The Right to Secede Under International Law: The Case of Somaliland

Peter Roethke

Two decades ago, a militant group called the Somali National Movement (SNM) declared the independence of the northwestern region of Somalia comprising the territory of a former British protectorate. The SNM styled the new state "Somaliland." This paper examines whether the *de facto* secession of Somaliland from the state of Somalia accords with international law. In particular, it analyzes whether the act of secession realized a positive right of external self-determination under international law. I argue that it does. International law may legitimize the secession of Somaliland in the context of decolonization if the union of the British and Italian colonies were invalid. International law may also legitimize the secession as an accurate instance of "remedial secession" given the inability of the people of Somaliland to exercise their rights to self-determination within the Somali state. Should Somaliland enjoy no substantive right to secede, I argue that its *de facto* secession accords with the procedural requirements of international law for the creation of new states.

BRIEF HISTORY OF SOMALILAND

A discussion of the legal right of the inhabitants of Somaliland to secede requires a brief explanation of who those inhabitants are and what Somaliland is. The self-proclaimed republic lies in the Horn of Africa, in the northwest corner of Somalia. It borders Ethiopia and Djibouti to the west, the remainder of Somalia to the east, and the Gulf of Aden to the north. Ethnically, the inhabitants of Somaliland are undisputedly Somali, a Hamitic people.[1] Somali society divides its members into clans.[2] Four large clans claim common Somali

[1] Guy Arnold, *A Guide to African Political & Economic Development* (Chicago: Taylor & Francis, 2001), 37.
[2] I.M. Lewis, *A Pastoral Democracy: A Study of Pastoralism and Politics among the Northern Somali of the Horn of Africa* (Oxford: James Currey, 1961), 7.

Peter Roethke received his J.D. from the American University Washington College of Law in 2010 and his B.A. in History and Politics from Brandeis University in 2007. He is a candidate to receive his M.A. in International Affairs from the American University School of International Service. Peter can be reached at peter.earl.roethke@gmail.com.

ancestry: the *Hawiye*, the *Dir*, the *Isaaq*, and the *Darood*. Each clan itself consists of multiple sub-clans. The majority of the inhabitants of Somaliland belong to the *Isaaq* clan, with a minority belonging to sub-clans of the *Dir* and *Darood*. Southern (formerly Italian) Somalia, by contrast, is dominated by the *Hawiye* clan.[3]

The political history of Somaliland follows a recognizable trajectory from colonialism to independence to dictatorship but also has several unique features. Prior to colonial rule, the clan—a group defined by family ties—served as the primary political unit.[4] In 1884, seeking to secure the area for their trade routes, the British concluded treaties of commerce and protection with the local Somali clans. Between 1884 and 1960, Great Britain ruled the territory as the British Somaliland Protectorate.[5] On June 26, 1960, Great Britain granted Somaliland independence.[6] The new state received recognition from thirty-five countries, including all five permanent members of the United Nations (UN) Security Council. Five days later Somaliland united with the UN Trust Territory of Somalia, which had been administered by its former colonial ruler, Italy.[7]

Somaliland and Somalia merged through an international treaty. Irregularities occurred in the ratification of the treaty, however. The two states drafted separate treaties. Somaliland crafted a draft treaty, legislatively approved it, and sent it to the authorities in Mogadishu, the southern capital. The authorities in Mogadishu never approved the draft. Instead, the southern legislature wrote a significantly different treaty, the Act of Union, which the national legislature made retroactively binding in 1961 after unification was an established fact.[8] A subsequent national referendum on the proposed constitution heightened the discrepancy between the two entities: northerners voted against it, whereas southerners voted for it.[9]

The inauspicious constitutional foundations of the united Somali state temporarily lost their significance with the establishment of the dictatorship of

