.

C. Self-Determination

Fundamental to statehood is self-determination. The right to self-determination is an established human right under international law. Somaliland asserts its right to self-determination when making the legal case for secession from Somalia.¹⁵⁶ Under international

¹⁴⁷ Dickovick, *supra* note 128.

¹⁴⁸ Lalos, *supra* note 73, at 789.

¹⁴⁹ Dickovick, *supra* note 128.

¹⁵⁰ *Id.*

¹⁵¹ Associated Press, Dubai port operator DP World inks deal for Somaliland Port, U.S. News, Sept. 5, 2016, <http://www.usnews.com/news/business/articles/2016-09-05/dubai-port-operator-dp-world-inks-deal-for-somaliland-port>.

¹⁵² Lalos, *supra* note 73, at 806.

¹⁵³ Carrol, *supra* note 48, at 653.

¹⁵⁴ International Crisis Group, *supra* note 76, at 7.

¹⁵⁵ *Id.*

¹⁵⁶ Republic of Somaliland: Ministry of Information,, *supra* note 1, at 5.

law, the right of a people to self-determination is a core principle and a preemptory norm that may not be derogated from.¹⁵⁷

Self-determination as a human right is a relatively new concept in the international community, born of post WWI political movements in Austria-Hungary as it broke into separate states.¹⁵⁸ “All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.”¹⁵⁹ International support for self-determination continued throughout the 1950s and can be seen through the efforts of various instruments to enumerate what constitutes a “human right”. Additionally, self-determination is the legal foundation of decolonization. The notion of self-government of peoples is the basic concept of self-determination, and means, “no people must be forced to live under foreign domination or under a constitutional system which it does not agree to.”¹⁶⁰ The International Court of Justice has affirmed that the right of self-determination is applicable to all non-self-governing territories.¹⁶¹ The I.C.J. advanced this principle in the *East Timor* case, stating the assertion that the right of people to self-determination has an *erga omnes*, or “towards all,” character and is “one of the essential principles of contemporary international law.”¹⁶² Again echoing this stance, in its advisory opinion issued on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the I.C.J. stated that the obligation to respect the right to self-determination is an obligation *erga omnes*, even outside of the colonial context. The right to external self-determination extends beyond the colonial context where the group at issue is subject to “extreme and unremitting persecution” coupled with the “lack of any reasonable prospect for . . . challenge.”¹⁶³ The I.C.J. has not directly addressed the legality of external self-determination beyond the colonial context. “[I]nternational law does not specifically grant component parts of sovereign states the legal right to secede unilaterally from their ‘parent’ state,” but it also does not explicitly deny such a right.¹⁶⁴

Even with international legitimacy and recognition, self-determination has definitional qualifiers that peoples must meet in order to invoke its principles. In order for self-determination to apply, the following must be identified:

- 1) the group that is claiming the right to self-determination (the “peoples”);
- 2) the nature and scope of their claim;
- 3) the underlying reasons for the claim; and

¹⁵⁷ S. James Anaya, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW*, 75 (1st ed. 1996).

¹⁵⁸ Nora Y.S. Ali, For Better or For Worse? The Forced Marriage of Sovereignty and Self-Determination, 47 *Cornell Int’l L.J.* 417, 426 (2014).

¹⁵⁹ See International Covenant on Civil and Political Rights, art. 1(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, art. 1(1), Dec 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]; G.A. Res. 2625(XXV) at Principle 5, U.N. Doc. A/RES/25/2625 (Oct 24, 1970).

¹⁶⁰ M.K. Nawaz, The Meaning and Range of the Principle of Self-Determination, 1965 *DUKE L.J.* 84 (1965) (citing *The Public Papers of Woodrow Wilson*, War and Peace).

¹⁶¹ *Western Sahara Opinion*, 1975 *I.C.J.* 12, ¶ 54–55.

¹⁶² *East Timor Case (Portugal v Australia)*, 1995 *I.C.J.* 90, ¶ 29.

¹⁶³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Opinion*, 2004 *I.C.J.* 136, ¶ 155.

¹⁶⁴ Antonio Cassese, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL*, 120 (1999).

4) the degree of the deprivation of basic human rights.¹⁶⁵

Applying these elements to Somaliland shows that they meet all of the criteria for self-determination as a human right.

The first and second elements may be condensed into one in the case of Somaliland. The group claiming the right to self-determination is the Somalis within the Somaliland territory; the nature and scope of their claim is a call for recognition as an independent nation-state separate from Somalia, as Somaliland was before the Act of the Union joined the two sovereigns. The third qualifier of self-determination, the underlying reasons for the claim, requires knowledge of the historical, cultural, social and economic status of Somaliland. In international terms, the reasons for a claim to secede ought to be compelling. Somaliland must show that the positive impact of secession, also known as the “maximization of community values,” on its inhabitants outweighs any potential negative impact upon Somalia, the surrounding region, or the international community.¹⁶⁶

The fourth and last element to be considered for self-determination, the degree of deprivation of human rights, is an element that rings strongly in the hearts and minds of many Somalis. In the *Quebec opinion*, the Supreme Court of Canada stated that secession may be available as a last resort in exceptional circumstances, such as where internal self-determination is completely blocked,¹⁶⁷ and recognized self-determination in situations beyond the colonial context. The court stated, “the international law right to self-determination only generates, at best, a right to external self-determination in situations of former colonies; where a people is oppressed, for example under foreign military occupation; or where a definable group is denied meaningful access to government to pursue their political, economic, social, and cultural development.”¹⁶⁸

Siad Barre, President of the Somali Democratic Republic from 1969 to 1991, headed a government that killed, tortured, and imprisoned thousands of Somalis.¹⁶⁹ The human rights violations inflicted by the government during his regime included summary executions, rape, torture, unlawful detainment, and theft. Barre directed his savagery towards the wealthy, independent Isaq clan in Somaliland. The genocide of the Isaq clan is exemplified in the military bombing and shelling of the northern cities of Hargeisa and Burao, along with Barre’s selective campaign to burn down Isaq towns.¹⁷⁰ The 1988 civil war resulted in over 50,000 deaths and 500,000 being forced to flee and find refuge in Ethiopia. In addition, over a million unmarked land mines were placed in the North.¹⁷¹ The Barre regime brazenly committed numerous violations of both human rights and humanitarian norms. In doing so, the regime’s repression of the Somalis in Somaliland led to their organization and unification. In 1991, Somaliland declared its independence from Somalia and invoked its

¹⁶⁵ Ved P. Nanda, *Self Determination Under International Law: Validity of Claims to Secede*, 13 Case W. Res. J. Int’l L. 265 (1981).

¹⁶⁶ *Id.* at 266.

¹⁶⁷ Reference Re Secession of Quebec [1998] 2 S.C.R. 217, ¶ 348.

¹⁶⁸ *Id.* at ¶ 135-138.

¹⁶⁹ Reuters, *Somali Army Killed up to 60,000 Civilians in North, Report Says*, Jan. 18, 1990.

