

## SOMALILAND – A WALK ON THIN ICE<sup>1</sup>

*Harriet Gorka*

"Northerners can in no way claim that the 1960 merger with the South was a shotgun wedding – by all accounts unification was wildly popular. Northerners could argue, however, that they asked for an annulment of the union prior to the honeymoon and that their request was unjustly denied."<sup>2</sup> This statement by a legal scholar reflects the prevailing balancing act of the conflict in Somaliland, which some might say started with the voluntary unification of Somaliland and the Italian Trust Territory of Somalia. Yet the conflict goes deeper and is more far reaching than "just" the desire to secede from the Somali state. It is an ongoing debate whether the right to self-determination should prevail over the notions of territorial integrity and sovereignty.

May 2011 marked the 20-year anniversary of Somaliland's proclamation of independence. However, its status has not officially been recognised by any state, even though it has a working constitutional government, an army, a national flag and its own currency, which should make Somaliland a stand out example for other entities seeking independence. The territory also sets itself apart from the rest of Somalia because it is stable and peaceful, which has been achieved by integrating clan culture into its government. The accomplishments of the past two decades are impressive, despite



Harriet Gorka worked from February to April 2011 at the Konrad-Adenauer-Stiftung in Windhoek, Namibia.

- 1 | The opinion expressed by the author is not in all points similar to the opinion of the editors. However, we decided to publish this text due to the high degree and value of information given about Somaliland, a region that hardly receives any media coverage.
- 2 | "Somaliland: Time for African Union Leadership," International Crisis Group, *Africa Report* 110, May 23, 2006: 4, <http://crisisgroup.org/~//media/Files/africa/horn-of-africa/somaliland%20Time%20for%20African%20Union%20Leadership.pdf> (accessed March 8, 2011).

the abuse suffered by Somaliland under the Siad Barre regime, which plunged the south into chaos and anarchy after its collapse. The foundation for democratic governance has established its ideals grounded in respect for human

**Somaliland's achievements stand in contrast not just to the chaos in Mogadishu but also to the records of governments across the Horn of Africa.**

rights. Credible national elections were held in 2003, 2005 and 2010, including parliamentary polls that put the territory's House of Representatives firmly in the hands of the opposition. In one of the world's most volatile regions those achievements stand in marked contrast not just to the chaos in Mogadishu but also to the records of governments across the Horn of Africa.

Even though the conflict in East Africa has been ongoing for decades, it is again on top of the agendas of western countries. Piracy in the Gulf of Aden has risen to 97 attacks in the first three month of 2011 from 35 in the same period last year leading to the effect that it threatens to disrupt international trade.<sup>3</sup> The only time when piracy vanished off Somalia's coast was during the six months of rule by the Islamic Court Union in the second half of 2006.<sup>4</sup> So if a working government is the answer to how to control piracy, the question arises why Somaliland, which has a functioning administration, is not granted independence to counter piracy and Islamic tendencies in the region. Or what happens if the people loose hope in ever becoming independent or are swallowed by the chaos nearby.<sup>5</sup>

Yet, the containment of piracy has so far not overcome the legal and political concerns for the self-determination of national sovereignty and territorial integrity when it comes to the international explanation to the non-recognition of Somaliland. Can the right to exercise self-determination have more value than Somalia's right to sovereignty and its territorial integrity? One might fear that other African enclaves such as the Casamance or Cabinda might follow

3 | "Attacks off the Somali coast drive piracy to record high, reports IMB," *ICC Commercial Crime Services*, April 14, 2011, <http://icc-ccs.org/news/441> (accessed May 2, 2011).

4 | Roger Middleton, "Piracy in Somalia: Threatening global trade, feeding local wars," *Chatham House briefing paper*, 10/2008, The Royal Institute of International Affairs, [http://chathamhouse.org.uk/files/12203\\_1008\\_piracysomalia.pdf](http://chathamhouse.org.uk/files/12203_1008_piracysomalia.pdf) (accessed May 14, 2011).

5 | Abdikarim Ahmed Hersi, "Somaliland: The buffer Zone Against the War in Terror And Piracy," *The Somaliland Globe*, January 25, 2011, <http://somalilandglobe.com/1310> (accessed May 3, 2011).

Somaliland's independence, but is Somaliland not a unique case with Somalia as a failed state? To understand Somaliland's desire for independence, Somalia's veto and the non-recognition from the international community requires a sound and thorough understanding of the conflict as well as consultation of international law is necessary.

## BACKGROUND INFORMATION

The history of Somaliland can be traced back to the establishment of British colonial rule in 1884. Apart from a short period from 1940 to 1941, when Italy occupied the region, Somaliland remained under British control<sup>6</sup> until June 26<sup>th</sup>, 1960. The reason for its independence was the progress of decolonisation, which finally brought about the change in power. The new State of Somaliland was recognised by 35 governments and also registered by the UN.<sup>7</sup> After only five days of independence, Somaliland merged with the former Italian colony, the Italian Trust Territory of Somalia, in the spirit of pan-Somali nationalism.<sup>8</sup> However, the Northern region, as Somaliland is also called, was dissatisfied with the representation they gained in the newly formed government. Not only that the capital city was chosen to be in the South, but also that both the president and the prime minister were southerners. Because they were ruled by two different colonial powers, the two territories "had produced largely incompatible administrative, economic and legal systems as well as divergent orientations and interests of their political elites".<sup>9</sup> Exactly a year later, in

6 | "Somaliland: Time for African Union leadership," n. 2, 4.