---

[3] Markus Höhne, "Political Identity, Emerging State Structures and Conflict in Northern Somalia," *Journal of Modern African Studies* 44 (2006): 401–402.
[4] Lewis 1961, 7.
[5] Colonial Office, "Report of the Somaliland Protectorate Constitutional Conference" (May 1960), 3, http://www.somalilandlaw.com/Somaliland_constitutional_conference_may1960.pdf.
[6] David Shinn, "Somaliland: The Little Country That Could," *CSIS Africa Notes* 9 (2002), http://csis.org/files/media/csis/pubs/anotes_0211.pdf.
[7] International Crisis Group, "Somaliland: Time for African Union Leadership," *Africa Report* 110 (2006): 4, http://www.crisisgroup.org/en/regions/africa/horn-of-africa/somalia/110-somaliland-time-for-african-union-leadership.aspx.
[8] Paolo Contini, *The Somali Republic: An Experiment in Legal Integration* (London: Frank Cass, 1969), 8–13.
[9] Critics such as the Northern Somalis for Peace and Unity claim that while 53 percent of the inhabitants of the former British Protectorate voted against the constitution, this number is irrelevant because it is skewed along clan lines. They claim that the *Isaaq* clan voted overwhelmingly to reject the document but the other clans voted in favor of it.

Mohamed Siad Barre in a coup in 1969.[10] In 1978, Barre attacked Ethiopia, seeking to incorporate the ethnically Somali Ogadeen region of Ethiopia into Somalia.[11] Somalia's defeat in this war resulted in a large number of Barre-supporting *Ogadeni* Somalis[12] fleeing Ethiopia and resettling in the *Isaaq*-dominated northwest. The defeat also undermined popular support for the government itself, a threat that Barre reacted to by cultivating the allegiance of the large *Darood* clan, of which he was a member.[13]

As documented in a 1989 report by the United States General Accounting Office (GAO) the influx of *Ogadeni* into the *Isaaq*-dominated northwest led to inter-clan tensions with the *Isaaq* and competition for scarce resources. In 1981, *Isaaq* militants formed a rebel group, the Somali National Movement (SNM), to oppose the regime. In response, the Barre regime sent regular army troops, as well as *Ogadeni* militias, to suppress the SNM. As fighting escalated, the government increasingly targeted civilians of the *Isaaq* clan. For instance, between June 1988 and March 1989, the Somali army "purposely murdered at least 5,000 unarmed civilians" because of their *Isaaq* clan affiliation.[14] The Somali government also bombed the Somaliland cities of Burao and Hargeisa (the capital of Somaliland), effectively destroying both of them.[15] In total, an estimated 50,000 *Isaaq* were killed and half a million displaced.[16]

The Barre regime fell in January 1991 to a coalition of clan-based rebel groups. After achieving victory, the southern *Hawiye*-dominated United Somali Congress (USC) declared an interim government. The other rebel groups rejected this declaration and began fighting among themselves. Since this time, the state of Somalia has lacked an effective government.[17] The SNM unilaterally declared the independence of "Somaliland" on May 18, 1991.[18] Somaliland clan

---

[10] Barre, an army officer, suspended the constitution, banned political parties, and abolished the Supreme Court.

[11] Barre justified this invasion as part of a pan-Somali nationalist project to create a "Greater Somalia" (Soomaaliweyn). Ethnic Somalis comprise substantial minorities in all of the states neighboring Somalia, providing a recurring source of inter-state tension and a disincentive for Somalia's neighbors to foster a strong Somali state that might assert irredentist claims.

[12] *Ogadeni* Somalis belong to the *Darood* clan and are closely related to the *Marehan* sub-clan of which Barre himself was a member.

[13] Walter Clarke and Robert Gosende, "Somalia: Can a Collapsed State Reconstitute Itself?" in *State Failure and State Weakness in a Time of Terror*, ed. Robert Rotberg (Washington, DC: Brookings Institution Press, 2003), 136.