¹⁷⁰ Maria Bongartz, *THE CIVIL WAR IN SOMALIA: ITS GENESIS AND DYNAMICS*, 13 (1991)

¹⁷¹ Drysdale, *supra* note 58, at 16, 18.

right under international law to self-determination. As is evidenced by the context and history leading up to this secession, Somaliland has identified all four elements of international recognition of self-determination. Since declaring its independence from Somalia, Somaliland has been acting as its own sovereign territory.

Somaliland's reluctance to make self-determination central to its case for recognition as an independent State may arise out of fear of being ostracized by the African Union, as many argue that the maintenance of the territorial *status quo* in Africa is seen as the wisest course.¹⁷² However, in some instances, such as the case of South Sudan, exceptional circumstances and specific historical contexts have allowed the A.U. to acquiesce to secession.¹⁷³ Given the exceptional circumstances and historical context of Somaliland's union with Somalia, the A.U. would, if it were so minded, have ample reason to accept the legitimacy of Somaliland's independence. With the current attitudes shown by A.U. and the international community, though, the question remains: where does Somaliland go from here? Somaliland has a strong legal case that it never lost its independence through its assimilation into Somalia, that it is a fully-fledged State and that its people have, and have exercised, their right of self-determination.

Yet, despite all that, without international recognition Somaliland remains in the shadow cast by Somalia. Its options are essentially three: to continue as a *de facto* State without recognition; to become an autonomous part of Somalia, following the Puntland model; or to become a *de jure* State through recognition.

¹⁷² Concerning the Frontier Dispute (Burkina Faso v Republic of Mali), 1986 I.C.J. 554, ¶ 25–26.

¹⁷³ Kidane Mengisteab, THE OAU DOCTRINE ON COLONIAL BOUNDARIES AND CONFLICTS OF SEPARATION IN THE HORN OF AFRICA, 38 (2015).

3. REMAINING IN THE SHADOW: THE *STATUS QUO*

The first potential pathway going forward for Somaliland is to leave things as they are now, maintaining the *status quo*. There are a variety of reasons that this path is at best undesirable, and at worst untenable. First and foremost amongst these is that it goes in direct opposition to the will of the people of Somaliland. When the people of Somaliland voted on the issue of independence, 97% of voters (it was estimated that about two thirds of eligible people voted) opted for independence from Somalia.¹⁷⁴ It is important to note that, while there have been some concerns that the vote was not representative due to the lack of a census at the time and the fact that tribal elders were making the decision as to who was eligible to vote, independent observers from the Initiative and Referendum Institute, a U.S. based non-profit, were able to observe the process and conclude that the vote met international guidelines for election procedures.¹⁷⁵ Beyond this, keeping things the way they are raises a number of concerns as regards the health of the country's economy, its security and the security of the surrounding region, and the future of its government.

Somaliland is ripe for investment. Its mineral and oil deposits, history of livestock and agricultural trade, port and the high return on investment found in Africa make it an ideal location. So why are investors not aggressively participating in Somaliland's economy? The 2016 World Bank Study, *Somaliland's Private Sector at a Crossroads*, indicates that Somaliland is faced with major constraints in the world of finance, land, taxation, and transport.¹⁷⁶ When looked at in conjunction with the government's capacity to deliver key regulatory and promotional services, Somaliland has had a difficult time reacting to constant changes in economy, regional setting, and society as a whole.¹⁷⁷ The Ministry of National Planning and Development has recognized many of these limitations in the Government of Somaliland publication, *Somaliland National Development Plan 2012-16*, stating that it would "pursue outward-oriented policies that encourage foreign investment and exports with high added value."¹⁷⁸ For Somaliland, this is crucial, as 85% of inputs for business are imported, compared to the region's average of 39%.¹⁷⁹ Critical imports include food, fuel, and manufactured goods.¹⁸⁰ Somaliland is limited in many ways from addressing these concerns and creating economic prosperity. First, the government operates with a limited budget of about \$250 million.¹⁸¹ This allows the government a spending of roughly \$72 per person, 0.065% of the average spending per person of the United Kingdom.¹⁸² It has been estimated that about 60% of the budget is spent on police and security forces, leaving only

¹⁷⁴ Lalos, *supra* note 73, at 789.

¹⁷⁵ David Shinn, *Somaliland: The Little Country that Could*, Ctr. for Strategic and Int'l Studies, 2002, https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/media/csis/pubs/anotes_0211.pdf.

¹⁷⁶ World Bank, *Somaliland's Private Sector at a Cross Roads: Political Economy and Policy Choices for Prosperity and Job Creation* 8 (2016).

¹⁷⁷ *Id.*

¹⁷⁸ Somaliland Ministry of National Planning and Development, *National Development Plan 2012-2016*, (2011), <http://faolex.fao.org/docs/pdf/som152327.pdf>.

¹⁷⁹ World Bank, *supra* note 176, at 37.

¹⁸⁰ *Id.*

¹⁸¹ James Jeffrey, *Why Somaliland now needs international recognition: Self-reliance can get you only so far*, *Irin*, July 16, 2016, <https://www.irinnews.org/feature/2016/07/19/why-somaliland-now-needs-international-recognition>.

¹⁸² Scienceogram UK, *Government Spending*, <https://scienceogram.org/in-depth/government-spending>.

\$100M to spend on all other areas of governance.¹⁸³ Without statehood, Somaliland has a much more difficult path towards increased foreign investment and trade. Access to economic development tools made available through the United Nations and its affiliate groups create a much easier approach but are only afforded to its members.

Somaliland's private sector has thrived in many ways since the days of the Siad Barre regime. Much of this growth can be attributed to the entrepreneurial spirit of the people, coupled with informal governance arrangements, reliance of pluralistic legal systems and deals struck between political authorities and the private sector.¹⁸⁴ Even with this private sector growth, investments for foreign investors have been limited with a majority coming from the Somaliland Diaspora who remit up to \$400 million a year.¹⁸⁵ The recent memorandum of understanding between the Republic of Somaliland and DP World has brought hope to the region. DP World is one of the largest port operators with over 77 marine and inland terminals in 40 countries.¹⁸⁶ The memorandum of understanding is part of a larger government-to-government agreement including recognition of passports, strengthens the countries ties.¹⁸⁷ The project includes a free zone, increases to the port of Berbera's capacity and construction of a road between the port and the city of Wachaale.¹⁸⁸ This investment, while critical for Somaliland, could be restricted while under Somalia. Somalia's Auditor-General, Nur Jumale Farah, has already called the deal illegal since "The [Berbera port] deal goes against national laws. It manifests a disregard to the country's traditional socioeconomic system, especially when we speak of what we call public-private partnership."¹⁸⁹ While it is still questionable as to what actions Somalia may take to prevent the deal from happening, the friction itself gives rise to potential conflict. If Somalia prevents the deal, Somaliland, as an unrecognized entity, will be without any legal recourse. In addition to being called illegal, the deal has been criticized as being overly generous to DP World, which will be receiving 60% of revenues generated by the port.¹⁹⁰ Without statehood, Somaliland's ability to build and expand upon infrastructure is severely limited.