7 | Ibid.

8 | "Somaliland: Ten Years On," *BBC*, April 30, 2001, [http://bbc.co.uk/worldservice/people/highlights/010430\\_somaliland.shtml](http://bbc.co.uk/worldservice/people/highlights/010430_somaliland.shtml) (accessed June 17, 2011).

9 | "Somaliland: Time for African Union leadership," n. 2, 5. Cf. Michael Schoiswohl, *Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: The case of Somaliland* (Leiden: Martinus Nijhoff Publishers, 2004), 113: "[I]t was anticipated that a representative of the independent northern Somaliland and the Southern Somaliland states would formally create the Union through the signing of an international treaty. The north drafted an Act of Union, had it approved by its legislative body and sent it to Mogadishu. Following approval by the legislative assembly in the south, it was to be signed by two respective representatives. The southern assembly never passed the proposed Act. However, it passed its own *Atto di Unione*, significantly different from the northern text."

June 1961, the dissatisfaction had risen even further so that the Somaliland people vetoed against the unitary constitution and also tried to gain back its independence through an unsuccessful coup.

In 1969 General Mohamed Siad Barre launched a military coup, gained power and quickly attracted the support from the North mainly because of his wish for a Greater Somalia. Yet the backing ended immediately when it became clear that the Barre regime favoured the Darod's, his own clan, and discriminated against the Isaaq, the majority population of Somaliland. The violent rule of the dictator was the catalyst for the development of the Somali National Movement (SNM). With tensions in the country rising, a civil war broke out in 1988 dividing Somalia in pro and anti Barre fractions. The conflict brought Siad Barre's regime to an end and caused the collapse of the Somali state in January 1991 as there was no successor who could replace the dictator.<sup>10</sup> With the collapse of the state, Somaliland convened the 'Grand Conference of the Northern People' in May 1991, during which it announced its independence within the old British borders. Those are

**Notwithstanding two critical times between 1991 and 1996, when there were short outbreaks of civil unrest in Somaliland, the entity managed to establish a democracy.**

the 137,600 square kilometres between the Republic of Djibouti to the west, the Federal Republic of Ethiopia to the south and Somalia to the east.<sup>11</sup> During the conference, the SNM and clan elders of the North withdrew from the Act of Union of 1960 and entrusted leading SNM members with the formation of a government for a period of two years. Notwithstanding two critical times between 1991 and 1996, when there were short outbreaks of civil unrest in Somaliland, the entity managed to stabilise and step-by-step establish a democracy out of the previous clan-based ruling.

The conflict of Somaliland has two main roots: ethnicity and colonial legacy. Before the colonisation of the Horn of Africa and the rest of the continent, the people in the Somali region governed themselves through a decentralised political system comprising an elaborate succession of clans

10 | "Somaliland: Time for African Union leadership," n. 2, 4-6.

11 | "Somaliland Country Facts," *Republic of Somaliland*, 2009, <http://www.somalilandgov.com> (accessed April 8, 2011).

and sub-clans.<sup>12</sup> Three clans are classified as 'noble clans', referring to the belief that they share a common Somali ancestry, whereas the minority clans are believed to have mixed parentage.<sup>13</sup> Those 'noble clans' are Darod, Dir and Hawiye, which have several sub-clans such as the Dhulbahante and Warsangeli (sub-clan of Harti, which belongs to the Darod), as well as the Isaaq (Dir). Traditionally each clan had its own leader and council of elders, who organised the social and political life of their communal property. With relatively few setbacks, this system survived colonial ruling and revitalized during the resistance against Siad Barre.<sup>14</sup> After the fall of the dictator, "ad hoc councils of elders (*guurtiida*) instantly took on the role of quasi-administrations, managing militias, mediating disputes, administering justice, interacting with international agencies and raising local revenue in the absence of local administrative structures."<sup>15</sup> Clan ruling mainly had a positive impact in Somaliland where they were able to establish a working government, whereas Southerners are still fighting over who has the right to govern. Frustration in some areas mounted over the slow progress leading to the autonomy declaration of Puntland in 1998. Bari, Nugaal, Mundug, as well as the Sanaag and Sool regions were claimed by Puntland to be part of its territory. However, up until this moment the Sanaag and Sool regions are part of Somaliland calling for frequent clashes between Puntland and Somaliland.<sup>16</sup> The reason is that people from the Warsangeli and the Dhulbahante sub-clans of the Harti, major residents of Puntland, are the main inhabitants in the Sanaag and Sool regions. However, the Somaliland's inhabitants are mostly all Isaaq clan members, therefore Puntland claims the territories to belong to its terrains.

**Clan ruling mainly had a positive impact in Somaliland where they were able to establish a working government. Meanwhile Southerners are still fighting over who has the right to govern.**

12 | Schoiswohl, *Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: The case of Somaliland*, n. 9, 97.