[14] Jane Perlez, "Report for U.S. Says Somali Army Killed 5,000 Unarmed Civilians," *New York Times*, September 9, 1989, A1.

[15] U.S. General Accounting Office. Somalia: Observations Regarding the Northern Conflict and Resulting Conditions, NSIAD-89-159. Washington, DC: General Accounting Office, 1989, http://archive.gao.gov/d25t7/138677.pdf.

[16] International Crisis Group 2006, 5.

[17] "Country Profile: Somalia," BBC, http://news.bbc.co.uk/2/hi/africa/country_profiles/1072592.stm.

[18] Peggy Hoyle, "Somaliland: Passing the Statehood Test?," *IBRU Boundary and Security Bulletin*, 8, no. 3 (2000): 81.

leaders endorsed this declaration in 1993 and 1997, and a "national referendum" overwhelmingly approved independence in 2001. Despite these internal signs of support for secession, however, support appears concentrated among members of the *Isaaq*. Minority clans within Somaliland such as the *Dhulbahante*[19] generally evidence more support for a united Somalia (ICG 2006, 6). As of the time of this writing, no state legally recognizes the secession of Somaliland from Somalia.[20]

International Legal Framework for Secession

International law does not grant sub-state entities a general right to secede from their parent states, nor does it prohibit secession.[21] Exceptions to this supposed neutrality arise from the international legal principles of territorial integrity and self-determination.[22] Defining these exceptions is difficult, however, because territorial integrity and self-determination are legally ambiguous terms.[23] For instance, some scholars argue that territorial integrity merely safeguards the inviolability of international borders but does not regulate an internal affair such as secession.[24] Others claim that territorial integrity prohibits secession because secession dismembers the territory of the state.[25] The principle of self-determination similarly lends itself to restrictive or expansive interpretations.[26] Some argue that self-determination only allows for the creation of new states in the context of decolonization. Many other scholars assert that the right of self-determination legally entitles peoples subject to extreme persecution to remedy their situation through secession.[27] Most agree that the definition of the "peoples" with collective rights to self-determination is unclear.[28]

---

[19] The *Dhulbahante* are a sub-clan of the *Harti*, itself a sub-clan of the *Darood*.
[20] States generally recognize the Transitional Federal Government (TFG) as the legal government of all of Somalia, despite the inability of the TFG to exercise meaningful control over any part of the country.
[21] Thomas Franck, "Opinion Directed at Question 2 of the Reference," in *Self-Determination in International Law: Quebec and Lessons Learned*, ed. Anne Bayefsky (Cambridge: Kluwer Law International, 2000), 83.
[22] Marcelo Kohen, introduction to *Secession: International Law Perspectives*, ed. Marcelo Kohen (Cambridge: Cambridge University Press, 2006), 6–9.
[23] Christian Tomuschat, "Secession and Self-Determination," in *Secession: International Law Perspectives*, ed. Marcelo Kohen (Cambridge: Cambridge University Press, 2006), 25.
[24] Georges Abi-Saab, "Conclusion," in *Secession: International Law Perspectives*, ed. Marcelo Kohen (Cambridge: Cambridge University Press, 2006), 473.
[25] James Crawford, "State Practice and International Law in Relation to Unilateral Secession," in *Self-Determination in International Law: Quebec and Lessons Learned*, ed. Anne Bayefsky (Cambridge: Kluwer Law International, 2000), 60.
[26] Tomuschat 2006, 24.
[27] Thomas Franck, "Postmodern Tribalism and the Right to Secession," in *Peoples and Minorities in International Law*, ed. C. Brölmann et al. (Boston: Brill, 1993), 13.
[28] *Reference re Secession of Quebec*, 2 S.C.R. 217 (Can. 1998).

