



## **DISSOLUTION OF UNION BETWEEN BRITISH AND ITALIAN SOMALIA: THE AFRICAN UNION AND THE DE FACTO STATEHOOD PLIGHT OF SOMALILAND**

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*Dissolution,  
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**ABSTRACT:** *Somaliland has remained a de facto State for the past thirty-one years because it has not received recognition from other States. The independence of Somalia on 18 May 1991 is a restoration of the 26 June 1960 independence as was the case with the Senegambia Federation between Senegal and Gambia etc. The specific objective of the study is to evaluate the union and dissolution of Republic of Somalia as well as the actions and inactions of the African Union in mitigating the de facto statehood plight of Somaliland sequel to its rebirth as an independent State. In accordance the study is guided by four research questions. The declarative theory of state is the theoretical framework while the qualitative method is the research methodology of the study. The study concludes that Somaliland meets the criteria for statehood under international law and as enshrined in Article I of the 1933 Montevideo Convention. The sui generis features of Somaliland present compelling rationale for it to be recognised. The African Union has the authority to decisively address the plight of Somaliland but the lack of interest is overwhelming. The study recommends that there should be accelerated implementation of the 2005 African Union Fact Finding Mission. The international community should not use the consent of Somalia as determining factor for the recognition of Somaliland because the union was voluntary and Somalia is not only a failed State but the worse failed state in the world for decades and there is no end in sight.*

### **1. INTRODUCTION**

Modern Somaliland was the British Protectorate of Somaliland that gained independence on 26 June 1960 after seventy-six years of colonialism and was recognised by more than 70% of independent States, including all the permanent members of the United Nations (UN). There was nothing like

the Organisation of African Unity that evolved into the African Union by this time but Somaliland was admitted as a member of the UN. After gaining independence that was internationally recognised, Somaliland voluntarily chose to enter into a union with Italian Somalia on 1 July 1960 to form the Republic of Somalia.

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The process of forming the union and the union was fraught with challenges that degenerated into the withdrawal of Somaliland from the union and a rebirth of Somaliland as a sovereign State on 18 May 1991. However, Somaliland had remained a de facto state since then – a period of thirty two years as at the time of writing, because of recognition challenges. The recognition by African Union would open the way for recognition by the international community and end the de facto plight of Somaliland. After wasting six years a Fact Finding Mission was sent by the African Union in 2005 to evaluate the situation in Somalia. The mission recommended that Somaliland should be recognised as a sovereign State.

The problem of the study is the failure of the African Union to amicably facilitate the recognition of Somaliland so that it would cease to be a de facto State. The specific **objective** of the study is to evaluate the union and dissolution of Republic of Somalia as well as the actions and inactions of the African Union in mitigating the de facto statehood plight of Somaliland sequel to its rebirth as an independent State. In accordance, the study is guided by the following **research questions**. What are the highlights of the union and dissolution of Republic of Somalia? What are the de jure statehood determinants in the light of Somaliland? What are the actions and inactions of the African Union in the recognition of Somaliland? What is the way out the de facto status plight of Somaliland?

Declarative theory of statehood is the theoretical framework of this study. The theory has developed an unambiguous and widely acceptable criterion for the rightful State. The declaratory theory is predicated on the Montevideo Convention of the Rights and Duties of States that list the elements of States

as: (1) Permanent population (2) Defined territory (3) Effective government (4) Capacity to engage in international relations with other States. Advocates of declarative theory are of the view that States exist independent of their recognition; which they perceive as just a formal acknowledgment of an entity that has achieved Statehood (Coggins, 2006). Declarative theory is in conformity with practical realities which is that in international law a new State acquires capacity by virtue of factual situation in specificity and not the consent of other countries (Shaw, 2003; Rrahmani, 2018).

Qualitative Method is the research methodology of the study. It consists of content and documentary analysis whereby data was gathered through mainly secondary sources like text books, journals, newspapers, internet materials etc. The gathered data was reviewed and critically analysed. The article is divided into five sections. We are already in the first section which is the introduction. The second is the union and dissolution of Somalia; the third section is de jure statehood determinants in the light of Somaliland; the fourth section is the African Union and way out of the de facto status plight of Somali and section five is the summary of findings, conclusion and recommendation.

## 2. UNION AND DISSOLUTION OF REPUBLIC OF SOMALIA

Somaliland is a product of dissolution and not secession from Somali Republic. During the colonial era, Northern Somalia was administered by Britain as a British colony (British Somaliland) while Southern Somalia was administered by Italy as an Italian Colony (Italian Somalia). The British Protectorate of Somaliland gained independence on 26 June 1960 after seventy-six years of colonialism – a period spanning from 1884 through 1960. At this time Southern Somalia was still a Trust

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Territory that has not gained independence. The independence of Somaliland facilitated the liberation of Southern Somalia as well as the initiative for the Union (Beyene, 2019; Meservey, 2021; Lewis, 2008).

At the period of its independence within the period of 26 June 1960 through 1 July 1960 most African States including Nigeria have not gained independence and there was nothing like the Organisation of African Unity which evolved into the African Union. On attainment of independence Somaliland received international recognition from thirty-five States including all the permanent members of the United Nations Security Council. They were also admitted into the United Nations. The United State sent a congratulatory message through Christian Herter the Secretary of States and Britain signed several bilateral agreements with Somaliland (Pijovic, 2014; Schwartz, 2021).