The Government of Somaliland recognizes the need to build infrastructure and financial services. In the *National Development Plan*, infrastructure was the highest investment requirement out of the five main pillars for improvement requiring close to \$490 million USD to achieve its goals.¹⁹¹ The DP World deal addressed some of the infrastructural and

¹⁸³ Nanda. *supra* note 166, at 266.

¹⁸⁴ Mousley, Peter J.; Ndiaye, Jade Elena Garza; Wimpey, Joshua Seth; Amin, Mohammad; Votava, Cari; Nicoli, Marco; Eigen-Zucchi, Christian, Somaliland's private sector at a crossroads : political economy and policy choices for prosperity and job creation, World Bank Group, 2016, <http://documents.worldbank.org/curated/en/840741468190160823/Somaliland-s-private-sector-at-a-crossroads-political-economy-and-policy-choices-for-prosperity-and-job-creation>.

¹⁸⁵ Somaliland Ministry of National Planning and Development, *supra* note 43, at 4.

¹⁸⁶ DP World, About DP World, <http://web.dpworld.com/about-dp-world/>.

¹⁸⁷ Awad Mustafa, Somaliland project opens up Africa for DP World, The National, May 28, 2016, <http://www.thenational.ae/business/shipping/20160528/somaliland-project-opens-up-africa-for-dp-world>.

¹⁸⁸ *Id.* at 2.

¹⁸⁹ Garowe Online, Somalia: Federal Government calls Somaliland-DP World deal "Illegal", August 13, 2016, <http://www.garoweonline.com/en/news/somaliland/somalia-federal-govt-calls-somaliland-dp-world-deal-illegal>.

¹⁹⁰ *Id.*

¹⁹¹ Somaliland Ministry of National Planning and Development, *supra* note 43.

financial needs, but leaves Somaliland vulnerable to a private investor and potential threats from Somalia.¹⁹² The Government of Somaliland's current reforms for improvement include changes to existing business laws regarding company, investment, mining, and taxes as well as a legislative framework for licensing and financial service institutions.¹⁹³ While these improvements will certainly change Somaliland's landscape for investors, it still will not cure the need for infrastructure necessary for the government to operate. This is not a new issue for developing countries, but, unlike Somaliland, typical developing countries have greater access to loans. Somaliland's access to loans, particularly with the World Bank, will be limited as long as Somaliland is not recognized as an independent State. Currently, Somalia has borrowed over \$500M USD from the World Bank.¹⁹⁴ If recognized as its own State, Somaliland would have greater access to funds and would likely be more capable of paying them back than Somalia.

There is an argument that the lack of clarity in foreign investor law, especially the law pertaining to land rights, prevents investors from seeing Somaliland as a viable option. Somaliland authorities have recognized this and, through the *National Development Plan*, have begun addressing the issues found in the 2016 World Bank Study. Unfortunately, addressing these issues will not be enough to draw investors. China, one of the largest hubs for foreign direct investment, has attracted investors despite its lack of formality in law and in property rights.¹⁹⁵ This can be partially attributable to China's huge market, which is attractive to investors, but also to its infrastructure and ability to sign and negotiate multinational treaties where rules of law are established and formalized.¹⁹⁶ Without statehood, Somaliland will likely be unable to compete in a realistic fashion with developing nations.

Somaliland recognizes the need for more international investment and trade, but options remain limited while Somaliland continues to be unrecognized. "About 70 percent of the population are younger than 30, and they have no future without recognition," said Jama Musse Jama, a former mathematics professor who gave up his life in Italy to return to Somaliland and run the Redsea Cultural Foundation, which offers cultural and artistic opportunities for Hargeisa's youth. "The world can't close its eyes," said Musse. "It should deal with Somaliland."¹⁹⁷

The Horn of Africa is a region that, in general, is known for its conflicts. Somali pirates are responsible for hundreds of attacks each year, to the extent that a multinational task force has been created to (unsuccessfully) address the problem. Terrorism, too, is a matter of great concern in the region. In 2006, Osama bin Laden named the Horn of Africa a target of al-

¹⁹² Garoew Online, *supra* note 189.

¹⁹³ Somaliland Ministry of National Planning and Development, *supra* note 43, at 95.

¹⁹⁴ World Bank, Country Lending Summaries – Somalia, <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,countrycode:SO~menuPK:64820017~pagePK:64414648~piPK:64414956~subTitle:All+Loans~theSitePK:40941~pageNo:1~pageSize:Show%20All,00.html>, (accessed 10/23/2016).

¹⁹⁵ Wang, Xiaozu et al., Foreign Direct Investment Under Weak Rule of Law: Theory and Evidence from China, September 1, 2011, <http://elibrary.worldbank.org/doi/abs/10.1596/1813-9450-5790>.

¹⁹⁶ *Id.*

¹⁹⁷ Jeffery, *supra* note 181, at 1.

Qaeda, and terrorist forces have been fighting over and claiming various portions of Somalia ever since.¹⁹⁸

Somaliland itself, on the other hand, has been relatively successful in maintaining security within its borders and waters, but that success is as fragile as the economy supporting it. Without recognition, Somaliland does not qualify for aid from many organizations, including the African Development Bank and World Bank.¹⁹⁹ This is not to say that it is not receiving any aid at all. Rather, there are multiple NGOs struggling to provide funding to the beleaguered nation. The funding from these NGOs, however, is largely not reaching the places that it is needed. According to one report, only about 20% of aid money is being distributed where it is needed; the rest getting used up in overhead.²⁰⁰

Somaliland is also a target for jihadist destabilization. Earlier in the century, parliamentary elections were targeted by a jihadi Islamist network objecting to both independence and the Western electoral system²⁰¹ (the phrase that Al-Shabab used has been translated as “the devil’s principles”²⁰²). In 2008, Somali Islamists bombed a U.N. compound and the Ethiopian consulate in Hargeisa.²⁰³ For now, Somaliland’s Coast Guard is able to combat piracy in their waters, and security forces have had some success in fighting Islamist operations, but the lack of funds is keenly felt.

Continued government operations, too, are suffering from a lack of aid. Poor funding has resulted in delays in the election process.²⁰⁴ In addition, the U.N. itself has proven unwilling in the past to send election officials to help establish polling stations and certify election results.²⁰⁵ This year, Somaliland was able to institute a new voter registration system, but funds are still needed to develop it and maintain an active and accurate database. With jihadist attempts to destabilize elections considered, the future of such elections in Somaliland is uncertain.

It should be noted that there are many issues that the international community has identified in Somaliland that will not necessarily be addressed by changing course. Amongst these is the local addiction to khat, a leaf that has been chewed in the region for thousands of years, and has been connected to problems in productivity (the World Health Organization identified khat as a drug of addiction in 1980, and many countries, including the U.S., have made its use illegal). An estimated 20% of the population uses this drug, pouring anywhere between 450 thousand to 3 million dollars into the industry every day.²⁰⁶ Another issue is the practice of female genital mutilation, which is performed on an estimated 95% of young

¹⁹⁸ Farley, *supra* note 61.

¹⁹⁹ Clapham, *supra* note 110.