Scholars do not contest that the right of self-determination entitles colonized peoples to form states independent of their colonial rulers.[29] The Declaration on the Granting of Independence to Colonial Countries and Peoples underpins the theoretical justification for decolonization with the principle of self-determination. In language echoed by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Declaration asserts that: "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."[30]

In practice, the exercise of this right through the process of decolonization, especially in Africa, resulted in ethnically heterogeneous states corresponding to colonial frontiers or former colonial administrative boundaries.[31] Modeled after the process of decolonization in Latin America, the creation of states using preexisting colonial boundaries—often referred to as *uti possidetis*—received the support of the Organization of African Unity (OAU) in 1964. The OAU (now the African Union, or AU) continues to insist that its member states, of which Somalia is one, "respect the borders existing on their achievement of independence."[32]

The right of self-determination did not cease to exist, however, with the effective completion of decolonization. Many scholars insist that a right to "remedial secession" exists. The notion of remedial secession assumes that international law provides a right to secession for peoples subject to extreme persecution or unable to internally realize their right to self-determination.[33] This theory postulates that if groups fall victim to "serious breaches of fundamental human and civil rights" through the "abuse of sovereign power," then international law recognizes the right of the afflicted group to secede from the offending state.[34]

The legal sources for this right derive primarily from UN General Assembly (GA) resolutions, although earlier sources from the inter-war period exist also. For instance, the Commission of Rapporteurs in the League of Nations' *Aaland Islands* dispute found that "separation of a minority from the state of which it forms part . . . may only be considered as an altogether exceptional solution, a last resort when the state lacks either the will or the

---

[29] Kohen 2006, 44.
[30] G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. No. 16, at 66, 67, U.N. Doc A/4684 (1960).
[31] Diane Orentlicher, "Separation Anxiety: International Responses to Ethno-Separatist Claims," *Yale Journal of International Law* 23 (1998): 41–42.
[32] OAU Assembly Resolution 16(I) of July, 1964.
[33] Lee Buchheit, *Secession: The Legitimacy of Self-Determination* (New Haven: Yale University Press, 1978), 220–223.
[34] Antonello Tancredi, "A Normative 'Due Process' in the Creation of States through Secession," in *Secession: International Law Perspectives*, ed. Marcelo Kohen (Cambridge: Cambridge University Press, 2006), 176.

power to enact and apply just and effective guarantees."[35] Despite thoroughly discouraging secession, the Commission nevertheless provided legal space for a group to secede under extraordinary circumstances—where the state lacks the will or the power to protect the group at issue.

Subsequent international legal developments retained this space for secession, and may have widened it. The Declaration on Friendly Relations among States contains a provision, referred to as a "safeguard clause," that reiterates the principle of the territorial integrity of states, but places a number of conditions on that affirmation. The Declaration implicitly authorizes the violation of territorial integrity if states are not "in compliance with the principle of equal rights and self-determination of peoples as described [in the Declaration] and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour."[36] The same language was adopted, without the qualifications of "race, creed, or colour," by the UN World Conference on Human Rights in 1993.[37] The conference replaced the words "race, creed, or colour" with the inclusive phrase "any kind." The UN General Assembly affirmed the modified text in 1995.[38] An expansive interpretation of this provision suggests that if peoples cannot exercise their right to self-determination internally because their government oppresses them or does not represent them, then they may exercise that right externally through secession.

Application of International Law to the Secession of Somaliland

Whether the legal doctrines just described entitle Somaliland to secede from Somalia requires a three-part analysis. First, self-determination is only available to "peoples" under international law. The obvious question, therefore, is whether the inhabitants of Somaliland are a "people." I argue that they are. Next, I explore whether self-determination allows Somaliland to secede as an instance of decolonization. In other words, did Somaliland retain a right to secede due to the invalidity of the Act of Union with Italian Somalia? I argue that it did. And finally, can Somaliland remedy its inability to exercise internal self-determination through secession? I argue that it can.