13 | NationMaster, Encyclopaedia, <http://www.statemaster.com/encyclopedia/Somali-clan> (accessed April 1, 2011).

14 | Mohammed Hassan Ibrahim and Ulf Terlinden, "Somaliland: 'home grown' peacemaking and political reconstruction," <http://www.c-r.org/our-work/accord/somalia/somaliland-peacemaking-reconstruction.php> (accessed April 6, 2011).

15 | Ibid.

16 | Schoiswohl, *Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: The case of Somaliland*, n. 9, 110-111.

## SOMALILAND'S VIEW ON THE CONFLICT

Somaliland provides three main arguments why it is entitled to be independent. The first one is that the Act of Union with the Italian Trust Territory of Somalia immediately became invalid when the Southerners did not stick to the agreed terms of unification. For a document to be

**Somaliland passed the Union Law in June 1960 but it was never signed by Somalia. Instead Somalia approved an Act of Union, which significantly differed from Somaliland's.**

legally binding, all participants have to sign it ensuring everyone is subject to the same obligations and rights. Somaliland passed the Union of Somaliland and Somalia Law in June 1960 but it was never signed by Somalia.<sup>17</sup>

About the same time, when Somaliland's legislature passed the above named document, Somalia approved an *Atto di Unione*, its Act of Union, which significantly differed from Somaliland's.<sup>18</sup> With the notably divergence between the two documents, none of them was legally binding. To overcome this obstacle the National Assembly of the Somali Republic proclaimed a new Act of Union, repealing the Union of Somaliland and Somalia Law. The new Act was made retroactive as of July 1<sup>st</sup>, 1960.<sup>19</sup> However Somaliland claims that it was never rightfully implemented as Somaliland rejected it in a referendum.<sup>20</sup>

Because it was a voluntary act in the first place, the second argument goes that with the failing of Somalia after the Barre regime, Somaliland is entitled to revert to its original state. It is rather the dissolution of a voluntary union between two independent states than secession where they reverted to their previously earned sovereignty.<sup>21</sup> Sovereignty is here defined as the concept, which guarantees "the autonomy and independence of each state to determine its own affairs, regardless of the approval or disapproval of external actors, no matter how big or small it was in terms of size and regardless of its relative power and capacity."<sup>22</sup> Various African and European countries

17 | "Somaliland: Demand for International Recognition," Ministry of Information, 2003, 4, [http://www.somalilandlaw.com/Government\\_Recognition\\_Paper\\_2001.pdf](http://www.somalilandlaw.com/Government_Recognition_Paper_2001.pdf) (accessed March 17, 2011).

18 | Ibid.

19 | Ibid., 4-5.

20 | Ibid.

21 | "Somaliland: Time for African Union leadership," n. 2, 16.

22 | Stephanie Lawson, *International Relations* (Cambridge: Polity Press, 2007), 33.

have to some extent accepted Somaliland's sovereignty. They have not officially recognised the entity but established bilateral ties to its government. Examples are liaison offices in Djibouti and Ethiopia, and projects planned in Somaliland by companies amongst others from countries like Germany, Switzerland and South Africa.<sup>23</sup> Lastly, the gross human rights violations of the dictator and the resulting ethnic cleansing against, the Isaaq amongst others, gives them the right to self-determination and hence separation.

**Various countries have to some extent accepted Somaliland's sovereignty. They have not officially recognised the entity but established bilateral ties to its government.**

## **LEGITIMACY OF SOMALILAND'S CLAIM OF INDEPENDENCE**

### **Self-determination**

The question arises whether or not the people of Somaliland have the right to self-determination. In international law, the right to self-determination is an essential principle and can be defined as the community's or state's right to sovereignty and independent relations.<sup>24</sup> The International Covenant on Civil and Political Rights specifies in Article 1 Paragraph 1: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."<sup>25</sup> The convention continues that all states that are bound to the Covenant "shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations." However, there is an ongoing debate about what the term 'self' in self-determination actually means. Lee Buchheit in *Secession: The Legitimacy of Self-Determination* quotes Sir Ivor Jennings: "on the surface it seemed reasonable: let the people decide. It was in fact ridiculous because the people cannot decide until somebody decides who are the people."<sup>26</sup>

23 | "Somaliland: Time for African Union leadership," n. 2, 4.

24 | Wolfgang Danspeckgruber, *The Self-Determination of Peoples*, (London: Lynne Rienner Publishers, 2002), 5.

25 | International Covenant on Civil and Political Rights, *Office of the United Nations High Commissioner for Human Rights*, December 16, 1966, <http://www2.ohchr.org/english/law/ccpr.htm> (accessed March 12, 2011).

26 | Lee Buchheit, *Secession: The Legitimacy of Self-Determination*, (London: Yale University Press, 1978), 9.