²⁰⁰ *Id.*

²⁰¹ International Crisis Group, *supra* note 76, at 7.

²⁰² Scott McKinzie, Somaliland election deserves recognition, Global Pol’y J. (2010), <http://www.globalpolicyjournal.com/blog/27/07/2010/somaliland-election-deserves-recognition>.

²⁰³ Narayan Mahon and Tristan McConnell, Pulitzer Center, *The Invisible Country*, Jan. 15, 2010, at 1.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Clapham, *supra* note 199.

women in the country.²⁰⁷ That having been said, however, there are still many advantages for Somaliland in altering course, and few benefits in keeping things the way they are. What's more, these issues, having survived for centuries and endured multiple political changes over the years, show no signs of being addressed as things stand. Recognition, and the associated access to new forms of aid and access, may lead Somaliland to address these issues as it seeks to establish itself internationally and encourage support from the international community.

The case for leaving Somaliland in its current state of internationally un-recognized limbo is difficult to justify. The primary arguments for it, which seem to center around fears of a balkanization of the surrounding African region along tribal lines,²⁰⁸ belie the already-fractured reality of the area as well as the success that Somaliland has had maintaining a central government over a quarter of a century.²⁰⁹ In contrast, the disadvantages of staying the course and maintaining the *status quo* are many and varied, harming both the people of Somaliland and the stability of the region.

²⁰⁷ UNICEF Hargeisa, Children in Somaliland 2011, UNICEF Hargeisa, 2012, https://www.unicef.org/somalia/SOM_resources_childrensomaliland.pdf.

²⁰⁸ E.W., Can't get no recognition, The Economist, Jan. 9, 2014, <http://www.economist.com/blogs/baobab/2014/01/somaliland>.

²⁰⁹ International Crisis Group, *supra* note 76.

4. A DIFFERENT SHADOW: THE PUNTLAND MODEL

The second path Somaliland could pursue is to become an autonomous region within federal Somalia. Puntland, unlike Somaliland, is an autonomous region within Somalia with no intention of seceding. It seeks the reunification of the Somali people and believes a strong federal Somalia is possible through peace and consensus.²¹⁰ Like Somaliland, however, Puntland is mostly self-governing as it recognizes the weaknesses of the Federal Government in Somalia's capital of Mogadishu. While Puntland is considered a moderately successful State in its own right because of its relative peace and stability, it suffers in ways Somaliland does not because of its obligations to Mogadishu. Considering this dynamic, seeking autonomy within federal Somalia would not be an attractive option for Somaliland because it would jeopardize all that Somaliland has worked hard to build, including its strong government, ability to secure local and foreign investments and its relative peace and security.

Puntland's decision not to pursue independence is based largely on the Somali Civil War of the 1980s and 1990s and the demographics of the region. Somaliland suffered heavily at the hands of the Barre regime, which fostered a sense of nationalist identity in the people of the region and contributed heavily to their decision to create their own nation.²¹¹ Puntland, on the other hand, was not targeted as heavily as Somaliland because its rebel forces were weaker and thus not regarded as a serious threat by the Barre regime.²¹² As a result, Puntland citizens did not push their leaders to pursue secession after the war.²¹³ Puntland and Somaliland also differ in the clan make-up of each's respective populations, which contributes to Puntland's decision not to pursue secession. Many of the clans present in Somaliland are found in Somalia or at least in the northern part of the country.²¹⁴ The clans found in Puntland, however, are dispersed throughout Somalia.²¹⁵ This dispersion would complicate a secessionist agenda because clans would be split by the boundaries of Puntland and Somalia.²¹⁶ The people of Puntland identify themselves primarily by their clan affiliation and not as Puntlanders, so splitting the clans by establishing borders between them would be problematic for the people of Puntland.

Puntland remained a part of Somalia for several years after the end of the Somali Civil War, but the people grew tired of the lack of political and social support they received from Mogadishu and the constant violence that plagued the South.²¹⁷ In 1998, clan elders met to begin the process of developing a regional state within Somalia and ultimately developed the Puntland Constitution.²¹⁸ The elders met with the purpose of developing a stable government

²¹⁰ Puntland Constitution, Jul. 1, 2001.

²¹¹ Markus V. Hoehne, Mimesis and Mimicry in Dynamics of State and Identity Formation in Northern Somalia, 79 *Africa: J. of the Int'l African Inst.* 252, 263 (2009).

²¹² Martha C. Johnson and Meg Smaker, *Puntland-Somaliland Comparison*, *Africa Today*, Summer 2014, at 2, 14.

²¹³ *Id.*

²¹⁴ *Id.* at 15.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ J. Peter Pham, Somalia: Where a State Isn't a State, 35 *Fletcher F. World Aff.* 133, 143 (2011).

²¹⁸ *Id.*

that could deliver services to the population and offer security in the region but still maintain ties and obligations with Mogadishu and the central government (which was non-existent at the time of the Constitution).²¹⁹ The Constitution developed ultimately achieves Puntland's goal of supporting a federal Somalia, but it also asserts Puntland's right to negotiate its place in Somalia with the eventual national government.²²⁰

Puntland is a somewhat successful State in its own right despite its lack of independence, especially when compared to the central government in Mogadishu. The Puntland government consists of an executive branch comprising a president and a council of ministers, a unicameral legislative branch, and a judicial branch.²²¹ The various administrations have mostly worked to fulfil the goals of the Constitution, such as a stable and legitimate government, basic services, and development through various projects, including a new airport²²² and lucrative agreements with the United Arab Emirates for various projects.²²³

However, Puntland suffers because of its connection to Mogadishu and its objective to preserve the unity of Somalia. Puntland has to balance protecting its regional needs with its obligations to federal Somalia.²²⁴ The State does not have enough resources to both build up itself and support development and stability in the South.²²⁵ The presidency of Abdullahi Yusuf Ahmed provides the perfect example of this tension. Yusuf, a native of the Puntland region, participated in the 1998 meeting and was instrumental in declaring Puntland an autonomous region. Yusuf was subsequently appointed the first President of Puntland by Puntland's House of Representatives, which is the only branch in the region's legislature and the authority charged with appointing all of Puntland's presidents.²²⁶ During his second term as President of Puntland, Yusuf began his campaign for President of the Transitional Federal Government.²²⁷ Puntland was only six years old at the time of Yusuf's campaign and thus was still in a critical state-building phase.²²⁸ Yusuf, however, neglected Puntland while he ran his campaign, and the region's economic growth and stability suffered.²²⁹ Yusuf was ultimately successful in his bid for the Transitional Federal Government presidency, and upon winning, he transferred key resources, including natural resources, funds, and security forces, from Puntland to Mogadishu.²³⁰ Yusuf's actions nearly bankrupted Puntland, but Puntland was powerless to stop Yusuf because of its obligations to Mogadishu.²³¹

²¹⁹ Johnson & Smaker, *supra* note 212, at 6.

²²⁰ Puntland Constitution, *supra* note 1.

²²¹ The Government of Puntland, Dolwadda Puntland, <http://www.puntland.somaligov.net/>.