[35] *The Aaland Islands Question: Report Submitted to the Council of the League of Nations by the Commission of Rapporteurs*, League of Nations Doc. B7.21/68/106, at 28 (1921).
[36] G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, at 121, U.N. Doc. A/8018 (1970).
[37] U.N. Doc. A/Conf.157/24
[38] G.A. Res. 50/6 of 24 October 1995.

Are the Inhabitants of Somaliland a "People"?

A basic principle of international law is that "all peoples have the right to self-determination."[39] Unclear, however, is what group constitutes a "people." Scholars such as Marcelo Kohen argue that international law only allows one "people" to exist within the territory of a state. Under this theory, more than one "people" inhabit a state only if the state "defines itself as constituted by a plurality of peoples having the right to self-determination." The logic of the theory requires a distinction between "peoples," minorities, and indigenous populations, with only "peoples" enjoying a right to self-determination. Minorities and indigenous populations, these scholars argue, form part of the "people" itself.[40]

Other scholars argue that many "peoples" may exist within the territory of a single state. The Canadian Supreme Court embraced this view in an opinion concerning the right of the province of Quebec to secede from Canada. The court noted how restricting the term "people" to the "population of existing states would render the granting of a right to self-determination largely duplicative."[41] This latter view seems more logical than the former. If "peoples" were merely defined by the territory in which they lived, then there would be no tension between the principles of self-determination and territorial integrity, and the "safeguard clause" of the Declaration on Friendly Relations would be redundant.

Assuming that a "people" may form only part of the population of a state, as the inhabitants of Somaliland did within Somalia, the question remains how to define a "people." If the term "people" is defined merely by objective criteria such as distinct language, ethnicity, and religion, then the inhabitants of Somaliland are not a people. They speak Somali, are ethnically Somali, and practice Sunni Islam as do almost all Somalis.[42] Such an exclusive definition appears overly broad, however. For instance, Norwegians, Swedes, and Danes are considered different "peoples" despite their shared language, ethnicity, and religion.[43]

Subjective criteria may provide more useful tools for determining whether a group constitutes a "people" entitled to self-determination. According to a subjective sense of identity, a "people" may exist if it is perceived to exist. This self-awareness of group identification may exist because

---

[39] U.N. Charter art. 1, para. 2; International Covenant on Civil and Political Rights art. 1, Dec. 16 1966, 999 U.N.T.S. 171.
[40] Kohen 2006, 9.
[41] *Reference re Secession of Quebec*, 2 S.C.R. 217 (Can. 1998).
[42] Catherine Lowe Besteman, *Unraveling Somalia: Race, Violence, and the Legacy of Slavery* (Philadelphia: University of Pennsylvania Press, 1999), 3.
[43] Lars Vikør, "Northern Europe: Languages as Prime Markers of Ethnic and National Identity," in *Language and Nationalism in Europe*, ed. Stephen Barbour et al. (Oxford: Oxford University Press, 2000), 105.

the group perceives itself as existing, or because outsiders define the group as distinct from them, or some mixture of internal and external identification. Sartre, for example, argued that "the Jew is a man that other men consider to be Jewish . . . it is the anti-Semite that makes the Jew."[44] International criminal tribunals have embraced a similar subjective identification of groups in the context of genocide. The trial chambers of the International Criminal Tribunal for the former Yugoslavia (ICTY), for instance, have found that

> attempt[ing] to define a national, ethnical or racial group today using objective and scientifically irreproachable criteria would be a perilous exercise whose result would not necessarily correspond to the perception of the persons concerned by such categorization. Therefore, it is more appropriate to evaluate the status of a national, ethnical or racial group from the point of view of those persons who wish to single that group out from the rest of the community.[45]

It may be possible to translate the subjective identification of groups from the context of genocide to our discussion of national self-determination for peoples. The inhabitants of Somaliland, ethnic Somalis overwhelmingly of the *Isaaq* clan, were singled out by the former regime for persecution because of their clan affiliation.[46] By committing atrocities against a segment of its own people, and by defining that segment with an immutable and collective characteristic like clan affiliation, the state may have raised the *Isaaq* to the status of a "people" with rights of self-determination independent of the greater Somali community.