Therefore it seems sensible that Buchheit attempts to solve the dilemma by closely defining the 'self' as "a group of people becomes a self for purposes of this principle as soon as it perceives itself as being reasonably distinct from its neighbours [sic]."<sup>27</sup> In other words: if the inhabitants of Somaliland distinguish and perceive themselves as being different to the rest of Somalia it is an indispensable element of statehood.<sup>28</sup> Nevertheless, the right to self-determination neither prohibits nor authorises secession. Moreover, when pursued by an ethnic or otherwise clearly defined group within a sovereign state, such as the Somali people in Somaliland, self-determination usually results in some combination of legal and political strategies involving autonomy, power and wealth sharing within the state.<sup>29</sup>

**The Isaaq people faced severe atrocities under the Barre regime and therefore they provide adequate grounds for not only self-determination but also separation.**

The changing of borders, however, is still permitted under international law, either peacefully through negotiations or in case of oppression by rebelling against the tyrannical state; the latter is a central argument for Somaliland. As mentioned above, the Isaaq people faced severe atrocities under the Barre regime and therefore they provide adequate grounds for not only self-determination but also separation from the state responsible for those crimes.<sup>30</sup> However, as the dictator is no longer in power some might question if this argument is still valid.

### **Statehood**

Another critical area for clarifying if Somaliland is entitled to secede is statehood. Statehood and its definition are outlined in the Montevideo Convention on the Rights and Duties of States of 1933. Article 1 of the Convention identifies a state as the following: "The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states" (Montevideo Convention).<sup>31</sup>

27 | Ibid., 10.

28 | Ibid.

29 | "Somaliland: Time for African Union leadership," n. 2, 15.

30 | Ibid.

31 | Montevideo Convention on the Rights and Duties of States, December 26, 1933, <http://cfr.org/publication/15897> (accessed March 15, 2011).



Hence, it needs to be verified whether or not Somalia meets any of the above-mentioned criteria. One of a state's main reasons to exist is to 'regulate human affairs' therefore a 'permanent population' needs to live in the claimed territory. Somaliland's current population consists of 3.5 million people and the number is largely constant.<sup>32</sup> Even though parts of the population are nomadic and move in and out of Somaliland, it is no hindrance to the criteria of 'permanent population' as there are enough constant inhabitants. Peggy Hoyle in *Somaliland: Passing the Statehood Test?* asserts that the population of Somaliland has a different dialect and tongue, clan cohesion as well as economic interests than Somalia, therefore they fulfil the first requirement of the Montevideo Convention.<sup>33</sup>

By the second criterion 'defined territory', one needs to analyse the boundaries of Somaliland and also how they were formed. As mentioned above, the borders claimed by Somaliland are those established by its former colonial power when it was granted independence in 1960. In the International Court of Justice (ICJ) North Sea Continental Shelf Cases it was stated, "there is for instance no rule that the land frontiers of a state must be fully delimited and defined, and often in various places and for long periods they are not."<sup>34</sup> A renowned example is Israel; it still has no defined and accepted borders and is thus not a 'defined territory' yet it is unquestionably recognised as a state by the majority of the international community.<sup>35</sup> A similar situation can be found with Somaliland and Puntland. Since the establishment of Somaliland's neighbouring republic in 1998 there have been ongoing disputes about the Sool and Sanaag regions, both part of eastern Somaliland.

**Since the establishment of Puntland in 1998 there have been ongoing disputes about the Sool and Sanaag regions, both part of eastern Somaliland.**

32 | Somaliland Country Facts, n. 11.

33 | Peggy Hoyle, "Somaliland: Passing the Statehood Test?" *IBRU Boundary and Security Bulletin*, Herbst 2000, <http://mbali.info/doc437.htm> (accessed May 16, 2011).

34 | I.C.J. Reports North Sea and Continental Shelf Case Judgment, 32, para. 46. February 20, 1969, [www.icj-cij.org/docket/files/51/5535.pdf](http://www.icj-cij.org/docket/files/51/5535.pdf) (accessed March 12, 2011).

35 | Hoyle, "Somaliland: Passing the Statehood Test?" n. 33.

'Government', the third requirement of the Convention, means that there is some authority effectively exercising governmental functions and able to represent the entity in international relations.<sup>36</sup> Here it is not important what form of government is in place.<sup>37</sup> As one of few African states, Somaliland has a democratically elected government including a bicameral parliament, independent judiciary, permanent electoral commission, army and police and custodial forces as well as a popularly approved constitution.<sup>38</sup> Nevertheless, even though there is an independent judiciary it remains weak because currently it only functions as a subordinate to the executive. Furthermore, the constitution includes no tangible checks and balances, which leaves the executive vastly stronger than the two other branches.<sup>39</sup> Still, the system in place is working and in comparison to the chaos and lawlessness in Somalia its pure existence is rather impressive.

The last of the four criteria is of particular importance because when a nation 'enters into relations with other

**Other nation states may be to some extent reluctant to make agreements with Somaliland in order not to undermine Somalia's sovereignty.**

states' it can be interpreted as a form of recognition for a country, which has not been recognised previously. Hence, other nation states may be to some extent reluctant to make agreements with Somaliland in order

not to undermine Somalia's sovereignty. However, what might be of greater importance in this case is if Somaliland has the legal authority for entering into agreements on the international scope. As previously mentioned, Somaliland has a written constitution providing the necessary legal basis to establish formal and informal agreements with others. Some states such as Djibouti, Ethiopia, Denmark and the U.S. entered into cooperation in areas such as security, trade, immigration and development assistance.<sup>40</sup>

36 | Schoiswohl, *Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: The case of Somaliland*, n. 9, 14-15.