²²² Puntland Government, The President Tours the Bossaso Airport Construction Site, Aug. 31, 2007, https://web.archive.org/web/20071107090353/http://www.puntlandgovt.com/en/currentissues/information/current_issues_more.php?id=412.

²²³ Adrian Murphy, Puntland: The Land of Opportunity, Hiiran Online, Nov. 8, 2008, http://www.hiiraan.com/news2/2008/Nov/puntland_the_land_of_opportunity.aspx

²²⁴ Johnson & Smaker, *supra* note 212, at 15.

²²⁵ *Id.*

²²⁶ Pham, *supra* note 217, at 144.

²²⁷ Johnson & Smaker, *supra* note 212, at 15.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

The obligations to Mogadishu, in addition to costing Puntland a significant amount of resources, prevent Puntland from developing its economy, government, and security forces. Unlike Somaliland, tragic events such as the downing of American Blackhawk helicopters and the Battle of Mogadishu leave investors and businesses wary of doing business in Somalia. Puntland has suffered not only from tragedies such as the 2004 tsunami, overfished coastal waters, and increased piracy. This system has led to a dependence on piracy, as it is seen by the many involved as the only option under a government which does not protect the coastal waters.²³² The international community has responded one hijacking at a time but offering no long-term solution for either Somalis or businesses who would like to conduct trade in the region.²³³ The diversion of funds from Puntland to Mogadishu contributes to Puntland's inability to solve this problem and secure more foreign investments.

Hesitancy to invest is not limited to foreigners. Puntland's obligations to the federal government have also made it difficult for Puntland to rally its local businesspeople behind the Puntland government because they are afraid their investments will just be diverted to Mogadishu.²³⁴ This inability to garner support from local businesses is a huge loss for Puntland, especially when considering that involvement from local businesspeople in government is a critical component of Somaliland's stronger economy and greater security.²³⁵

Puntland's obligations to Mogadishu are also blamed for the slow pace of democratization of Puntland's government. Currently, the public is not involved in the election of any government officials, despite the Constitution calling for the development of a multi-party electoral commission and registration of political parties.²³⁶ Instead, the legislature is selected by clan leaders, and the president and his ministers are chosen by the legislature. The move towards direct elections has been promised to the people of Puntland by their Constitution for a long time, and some steps have been taken by the government, such as the formation of an electoral commission and party registration.²³⁷ However, those efforts were stalled prior to the 2013 elections and the President was picked in the traditional Puntlander way.²³⁸

The slow move towards democratization is partially blamed on Puntland's commitments to Mogadishu and particularly its participation in Somali reconciliation efforts.²³⁹ During times of intense reconciliation efforts in Mogadishu, state building in Puntland suffers because the Federal Government of Somalia creates incentives for Puntland politicians who are selected to participate in these efforts to neglect their democratic duties back home.²⁴⁰ First, there are many personal advantages to be gained by those who are selected to participate with the Federal Government in these efforts, such as access to foreign aid and other money and benefits. Secondly, the selection process to participate in the Federal Government is based on political status, not an election. Therefore, for aspiring Puntlander politicians, the goal

²³² Daniel Fusfeld, *AGE OF THE ECONOMIST*, 52–55 (Harper Collins 2001).

²³³ Jonathan R. Belof, How Piracy is Affecting Economic Development in Puntland, *Somalia Journal of Strategic Security*, Volume 6, No. 1: Spring 2013.

²³⁴ Johnson & Smaker, *supra* note 212, at 15.

²³⁵ *Id.* at 16.

²³⁶ *Id.*

²³⁷ *Id.* at 17.

²³⁸ *Id.*

²³⁹ Johnson & Smaker, *supra* note 212, at 17.

²⁴⁰ *Id.*

becomes to achieve a high-level position in the Puntland government to get into the Federal Government, not to improve Puntland.²⁴¹

However, Puntland has many problems that are not exclusively the result of its obligations to federal Somalia. As mentioned, piracy is one of the biggest threats to travelers and trade in the Gulf of Aden and the Arabian Sea, and many of the most used pirate ports are within Puntland's borders. While diverting funding from Puntland to Mogadishu that could be used to combat piracy is a contributor, Puntland also suffers from corruption within their government that exacerbates the problem.²⁴² For example, the United Nations Sanctions Monitoring Group has indicated its belief that Puntland officials are aiding and abetting the piracy networks by allowing them to port in Puntland and collecting some of the proceeds from their ventures.²⁴³

Because of the mostly negative effects Puntland has suffered through its relationship with federal Somalia, Somaliland would be unwise to pursue autonomous region status within a federal Somalia. Somaliland has a stable government, ability to secure local and foreign investments, and a firm handle on security, and it would risk weakening or potentially losing all of those positive aspects of its nation were it to join with federal Somalia.

²⁴¹ Ahmed Sayid, Crisis in Puntland Presidential Election 2014, *Wardheer News*, Dec. 21, 2013, <http://www.wardheernews.com/crisis-puntland-presidential-election-2014/>

²⁴² Pham, *supra* note 217, at 144.

²⁴³ *Id.*

5. THE DREAM REALIZED: RECOGNITION

Somaliland sees itself now and in the future as a sovereign and independent nation. In any analysis of the Somaliland issue, that has to be a given, evidenced in many different ways. First, Somaliland emphatically declared itself independent from its thirty-one-year long union with Somalia in 1991. Secondly, Article 1 of the Somaliland Constitution enshrines a sovereign and independent nation of Somaliland.²⁴⁴ Thirdly, in 2011, the government of Somaliland released a report titled *Somaliland Vision 2030*, which is premised on the assumption of an independent Somaliland.²⁴⁵ Fourthly, over one million people voted to affirm the Somaliland Constitution, which enshrines independence, in a national referendum.²⁴⁶ Lastly, a clear demonstration of the heart-felt pride the people of Somaliland have in their country's independence and the goal of eventual sovereign recognition was the outpouring of joy celebrating Somaliland's silver anniversary of independence from Somalia in May of this year.²⁴⁷ While the desire and determination of the government and the people of Somaliland for recognition is clear, their route to that goal is less so.

A. *Intention and Will to be an Independent State*

The 1991 declaration of independence is the starting point of Somaliland's struggle to gain international recognition as a sovereign nation independent from Somalia. Since the declaration of independence, the next major step the government has taken towards promoting its independence and international recognition has been the publication of the Somaliland Constitution. The Constitution describes the structure of the three branches of government and sets forth individual rights and liberties.²⁴⁸ The Constitution also declares unambiguously the intent of Somaliland to be an independent and sovereign nation. This intent is shown by the Preamble and the first seven articles of the Constitution, which clearly establish the building blocks of an independent and sovereign State.²⁴⁹ The Preamble expresses a desire "to build together a state in which everyone has equal status." Article 1 declares that the country "shall hereby and in accordance with this Constitution become a sovereign and independent country known as 'The Republic of Somaliland'." The Constitution, which was affirmed in a national referendum, is clear intent of the government and the people to remain independent today and, one day in the future, to secure international recognition of their sovereignty.