The inhabitants of Somaliland may have reinforced this external definition of identity by internally affirming their sense of communal solidarity. For example, the 2001 referendum in favor of independence may indicate that the inhabitants of Somaliland have embraced a common sense of political identity. This civic conception of group identity is distinct from the quasi-ethnic *Isaaq* clan identity.[47] Markus Höhne argues that the inhabitants of Somaliland have constructed a civic identity—that of "Somalilander"—from a common colonial history, a shared struggle against the Barre regime and the process of

---

[44] Jean-Paul Sartre, *Anti-Semite and Jew: An Exploration of the Etiology of Hate* (New York: Schocken Books, 1948), 69.

[45] Prosecutor v. Jelisic, Case No. IT-95-10-T, Judgment, 14 December 1999, para 70.

[46] Perlez 1989, A1.

[47] Opponents of the secession of Somaliland vigorously dispute the legitimacy of this referendum. The organization Northern Somalis for Peace and Unity, for example, argues that "[t]here was no prior agreement as to whether it should be conducted at all as was the case in Eritrea, no international presence whatsoever, no prior and free public debates, and even no clear and credible explanation of the provisions of the constitution to a population, which is largely illiterate and nomadic. In fact those who voiced their opposition to the secession were ridiculed, branded as traitors and imprisoned by the secessionist administration in Hargeisa; only those who were in favor were allowed to campaign and address the public."

nation-building since 1991.[48] Arguably, the combination of this internal and subjective validation of group identity with the external and "objective" clan distinction drawn by the former regime may elevate "Somalilanders" from a mere group to a distinct "people."

Can Somaliland Restore Its Previous Sovereignty?

The postwar process of decolonization recognized "peoples" as being the inhabitants of defined colonial territories.[49] Had Somaliland achieved independence from Britain and become a sovereign state in its own right through the normal process of decolonization, the question of whether Somalilanders were a "people" would therefore be a moot point. Somaliland could simply claim a right to self-determination under international law as a colonial people. Ironically, Somaliland did achieve independence in this manner, but then united with Italian Somalia to form a new state.[50] Were this union invalid, however, Somaliland could plausibly lay claim to its previous sovereign status. Assuming that recognition alone does not confer sovereignty upon a state, I argue that Somali unification could be invalidated because the Act of Union did not fulfill the criteria of a valid international treaty.

The two bilateral treaties drafted by British Somaliland and Italian Somalia for the purpose of unification may be invalid because they never received consent from the opposite party. Article 24.2 of the Vienna Convention on the Law of Treaties (Vienna Convention) stipulates that states must express their consent to be bound by a treaty for the treaty to enter into force. The treaty drafted by Somaliland, the *Law of Union between Somaliland and Somalia* (Law of Union), was to enter into force after being signed by the "duly authorized representatives of the peoples of Somaliland and Somalia."[51] Although the representatives from Somaliland signed the treaty, the representatives from Italian Somalia did not. Instead, the Legislative Assembly of the Somalia Trust Territory (Italian Somalia) approved "in principle" a different treaty, the *Atto di Unioni* (Act of Union).[52] The Act of Union differed substantially from the treaty drafted by Somaliland. The provisional President of the Republic, a southerner, then issued a presidential decree formalizing the union of the two states. Six months later, the *Atto di Unioni* was approved by the National Assembly. As formal agreements between two states, both treaties of unification therefore appear to lack the consent of the other party to the agreement.

---

[48] Höhne 2006, 409.
[49] Orentlicher 1998, 53.
[50] International Crisis Group 2006, 4.
[51] "Somaliland and Somalia: The 1960 Act of Union—An Early Lesson for Somaliland," http://www.somalilandlaw.com/Somaliland_Act_of_Union.htm.
[52] Ibid.