37 | *Ibid.*, 14.

38 | "Somaliland: Time for African Union leadership," n. 2, 11.

39 | Ibrahim and Terlinden, "Somaliland: 'home grown' peace-making and political reconstruction," n. 14.

40 | "Somaliland: Time for African Union leadership," n. 2, 11.

As a result, Somalia fulfils all essential requirements of the Montevideo Convention. However, due to the non-recognition of Somaliland by all states it has nearly no effect for the entity, as states are not required to recognise another state if it fulfils the Convention. In the words of the South African Ministry of Foreign Affairs: "Somaliland officials have mastered all arguments and precedents for recognition, but the problem is in convincing the rest of the world, especially members of the African Union, that its case is special and deserves support."<sup>41</sup>

### **THE OTHER SIDE OF THE COIN: SOMALIA'S, THE AFRICAN UNION'S AND UN'S PERSPECTIVE**

So the question remains why no country has so far recognised Somaliland if it is, depending on the position taken, entitled to exercise self-determination and meets all the Montevideo criteria. Its independence would first of all affect Somalia so its arguments against Somaliland's independence need to be considered.

#### **Somalia's (legal) arguments**

Due to continuous state failure and lack of effective government, it proves difficult to find an official statement, which is representative of the Somali (legal) position towards Somaliland's independence claim, as Somalia has only existed *de jure* since 1991. However, authorities in Somalia have consistently and implacably opposed any formal dismantling of the larger Somali state.<sup>42</sup> Furthermore, even though the transitional Somali government has failed in its attempts to bring peace and stability to the country, its *de jure* borders remain unchanged. In its constitution of 1960, Somalia states "no part of people nor any individual may claim sovereignty or assume the right to exercise it."<sup>43</sup> Therefore Somaliland's

**Somalia has only existed de jure since 1991. However, authorities in Somalia have consistently and implacably opposed any formal dismantling of the larger Somali state.**

41 | Ibid., 12.

42 | Human Rights Watch, 'Hostages to Peace': *Threats to Human Rights and Democracy in Somaliland*, July 13, 2009, 51, <http://hrw.org/en/reports/2009/07/13/hostages-peace-0> (accessed March 22, 2011).

43 | "Constitution of the Somali Republic, Article 1 (1)," United Nations Development Programme on Somalia, May 31, 2001, <http://www.so.undp.org/docs/Somaliland%20in%20English.pdf> (accessed March 3, 2011).

aim for separation and international recognition is in direct breach with its obligations under the Charter of the Somali Republic. Even though a new constitution was created in 2004, after the collapse of the Barre regime, the new constitution applies to Somaliland too, since it continues *de jure* to be a part of Somalia. This position is strongly reaffirmed in the Transitional Federal Charter of the Somali Republic where the territory of Somalia is clearly defined, which includes the territory that is claimed by Somaliland. Even if the wording of parts of the Charter gives room for interpretation, Somalia made clear that it promotes Somali unity by stating "The Charter shall be interpreted in a manner that promotes national reconciliation, unity and democratic values."<sup>44</sup> Therefore by declaring itself independent, the separatist entity contests Somali territorial integrity and sovereignty.

### **The African Union's (legal) arguments**

If a sustainable solution to Somaliland's desire for independence should be found in the near future then the African Union (AU) and its viewpoint needs to be considered. Even though Somalia is internationally considered to be a failed state it is still a member of the African Union and its seat is no longer vacant since a new (transitional) government is in place. One of the AU's objectives, which are crucial in the case of Somaliland, is to "defend the sovereignty, territorial integrity and independence of its Member States."

**One of the African Union's objectives, which are crucial in the case of Somaliland, is to "defend the sovereignty, territorial integrity and independence of its Member States."**

the sovereignty, territorial integrity and independence of its Member States."<sup>45</sup> There is no implication of general encouragement or support of secessionist ambitions. If at all the opposite is true as this would mean that Somaliland has no right to secede, as that would violate Somalia's sovereignty as well as territorial integrity. However, in Article 4 (b) the "respect of borders existing on achievement of independence"<sup>46</sup> is demanded. Again, putting this into context with Somaliland's demand, this Article gives room for interpretation and it now depends on the assumption taken in regard to the legality of Somaliland's 'return' to its

44 | Transitional Federal Charter of the Somali Republic (2004), Article 4 (1).

45 | "African Union in a Nutshell," African Union (AU), [http://www.africa-union.org/about\\_au/au\\_in\\_a\\_nutshell.htm](http://www.africa-union.org/about_au/au_in_a_nutshell.htm) (accessed April 10, 2011).