A more recent example of the government's intent to be an independent and sovereign nation is found in its *Somaliland Vision 2030*. The report is a "road map for Somaliland's long term

²⁴⁴ Republic of Somaliland Constitution, art. 1 (Apr. 2000).

²⁴⁵ Republic of Somaliland Ministry of National Planning & Development, *supra* note 43.

²⁴⁶ David H. Shinn, *Somaliland: The Little Country that Could*, Africa Notes, Center for Strategic and International Studies, (2002).

²⁴⁷ James Jeffrey, *Somalilanders refuse to let the lack of recognition for their state stop them from celebrating its 25th anniversary*, May, 23 2016, <http://www.aljazeera.com/indepth/inpictures/2016/05/somaliland-25-years-unrecognised-state-160520112141208.html>

²⁴⁸ Republic of Somaliland Constitution, *supra* note 244.

²⁴⁹ *Id.* art. 1.

development, aspirations and goals.”²⁵⁰ Woven throughout the document is the assumption that Somaliland will remain an independent nation.²⁵¹ The document does not directly address whether (or how) Somaliland will achieve international recognition in the future, and the report is written to reflect the point that Somaliland’s future goals do not hinge on international recognition. The *Somaliland Vision 2030* is revealing for several reasons. It shows that the government continues to envision itself as an independent nation in the future but, at the same time, recognizes that international recognition of its sovereignty may still be an elusive goal some years in the future.

In a democracy, a national referendum on the constitution is a strong signal of the will of the people because the people directly vote on a narrow issue. On May 31, 2001, Somaliland conducted a national referendum on whether to affirm the Somaliland Constitution. The referendum can also be viewed in the context of affirming independence because the Somaliland Constitution has a specified and explicit acknowledgement of an independent and sovereign Somaliland. In short, the question of constitutional affirmation of Somaliland’s independence and sovereignty was posed directly to the people of Somaliland.

It is estimated over two-thirds of eligible voters cast ballots, and the final referendum results were 97% voting in favor of affirming the Constitution.²⁵² Even assuming that one-third of electorate who did not take part in the referendum were uniformly opposed to the Constitution and the inherent inclusion of independence, an overwhelming majority of the people of Somaliland supported an independent and sovereign Somaliland. An international non-profit organization monitored the referendum and declared it was conducted “openly, fairly, honestly, and largely in accordance with internationally recognized election procedures.” The referendum was peaceful and only minimal irregularities and a few procedural violations were noted by the observation group. The vote was free and fair, and is proof the people of Somaliland desire to be an independent and sovereign nation.

Finally, Somaliland recently celebrated the twenty fifth anniversary of declaring its independence from Somalia. In the capital city of Hargeisa, over 500,000 people filled the streets to celebrate 25 years of independence from Somalia.²⁵³ The number of revelers celebrating a festive occasion of this sort may not be dispositive in the legal case for Somaliland independence and recognition, but the half-million revelers in a city of only three-quarters of a million does offer evidence of the intense pride the people of Somaliland feel in their nationhood.

B. The Recognition Handicap

There are several factors standing in the way of Somaliland achieving recognition. Somalia, arguably the parent nation in this situation, is opposed to recognition of Somaliland; there is opposition from the African Union, and western nations are thus far unwilling to make the first move on recognition because there seems to be a belief that any recognition of Somaliland should start in Africa. Further, the United Nations’ plan for Somalia is to bolster

²⁵⁰ Republic of Somaliland Ministry of National Planning & Development, *supra* note 43.

²⁵¹ *Id.*

²⁵² David H. Shinn, *Somaliland: The Little Country that Could*, Ctr. for Strategic and Int’l Studies (2002).

²⁵³ Jeffrey, *supra* note 247.

and support the creaking Federal Republic of Somalia, which in its current design includes Somaliland.

Under international law, Somaliland does not need the explicit permission of Somalia to gain recognition.²⁵⁴ In a very real sense, it would have been impossible for Somalia to give its approval because, for the vast majority of the time since Somaliland declared independence in 1991, Somalia had no functioning government. Yet, the continuing opposition from Somalia to Somaliland's independence and recognition remains an impediment to Somaliland's goal of recognition.

In sum, the African Union and the international community at large are hesitant to recognize Somaliland's independence over the objections of Somalia. This hesitation pays absolutely no regard to the merits of Somaliland's legal case for recognition. A settled agreement between Somalia and Somaliland on independence would, of course, allow recognition to take place without breaching the A.U.'s proclaimed stance on territorial disruption.

The African Union does not recognize any post-independence, self-determination claim that impacts the territorial integrity of a member State.²⁵⁵ The A.U. does not recognize secession primarily because secession does not promote African unity and it fears that any recognition of secession may spark a domino effect of further secession attempts.²⁵⁶ Though States that have unilaterally seceded can freely operate without A.U. assistance, the importance of A.U. recognition cannot be underestimated. Lack of A.U. recognition results in less aid and support from the region generally.²⁵⁷ Further, A.U. recognition is a growing requirement for being recognized globally. For example, the United States, Europe, and Canada have exhibited hesitation towards recognizing self-determined States that the A.U. does not itself recognize.²⁵⁸

The Organization of African Unity, later replaced by the A.U., adopted a resolution in 1964 under which "all Member States pledge themselves to respect the borders existing on their achievement of national independence."²⁵⁹ That is taken to mean that there can be no secession within existing, post-colonial States in Africa. Many argue that the maintenance of the territorial *status quo* in Africa is seen as the wisest course.²⁶⁰ The importance of stability for economic development and independence has induced African States to insist on the

²⁵⁴ Crawford, *supra* note 62.

²⁵⁵ Organization of African Unity (OAU), Charter of the Organization of African Unity, May 25, 1963, 479 U.N.T.S. 39, *entered into force* Sept. 13, 1963 (respecting sovereign and territorial integrity of member States); *see also* O.A.U. Res. AHG/16(I) (July 1964) (reaffirming the declaration to respect Member states' borders); S. Kwaw Nyameke Blay, Changing African Perspectives on the Right of Self-determination in the Wake of the Banjul Charter on Human and Peoples' Rights, 29 J. Afr. L. 147, 150 (1985) ("[T]he Charter unequivocally rejects post-independent territorial claims.").

²⁵⁶ S. Kwaw Nyameke Blay, Changing African Perspectives on the Right of Self-determination in the Wake of the Banjul Charter on Human and Peoples' Rights, 29 J. Afr. L. 147, 153–154 (1985).

²⁵⁷ Clapham, *supra* note 110, at 9 (quoting Somaliland newspaper discussing the negative effects lack of recognition brings to the country).

²⁵⁸ Omar Guled, Somaliland: African Union Has no Alternative but Recognition of its 56th Member, *Somaliland Sun* (Jul. 15, 2015).

²⁵⁹ OAU first ordinary session, Cairo July 17–21, 1964.