Assuming that the Act of Union did constitute a valid treaty, however, Somaliland could plausibly argue in the alternative that material breaches of the treaty under the dictatorship allow the North to terminate the agreement. Article 60.1 of the Vienna Convention allows parties to bilateral treaties to invoke breach as grounds for termination. Both the Law of Union and the Act of Union structured the new Somali state within a constitutional framework.[53] In 1969, however, the constitutional order was overthrown and a military dictatorship installed. Although the actor breaching the treaty was a military leader, not a signatory to either treaty, Somaliland could maintain that the conditions under which it agreed to unite with Italian Somalia no longer existed, thereby terminating their agreement.

In the event that the bilateral treaties unifying the two Somali states were invalid or terminated, Somaliland's claims to independence would not violate the territorial integrity of a united Somalia, since that union has ceased to exist. In such a scenario, Somaliland could possibly justify its secession as a valid exercise of self-determination under the decolonization framework of the Declaration on the Granting of Independence to Colonial Countries and Peoples. Viewed through this lens, the secession of Somaliland from Somalia would not dismember a sovereign state, but rather restore a previously sovereign state to its earlier status.[54]

Is Secession a Legal Remedy for Somaliland's Inability to Exercise Self-Determination Within Somalia?

International law may entitle the people of Somaliland to remedy their inability to exercise self-determination within Somalia by seceding from Somalia.[55] In an influential opinion, the Canadian Supreme Court found that a right to secession may arise "under the principle of self-determination of people at international law where 'a people' . . . is denied any meaningful exercise of its right to self-determination within the state of which it forms a part."[56] The people of Somaliland can argue that their right to self-determination has been denied in two ways. First, the violence of the Barre regime targeting *Isaaq* clan members denied the *Isaaq* a government that respected their civil, political, and human rights. Second, the current anarchy in Somalia denies the people of Somaliland any ability to determine their political destiny within the state because the state

[53] Ibid.
[54] Instances of independent and ethnically similar colonial states uniting and later breaking apart and securing independent sovereignty include Senegal and French Sudan forming the Mali Federation and Egypt and Syria forming the United Arab Republic. Both unions failed and all four states returned to their previous status.
[55] Assuming for the sake of argument that the inhabitants of Somaliland are indeed a "people."
[56] *Reference re Secession of Quebec*, 2 S.C.R. 217 (Can. 1998).

has ceased to exist. For these reasons, I argue that Somaliland has a right to remedial secession.

State authorities must respect the right of the state's entire population to internal self-determination and "[represent] the people . . . without distinction of any kind."[57] Therefore, if the state excludes a group from the decision-making process it violates that group's right to self-determination and may activate a right to remedial secession.[58] The Barre regime probably violated the self-determination rights of the *Isaaq* through its military campaign against them in the 1980s. The violence in Somaliland originated from tensions between the native *Isaaq* and *Ogadeni* refugees fleeing Ethiopia. Because livestock is the primary source of livelihood in Somaliland, the tensions chiefly concerned access to grazing land. The Somali government chose sides in this dispute. It armed *Ogadeni* militias and supported them with infantry, artillery, and aerial bombardments of *Isaaq*-populated areas. By violently supporting one clan over another, the Somali government clearly distinguished between certain Somalis whose rights it respected and others whose rights it did not. The government committed human rights abuses, detailed in a U.S. General Accounting Office Report (GAO Report), including targeted killings of *Isaaq* civilians, rape, beatings, theft, and destruction of property.[59] This combination of denying the *Isaaq* any meaningful ability to determine their own affairs and committing serious human rights abuses suggests that the Somali regime activated an international legal right for the *Isaaq* to secede from Somalia.