46 | Ibid.

borders of 1960. Therefore two scenarios are possible: If the return to the borders on the five days of independence is (legally) valid, then the AU would still violate Somalia's territorial integrity as well as its *de jure* boundaries by recognising Somaliland as a state. However, if it does not allow Somaliland to become independent than it would violate its own Charter. Yet the legal dimensions for the AU, whether they set a precedent for other African cases, or have impact on the organisations own internal politics, are critical. As mentioned previously it is possible that movements with secessionist tendencies may also demand independence in the aftermath of a potential recognition of Somaliland. However one could argue that Somaliland has been a *de facto* state for the past 18 years and with recognition not much would change.

Further, if the right to self-determination should be granted, the time frame in which to exercise self-determination must be defined. From the perspective of the AU, self-determination is to be exercised only once, specifically, at the time of decolonisation from Europe. In short, self-determination was not designed to be subject to continuous review.<sup>47</sup> Thus the African Union is unlikely to recognise Somaliland anytime soon as it has several concerns when it comes to the legal evaluation of Somaliland's demand for recognition.

### **The UN's (legal) arguments**

Nonetheless that the United Nations (UN) and other governments have made AU recognition of Somaliland a precondition for their own, the UN still is the framework in where important questions like secessionist movements are often resolved. Self-determination, territorial integrity as well as sovereign equality and political independence are all deeply imbedded in the UN Charter and are therefore one of the essential provisions of the document. Somalia is a UN member and is therefore entitled to sovereign equality and its territorial integrity, which political independence must be adhered. The recognition of Somaliland would therefore be a violation of the Somali territorial

**The recognition of Somaliland would undermine Somali sovereignty. This however proves difficult with Somalia being a failed state.**

integrity as well as undermine Somali sovereignty. The latter however proves difficult with Somalia being a failed state. According to various renown academics, the only conceivable basis for creating an entitlement of a group within a state to external self-determination in order to

**The Security Council stated its commitment to “a comprehensive and lasting settlement of the situation in Somalia, and its respect for the sovereignty, territorial integrity, political independence and unity of Somalia.”**

secure international peace and security is through the UN Security Council. Yet the Security Council stated its commitment to “a comprehensive and lasting settlement of the situation in Somalia, and its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, consistent with the purpose and principles of the Charter of the United Nations.”<sup>48</sup> Consequently, any form of recognition of Somaliland would violate Somali sovereignty, territorial integrity, political independence and unity.

But there is the right to self-determination which is also stated in the Charter of the United Nations and therefore, depending again on the basic assumption, Somaliland could be granted recognition anyway. The case for Somaliland is precisely where the two principles collide and it is critical to determine which is going to outrule the other in regard to hierarchy.

### **DESPITE THE LEGAL LIMBO: CURRENT SITUATION IN SOMALILAND**

With the capture of various vessels and the apparent alliance of Somali pirates and Islamic terror organisations, the Horn of Africa has made negative headlines in international newspapers recently. There are several voices arguing that the instability around the Gulf of Aden should best be tackled from within, by achieving greater internal stability in the affected countries. Abdillahi Duale, the foreign minister of Somaliland, stated “we are the key [...] this is the only safe haven you’ve got [in the region].”<sup>49</sup>

48 | “Security Council, in Presidential Statement, says enhanced UN Role in Somalia must be in Cremental, based on Discussions with new Government,” United Nations Security Council, Press Release, October 26, 2004, <http://un.org/News/Press/docs/2004/sc8225> (accessed June 20, 2011).

49 | Scott Baldauf, “In Somalia’s break-away corner, an oasis of stability,” *The Christian Science Monitor*, June 12, 2009, <http://csmonitor.com/2009/0612/p06s03-woaf.html> (accessed March 3, 2011).

Yet, it is questionable how this argument holds up when analysing the current situation in Somaliland. In order to answer this question, the circumstances in Somaliland are discussed with a particular emphasis on the political and economical as well as the social situation, since it is the first duty of a state to promote the welfare and security of its citizens. Baldauf describes the entity as “a multiparty democracy with an elected president and parliament, a secular Muslim country with no tolerance for extremism, a thriving free-market economy with precious little foreign aid, and a strict law-and-order state with no patience for piracy – Somaliland is exactly the kind of country the Western world loves to embrace.”<sup>50</sup>

In regard to the current situation in Somaliland, it is questionable in how the picture drawn above is representative. It is true that internal measures to counter piracy have been taken.<sup>51</sup> Apparently, Somaliland’s pirate control has already caught three dozens pirates who are now locked up in prison in Berbera and Mandheera.<sup>52</sup> It indicates a considerable success in the domestic fight against piracy and it also points out that the administration within Somaliland is capable of responding to external problems and can provide security. Somali piracy however, according to the UN, is becoming an “organised industry”, which is estimated to cost the world economy more than 4 billion pound sterling a year.<sup>53</sup>

**Somaliland’s pirate control has already caught three dozens pirates who are now locked up in prison. It indicates a considerable success in the domestic fight against piracy.**

Piracy and terrorism seem to go hand in hand in the region. This has attracted the attention and financial resources of the British government, which was Somaliland’s colonial ruler. This year, the British government has realigned its aid budget so that Somalia and other nations plagued

50 | Ibid.