²⁶⁰ Concerning the Frontier Dispute (Burkina Faso v Mali), 1986 I.C.J. 554, ¶ 25-26.

maintenance of colonial boundaries and to interpret the principle of self-determination accordingly.²⁶¹ Neither the A.U. itself nor any of its 54 members has recognized Somaliland as an independent State.²⁶² Somaliland separated from Somalia in 1991 after the collapse of the existing Somalian government.²⁶³ Though operating as a successfully independent country, Somaliland is not recognized within the A.U. because it unilaterally declared itself independent rather than constitutionally separating from its parent State.²⁶⁴

In light of the A.U. determined stance on secession, States outside of Africa are hesitant to recognize Somaliland when there is no consensus to do so in Africa. Additionally, the international community wants to support the Somalia political process which calls for a federal Somalia that would include Somaliland. By Resolution 2012 (2013), the U.N. Security Council established the United Nations Assistance Mission in Somalia (UNSOM), whose mandate is to restore and governance, security and economic development in Somalia. According to its Preamble, this resolution is explicitly based on “respect for the sovereignty, territorial integrity, political independence and unity of Somalia.” This UNSOM mandate, approved by the U.N. Security Council, is directly opposed to the independence and recognition of Somaliland. The U.N. has never officially stated that it is opposed to Somaliland recognition, but it has also not changed course on its UNSOM mandate and support of the Federal Government of Somalia. In the eyes of the international community, the question of Somaliland independence and recognition is, in essence, an unresolved question between Somalia and Somaliland, for which solutions imposed from afar are disfavored.

However, in some cases, most notably South Sudan, exceptional circumstances and specific historical contexts have allowed a departure from the A.U.’s stance on secession. The A.U. recognized South Sudan because the split from Sudan was negotiated with the parent State.²⁶⁵ South Sudan’s secession in the face of A.U. opposition to breaking up colonial boundaries was only possible through the intervention of the international community, particularly through the patronage of the United States.

Starting in the 1960s, Sudan was embroiled in bitter and violent internal conflicts between Northern Arab Muslims and Southern Christians and animists. It was “the longest-running conflict in Africa, an estimated two million southern Sudanese lives were lost by the time the war ended in 2005.”²⁶⁶ In 2005, the Comprehensive Peace Agreement finally ended the war, declaring a ceasefire and allowing South Sudan the opportunity to eventually secede.²⁶⁷ In a

²⁶¹ *Id.*

²⁶² *Somaliland Member Profile*, Unrepresented Nations and Peoples Organization (Mar. 25, 2008), <http://unpo.org/members/7916>.

²⁶³ *Id.*

²⁶⁴ *Id.* (suggesting that Somaliland should “operate under the backdrop of sovereignty”).

²⁶⁵ Redie Bereketeab, *Self-Determination and Secessionism in Somaliland and South Sudan*, *The Nordic Africa Institute* 15 (2012).

²⁶⁶ Rebecca Hamilton, *U.S. Played Key Role in Southern Sudan’s Long Journey to Independence*, *The Atlantic*, Jul. 9, 2011, <http://www.theatlantic.com/international/archive/2011/07/us-played-key-role-in-southern-sudans-long-journey-to-independence/241660/>.

²⁶⁷ Jeffrey Gettleman, *After Years of Struggle, South Sudan Becomes a New Nation*, *N.Y. Times*, Jul. 9, 2011, http://www.nytimes.com/2011/07/10/world/africa/10sudan.html?_r=1.

2011 referendum, 98.8% of South Sudan voters chose independence.²⁶⁸ Fulfilment of the South Sudanese desire for independence would not have been reached without American involvement.

While the U.S. was involved in attempting to ameliorate the Sudan conflict during the Clinton Presidency, the involvement gained momentum during the Bush administration.²⁶⁹ Bush's "aides said the former president, pressed by evangelical activists, viewed ending the civil war in Sudan as a 'legacy item' for his foreign policy. Bush appointed a special envoy to focus on peace negotiations, which finally bore fruit in 2005."²⁷⁰ The Bush administration was influenced by evangelicals who were concerned about Arab Muslims in Northern Sudan oppressing the Southern Sudanese Christians. With the U.S. backing, the South Sudanese people's hard-fought goal was finally achieved. The U.S. was highly involved in every step of South Sudanese independence, and that involvement certainly did not end with the declaration of the peace agreement. A Sudan Caucus was formed, and along with brokering the peace deal, it "also secured over \$6 billion in humanitarian aid, between 2005 and 2010, to the war-affected areas in Sudan. According to statistics from the U.S. Official Development Assistance database, Sudan has been the third largest recipient of U.S. aid since 2005, trailing only Iraq and Afghanistan."²⁷¹

For Somaliland, there is much to learn from South Sudan's triumphs and struggles. First, it seems that currently the most successful way to overcome the A.U.'s opposition to fragmentation of African countries is through patronage from a major world power. South Sudan accomplished recognition with the United States' backing, largely due to the plight of the South Sudan Christians during the evangelical-influenced Bush administration. On the South Sudan precedent, it might be possible for Somaliland to attract patronage from an influential world power, especially considering the ways in which it contrasts with South Sudan. While South Sudan has been caught up in violence and instability, Somaliland has had a stable, functioning government for 25 years. Rather than facing the creation of a new regime upon independence, Somaliland generally operates on its own already. In other words, Somaliland is manifestly equipped for independence where South Sudan was horribly unequipped.

C. Achieving Recognition

That Somaliland wants recognition of its independence and sovereignty and that there are substantial obstacles in the way of securing recognition are beyond debate. The question that remains is to identify whether there are means whereby Somaliland can realize its dream.

The President of Somaliland has taken an important and practical step towards achieving recognition by appointing a high-level National Recognition Committee (NRC), which is

²⁶⁸ *Id.*

²⁶⁹ Hamilton, *supra* note 266.

²⁷⁰ Gettleman, *supra* note 267.

²⁷¹ Hamilton, *supra* note 266.

tasked with developing recognition strategies.²⁷² One obvious strategy the NRC could adopt would be to follow the example of South Sudan and seek the patronage of a powerful existing State or States to support and advocate for Somaliland's case in the international community. In this type of relationship, the patron would, one assumes, publicly recognize the unrecognized Somaliland and advocate for others to do likewise.

Any recognition-seeking strategy for Somaliland that involved seeking a patron State or States would have no difficulty finding obvious (though not necessarily willing) candidates. The options are wide-ranging, but might involve leveraging an existing relationship, transforming a commercial agreement, providing military facilities or pursuing an "amicable divorce" from Somalia.

One obvious option for Somaliland would be to turn an existing relationship into a recognition/patron relationship. Somaliland has a special and unique relationship with the United Kingdom because of the U.K.'s history as the one-time colonial master. Because of the U.K.'s colonial connections to Somaliland, starting in the 1880s and extending to 1960, Britain has a special responsibility to Somaliland. That responsibility is compounded by the U.K.'s pivotal role in uniting British Somaliland with Italian Somalia, a union that has palpably failed. Somaliland could present a compelling case that its special relationship with the U.K. involved, for the U.K., special responsibilities, and that among these responsibilities was support for recognition.²⁷³

This possibility seems to be already in the thinking of the Somaliland government. The Foreign Minister has stated that the recent Brexit vote to withdraw from the European Union might "make it easier for the British government to make up its mind" in supporting recognition for Somaliland.²⁷⁴ This statement is a clear reference to the possibility that the U.K., post-Brexit, will not necessarily be tied into the E.U. support for a unified Somalia.²⁷⁵ Once Brexit is complete, the U.K. would, it is argued, be free to pursue a foreign policy on its own without regard to the consensus of 27 other EU members.²⁷⁶ When the U.K. and Somaliland were negotiating the end of colonial rule in 1960, the Somaliland delegation hoped it would be possible for the U.K. to continue to give advice and help after the end of the colonial period.²⁷⁷ Acting as Somaliland's recognition patron would be just the help envisioned over 50 years ago.