The collapse of the Barre regime, however, did not renew the ability of the inhabitants of Somaliland to exercise their right to internal self-determination, because the very institutions of governance themselves collapsed in 1991. Somaliland thus lacks a "parent state" within which it could advocate for its interests, achieve greater autonomy, or from which it could devolve into an independent state through a negotiated settlement. The internationally recognized government of Somalia, the Transitional Federal Government (TFG), cannot act as an ersatz "parent" because it does not exercise actual control over the country. In theory the TFG is the first success after 14 attempts to create a national unity government in almost as many years. In reality, it cannot even assemble in Somalia because of the ongoing civil war, Islamic insurgency, and proxy war being fought between Ethiopia and Eritrea through various Somali militant groups.[60] In short, the TFG is neither able to

[57] G.A. Res. 50/6 of 24 October 1995.
[58] Antonio Cassese argues that the right to secede requires both the denial of internal self-determination *and* human rights violations.
[59] GAO Report 1989, 4.
[60] Stephanie Hanson and Eric Kaplan, "Somalia's Transitional Government," Council on Foreign Relations Backgrounder (2008), http://www.cfr.org/somalia/somalias-transitional-government/p12475.

guarantee the rights of the inhabitants of Somaliland,[61] nor is it a government "representing the whole of the people"[62] of Somalia. Under these conditions, international law may allow Somaliland to secede from its anarchic southern counterpart as a remedial measure to guarantee its inhabitants their right to self-determination.

In the Absence of a Right to Secede Is Secession Still Valid?

Should Somaliland fail to hold a secessionist right to self-determination (either because its inhabitants are not a people, the union with Italian Somalia was indeed valid, or because it cannot claim secession as a remedy), international law may still legitimize its *de facto* secession as a procedural matter. Many scholars argue that international law neither authorizes nor prohibits secession. Instead, these scholars contend, secession is a fact that international law will recognize as legitimate if it succeeds.[63] Antonello Tancredi argues that international law addresses the procedure of secession, not whether it substantively occurs. His argument rests on the assumption that although international law is neutral on the issue of secession, the "dynamics of secession represent a process which potentially collides with international rules at a higher level, designed to protect the common interests of the intergovernmental community."[64] In other words, secession threatens the established order, so international law should guide the process along a nonthreatening path. Tancredi maintains that three procedural criteria must be met in order for international law to legitimate secession. First, the secession must occur without military aid from foreign states. Second, the population of the seceding territory must democratically approve of the secession. And third, secession must respect the principle of *uti possidetis*.[65]

The secession of Somaliland from Somalia fulfills these three criteria. The SNM defeated the Barre regime in conjunction with other Somali rebel groups, not with foreign assistance. The subsequent declaration of independence following Barre's defeat received clan support in 1993 and 1997 and democratic approval in 2001 through a referendum. Oddly, the secession also respects the principle of *uti possidetis* because Somaliland was a British protectorate prior to the union with Italian Somalia in 1960. Should Tancredi's criteria accurately reflect international legal requirements, then the secession of Somaliland may be procedurally legitimate, even if a substantive right to secession is lacking.

[61] The language of the *Aaland Islands Report*.
[62] The language of the "safeguard clause" of the Declaration on Friendly Relations.
[63] Franck 2000, 83.
[64] Tancredi 2006, 189.
[65] Ibid., 189–191.

CONCLUSION

The secession of Somaliland is a fact. I have argued that this fact enjoys international legal legitimacy for three reasons. The people of Somaliland may be considered a distinct "people" entitled to exercise rights of self-determination because they perceive themselves as such and because the former regime viewed them as a distinct group unworthy of state protection. Because of the likely failure of Somaliland and Somalia to formally unite through international treaties, Somaliland can possibly recover the sovereignty it briefly gained during the period of decolonization. The inhabitants of Somaliland may also claim a right to remedial secession as a result of their inability to realize their right to self-determination within a united Somalia. Failing both of these theories, their secession may find legitimacy under international law, which neither authorizes nor prohibits their departure from Somalia given their fulfillment of certain procedural criteria.