51 | “Somaliland, a generally law-abiding de facto state; Puntland, which is the home base for most of the pirates,” *The Somaliland Globe*, March 4, 2011, <http://somalilandglobe.com/1378> (accessed April 6, 2011).

52 | Tristan McConnell, “Somaliland: The Pirate Hunting Coast Guard,” Pulitzer Center, June 23, 2009, <http://pulitzercenter.org/blog/untold-stories/somaliland-pirate-hunting-coast-guard> (accessed March 15, 2010).

53 | Oliver Harvey, “Pirates to the left of me, terrorists to the right,” *The Sun*, February 3, 2011, <http://thesun.co.uk/sol/homepage/features/3388200/The-Suns-Oliver-Harvey-joins-police-in-lawless-Somaliland.html> (accessed May 20, 2011).

by war and terrorism, such as Afghanistan, Pakistan and Yemen, receive greater financial aid.<sup>54</sup> The International Development Minister Andrew Mitchell travelled to Somaliland in February this year to announce 10.5 million British pound in emergency aid. He also revealed Britain is increasing Somalia's aid package from 26 million pound sterling this year to 80 million by 2014 to build peace and stability.<sup>55</sup> This all seems to be the right approach as (severe) poverty often leads to crime, such as piracy and alleged terrorism in the case of Somalia. Pirates primarily operate from Puntland, which is the homeland of the former Somali president Abdullahi Yusuf.

**Even if the higher echelons of Somali government and clan structure are not directly involved in organising piracy, they probably benefit.**

As Middleton mentions in *Piracy in Somalia: Threatening global trade, feeding local wars*, "money will go to Yusuf as a gesture of goodwill to a regional leader" – so even if the higher echelons of Somali government and clan structure are not directly involved in organising piracy, they probably benefit.<sup>56</sup> Therefore it could be concluded that the current Somali government might not be too active in bringing down piracy off its shores.

Nonetheless, the postponement of the presidential elections from May 2008 to late June 2010 after instability in the eastern Sanaag and Sool regions, led to several demonstrations against the extension of former president Rayale's term in office. Even though the government issued a demonstration ban, nothing was done by the police force to end the demonstrations. This development is very interesting as the government did not respond to the open criticism with additional force but tried to appease the protesters by seeking compromise showing something very peculiar about Somaliland, which has often been referred to as the notion of "hostages of peace". Somalilanders tend to keep potential conflicts on a fairly low level of intensity in order to maintain the highly prized stability within their country.

In terms of its economy, Somaliland has accomplished very little up until now. Human Rights Watch stated in an article in 2009 that economic development had stalled,

54 | Ibid.

55 | Ibid.

56 | Middleton, "Piracy in Somalia: Threatening global trade, feeding local wars," n. 4.



unemployment was rising in Hargeisa and other urban centres. The reasons for the impoverishment of Somaliland are the lack of international aid and support due to its status as an unrecognised entity. In general, the annual national budget is estimated to be 20 to 30 million U.S. dollars and is mainly derived from customs revenues collected at the seaport of Berbera, import taxes on the mild narcotic stimulant qaat from Ethiopia, landing fees and cattle export to Saudi Arabia.<sup>57</sup> The latter, however, is not without risks. Two livestock export bans, first to Saudi Arabia and then to the Gulf State and five other countries, caused a severe economic deterioration, which exposed Somaliland's limited economic diversification. However, Somaliland is an arid country with little fertile land, which makes agricultural diversification very difficult.

Even though the land provides barely any income, there have been conflicts about territories providing sources of insecurity in Somaliland since the end of the civil war in 1991. Recently, rural conflicts over land have become more frequent and increasingly violent, which deepens rural poverty in the eastern regions of Sanaag, Sool and Togdheer, and diminishes common grazing lands and water resources.<sup>58</sup> This effect arises due to the common grassland policy, which means that every livestock farmer uses the common grazing resources. With no government regulations in place to guide the (sustainable) use of those common grasslands, conflicts about their usage and ownership will prevail.

**With no government regulations in place to guide the (sustainable) use of common grasslands, conflicts about their usage and ownership will prevail.**

Apart from the negative aspects, Somaliland's economic development needs to be viewed in perspective. The economic problems of Somaliland are certainly grave and the entity is by no means as competitive and stable as other African states. However, the government can hardly

57 | Kenneth Menkhaus, "Somalia: Governance vs. Statebuilding," in: *Building States to Build Peace*, Charles T. Call (ed.) (London: Lynne Rienner Publishers, Inc., 2008), 200.

58 | "Need to Address Pastoral land Degradation and Increasing Rural Conflicts in Somaliland," Social Research and Development Institute, February 13, 2011, [http://soradi.org/index.php?option=com\\_content&view=article&id=90:-need-to-address-pastoral-land-degradation-and-increasing-rural-conflicts-in-somaliland-&catid=34:conference&Itemid=54](http://soradi.org/index.php?option=com_content&view=article&id=90:-need-to-address-pastoral-land-degradation-and-increasing-rural-conflicts-in-somaliland-&catid=34:conference&Itemid=54) (accessed June 2, 2011).