Another option to secure a patron would be by leveraging or modifying commercial agreements. For example, Somaliland and DP World, which is majority-owned by the United

²⁷² Somaliland Sun, Somaliland President Names National Committee on Recognition and SL-Somalia Talks, Feb. 20, 2016,

http://www.somalilandsun.com/index.php?option=com_content&view=article&id=8637:somaliland-president-names-national-committee-on-recognition-and-sl-somalia-talks&catid=29&Itemid=37

²⁷³ Scott A. Anderson, Rationalizing Collective Guilt, 33 Vt. L. Rev. 519, 537 (2009).

²⁷⁴ Ben Quinn, Somaliland hopes Brexit will pave way for UK to grant international recognition, The Guardian, <https://www.theguardian.com/global-development/2016/oct/19/somaliland-brexit-pave-way-uk-grant-international-recognition-berbera-port-deal>.

²⁷⁵ As required by the Treaty on European Union, art. 22(1) (Consolidated Version: O.J. C 326/13 (2012)).

²⁷⁶ Quinn, *supra* note 274.

²⁷⁷ Secretary of State for the Colonies, *Report of the Somaliland Protectorate Constitutional Conference*, Presented to Parliament by the Secretary of State for the Colonies, May 1960.

Arab Emirates government through a series of holding companies,²⁷⁸ recently entered into a commercial agreement giving DP World management control over the port of Berbera for the next thirty years.²⁷⁹ Arguably, an agreement such as this involves a degree of “recognition” of Somaliland as an entity, if not as an independent and sovereign State. As Somaliland works to open up exploration and exploitation of its natural and other resources,²⁸⁰ it will enter into agreements with commercial undertakings abroad. One assumes that these agreements are beneficial to any undertakings’ home State; and Somaliland might leverage that perceived benefit to secure a patron.

A third option would be to offer potential patrons space to set up military bases within Somaliland. Its northern neighbor, Djibouti, currently hosts a permanent foreign military presence from the United States, Germany, France, Japan, and China.²⁸¹ Neighboring Somalia and Puntland, host a permanent or semi-permanent military presence from the United States.²⁸² As a region, the Horn of Africa is a particular hotbed of terrorist and pirate activity that many Western and Asian powers are interested in combatting.²⁸³ Somaliland has an opportunity to leverage its strategic location on the Horn of Africa to capitalize on the desires of these countries, and perhaps others, in seeking new locations or expanding their operations in the area.²⁸⁴

Somaliland could also pursue an “amicable divorce” with Somalia, which would require an agreement on the terms of their separation. A patron might be found to facilitate these negotiations. Somalia and Somaliland have recently held several formal meetings. Since 2012, official representatives from Somalia and Somaliland have met in the U.K.,²⁸⁵ the United Arab Emirates,²⁸⁶ and in Turkey.²⁸⁷ These meetings have largely centered on issues such as airspace management, movement of people, passports and trade, and have not been formal negotiations for recognizing the independence of Somaliland. A patron could be instrumental in transforming these meeting from discussions of administrative matters into substantive talks about separation and recognition. This is a realistic option, as evidenced by the “amicable divorce” between Eritrea and Ethiopia and South Sudan and Sudan, the latter largely facilitated by the United States. An “amicable divorce” would effectively overcome

²⁷⁸ DP World Limited, Moody’s Investor Services Credit Opinion: DP World Limited, Global Credit Research, Jan. 30, 2014.

²⁷⁹ Asa Fitch, DP World to Manage Somaliland Port of Berbera, Wall Street Journal, <http://www.wsj.com/articles/dp-world-to-manage-somaliland-port-of-berbera-1473086050>

²⁸⁰ Somaliland Vision 2030, *supra* note 46 at 6.

²⁸¹ Monte Reel, Djibouti Is Hot: How a forgotten sandlot of a country became a hub of international power games, Bloomberg, March 23, 2016, <http://www.bloomberg.com/features/2016-djibouti/>.

²⁸² Mark Mazzetti, Jeffrey Gettleman & Eric Schmitt, In Somalia, U.S. Escalates a Shadow War, N.Y. Times, Oct. 16, 2016, http://www.nytimes.com/2016/10/16/world/africa/obama-somalia-secret-war.html?_r=0.

²⁸³ *Id.*

²⁸⁴ Nobuhrio Kubo, Japan to expand Djibouti military base to counter Chinese influence, Reuters, Oct. 13, 2016, <http://www.reuters.com/article/us-japan-military-djibouti-idUSKCN12D0C4>.

²⁸⁵ Somali Diaspora News, Somaliland and Somalia Talks: Chevening House Declaration, June 20, 2012, <http://www.qurbejoog.com/somaliland-and-somalia-talks-chevening-house-declaration/>.

²⁸⁶ Somaliland Press, Dubai Statement on Somaliland and Somalia, June 28, 2012, <http://www.somalilandpress.com/dubai-statement-on-somaliland-and-somalia/>.

²⁸⁷ Republic of Turkey Ministry of Foreign Affairs, The Ankara Communique released at the end of the meetings between Somalia and Somaliland, April 13, 2013, <http://www.mfa.gov.tr/sub.en.mfa?047f3628-be36-4702-b60d-2cccec37ae09a>.

any A.U. opposition to separation and achieve recognition in Africa.²⁸⁸ Looking to recent international precedents, an “amicable divorce” is an important step in achieving international recognition.²⁸⁹

The principal task of Somaliland’s recently-established National Recognition Committee is the elaboration of new recognition strategies. One such strategy could be the identification of possible patrons. In this, Somaliland is not pursuing its dream of recognition in a vacuum.²⁹⁰ Out of necessity and practice, it has, for a quarter of a century, operated as a fully-functioning State; it has already undertaken diplomatic and commercial relations with neighboring and more distant States;²⁹¹ and it has a vibrant diaspora of 200,000 willing and able to promote the recognition agenda. The shadow will be lifted and the dream of recognition will be realized if Somaliland applies itself to its new priority as it did to establishing itself as a *de facto* State.

²⁸⁸ Adam, *supra* note 84, at 36.

²⁸⁹ Adam Taylor, The 9 newest countries in the world, Washington Post, Sept. 16, 2014, <https://www.washingtonpost.com/news/worldviews/wp/2014/09/16/the-9-newest-countries-in-the-world/>.

²⁹⁰ Herbert W. Briggs, Recognition of States: Some Reflections on Doctrine and Practice, 43 Am. J. of Int’l L. 113, 117 (1949).

²⁹¹ *Id.*