**Somaliland is ineligible to borrow from international financial institutions and receives no external budget support. This is a by-product of the status of non-recognition.**

improve the economic situation through infrastructure investment, because the entity has no credit rating, is ineligible to borrow from international financial institutions and receives no external budget support. This is a by-product of the status of non-recognition. The financial situation would improve if Somaliland were to gain international recognition since it would then be entitled to UN aid and other international support mechanisms. Hence, embedding Somaliland's economic development into the regional context, its economic achievements are very impressive, even though far from perfect.

When looking at the social sector, according to Human Rights Watch, the efforts of Somaliland government to provide basic services such as health and education run from paltry to almost nonexistent. With regard to health care, HIV/AIDS prevalence, for example, is higher in Somaliland than in the rest of Somalia. Moreover, this year's severe drought forced herdsmen into the urban centres leading to a medical and financial crisis for the government. It leaves many without secure income or a place to live due to the government's powerlessness of providing social welfare to those in need. Amnesty has raised a number of concerns regarding the human rights situation in Somaliland. Clashes with Puntland still frequently lead to human rights violations relating to the economic, social and cultural rights of the people in Sool and Sanaag.<sup>59</sup> In addition, there have been frequent arrests of journalists and other Somalilanders who were detained without a trial, which were instigated by various National and Regional Security Committees. Often the reason for the arrest is unknown or in terms of the journalists their work and research has been perceived as having questioned the credibility or authority of the government.

The influence of the revenues generated by piracy on the social fabric of Somalia and Somaliland is often overlooked in official reports by international organisations such as Amnesty and Human Rights Watch. Pirates, even those at

59 | "Somalia: Human rights challenges: Somaliland facing elections," Amnesty International, March 17, 2009, 23, <http://amnesty.org/en/library/info/AFR52/001/2009/en> (accessed March 7, 2011).

the lower end of the earnings pyramid, are paid roughly 100,000 U.S. dollars per vessel if they are successful in blackmailing the shipping company.<sup>60</sup> For Somalis and Somalilanders this is a fortune that cannot realistically be earned in any other way. A pirate's income guarantees food and shelter and so it is not surprising that many Somali women claim only to marry pirates. The price for a bride has risen to 10,000 U.S. dollars or more, which forces men who wish to marry to join the pirate sector.<sup>61</sup> This trend is worrisome. If Somaliland really manages to keep piracy at bay how long will it manage to do so if that kind of money is earned by blackmailing one vessel?

**A pirate's income guarantees food and shelter and so it is not surprising that many Somali women claim only to marry pirates.**

## CONCLUSION

Despite not being recognised on an international scope, Somaliland has achieved a sufficient level of peace, stability and effective governance to qualify as a state under international law.<sup>62</sup> Depending on the interpretation, it fulfils the question of self-determination and with that has (legitimate) reasons to claim to be independent. Yet, when balancing the right to self-determination of people against the principles of sovereignty and territorial integrity, there is a tendency to give preference to sovereignty and territorial integrity. The fact that Somaliland exists in a status of legal limbo proves the assertion to be correct. What became clear in the analysis of self-determination is that the definition lacks clarity in general and in the case of Somaliland in particular. The entity does not really match the criteria for self-determination yet it also does not fall out of it completely. This uncertainty triggers another problem relating to Somaliland's international recognition: the criteria of statehood. The enclave meets the Montevideo Convention yet international recognition is an additional element of statehood and the latter will only take place once the legal uncertainty is resolved. Considering the fact that Somaliland is *de facto* independent since the fall of

60 | "Gefährliche Reise durch Somalia", *ZDF Auslandsjournal*, June 1, 2011, <http://zdf.de/ZDFmediathek/beitrag/video/1345478> (accessed June 3, 2011).

61 | *Ibid.*

62 | Schoiswohl, *Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: The case of Somaliland*, n. 9, 306.

the Siad Barre regime, the legal debate is politically past the point of relevance since the international community is already dealing with a "state".

Furthermore, all four criteria of statehood are met, which undermine the legal authenticity it has on international grounds. Nevertheless, no state is willing to take the first step towards recognising Somaliland as the respect for territorial integrity and sovereignty of other states still supersede. This resistance leaves room for criticism, as Somalia is a failed state and only *de jure* sovereign. The secessionist entity, contrary to Somalia and other unstable states in the region, was able to establish a multi-party democracy and to conduct free and fair elections, even if those democratic standards cannot be compared to other (western) democracies. Maybe international acceptance will promote Somaliland so it could act as a role model in re-establishing Somalia or other parts in the region. What seems more advisable in this situation, however, is leaving the entity in the status quo but open the doors for international support mechanisms, such as the surveillance of Human Rights, foreign investment and aid to see if that would uplift Somaliland's current deficiencies. Britain has done so this year even when its reason were to try to bring piracy to an end rather than help Somaliland's economy. With a more stable economy and democracy as well as social welfare system, Somaliland should be granted independence.

If Somaliland is not granted independence then the question remains how one could find a solution that satisfies both Somalia and Somaliland to prevent further fighting or even war. One cannot ignore ostrich-like that Somaliland has achieved something that the rest of Somalia has not and that it should be rewarded for its achievements one way or the other.