Somaliland enjoyed its independence for five days before it voluntarily joined the newly liberated Trust Territory of Somalia to form the Somali Republic on 1 July 1960 through the Act of Union treaty. Unfortunately, this bilateral treaty was fraught with fraud and irregularities. In tandem with the Vienna Convention on the Law of Treaty (VCLT), Somaliland and Somalia ought to give their approval to a treaty of such magnitude and eventually ratify it. This was not however the case as separate treaties were drafted by them. Somaliland forwarded its draft treaty to Somalia but this was neither reciprocated nor approved. Instead, Somalia drafted their treaty viz. Act of Union and the treaty was forwarded to a Somalia dominated national legislature for approval without going through the due process of consultation and approval by Somaliland. This makes the Act of the Union invalid under the spectacle of international law (Beyene, 2019).

The bilateral treaty for the union was also in violation of international law of treaty and the VCLT because it was not signed by both parties. The Law of the Union or draft treaty for union by Somaliland was exclusively signed by the authorities of Somaliland and the Act of the Union or draft treaty for union by Somalia was only signed by the authorities of Somaliland. There was no valid agreement for the union as both the Law of the Union as well as the Act of the Union was deficient in the approval of the other party (Beyene, 2019; Bryden, 2004; Hoch, & Rudincová, 2015).

The desire for a union hinged on the expectant benefits of a Greater Somalia made the people and authorities of Northern Somalia to ignore the illegality of the merger and forge ahead by voluntarily joining the union. But treaties are generally subject to reviews and amendments. Gross violations or breaches of a treaty can also lead to abrogation or dissolution. The leadership and people of Somaliland have decided that the Act of the Union treaty that was not ratified is irrevocably terminated because of gross breaches caused by the military disruption and dictatorship of Siad Barre. After 9 years of democratic government, the President of Somalia – Abdirashid Ali Sharmarke was assassinated in the October military coup that brought to an end the first republic of Somalia. General Barre became the Head of State and annulled the constitution as well as commenced a military dictatorial government (Beyene, 2019; Pijovic, 2013).

At the collapse of the military dictatorship of General Barre the leadership and people of Somaliland took the decisive action of declaration of independence on 18 May 1991. The declaration of sovereign statehood was such that Somaliland “reverts to the sovereign status [it] held at independence from Britain on June 26, 1960 ...” (Farley, 2010 p.783) The

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independence declaration by Somaliland is not remedial secession or dismemberment of a sovereign state but “restoration of a previously independent and sovereign state to its former status” (Beyene, 2019 p.4) Somaliland simply extracted itself from the failed State of Somalia by officially cancelling the Act of the Union that unceremoniously merged British Somaliland with Italian Somalia (Hoch, & Rudincová, 2015; Fakude, 2017).

Dissolution of union is not unprecedented in international relations. The Senegambia Federation between Senegal and Gambia was dissolved in 1989 after seven years. There was also the dissolution of the United Arab Republic between Egypt and Syria in 1961 after three years in existence. A union existed between French Sudan and Mali Federation from 1959 through 1960 when it disintegrated. In all the above cases of integration and disintegration the affected countries regained full independence and recognition (Roethke, 2011; Pijovic, 2014). Why should the case of Somaliland be different? Most countries are waiting for the consent of Somalia before they accord recognition to Somaliland.

The case of Somaliland should not be different because it is crystal clear that Somalia is not only a failed state but have remained the worse failed state in the world for decades. Somaliland “lacked any form of government between 1991 and 2000” (Pijovic, 2014 p.23). The situation has not improved as at the time of writing this article. How many more decades would Somaliland wait for Somalia to cease to be a failed State and have a recognised government that would endorse the dissolution. Also a recognised government for Somalia can emerge in the future shrouded with the complex of failure and extended aggression mentality for past woeful failures. In such a scenario that government would likely

want Somaliland to also fail by purposively denying the needful endorsement of the dissolution of union which is been awaited by the African Union and the international community.

Referendum is a prerequisite on issues that border on sovereignty but this was not the case with the union between Somaliland and Somalia obviously because of the very short duration of five days after the independence of Somaliland. A referendum was later conducted on 20 June 1961 and the people of Somaliland voted against the union (Hoch, & Rudincová, 2015). The treaty for the union was neither endorsed nor ratified (Kreuter, 2010). The Fact Finding Mission of the African Union confirmed that the “union between Somaliland and Somalia was never ratified” (Pijovic, 2014 p.23). Voluntarily Somaliland joined because of perceived prospect; they should also voluntarily leave when there are perceived threats and problems.

There was a referendum by the people of Northern Somalia as part of the process for the 1991 independence of Somaliland. Another referendum was conducted in 2001 – a decade later; for the ratification of the independence of Somaliland and adoption of an independent constitution. The referendum was monitored by the Initiative and Referendum Institute (IRI) which is a research and education group attached to the University of Southern California (Beyene, 2019; Snaddon, 2019). An overwhelming majority of eligible voters participated in the referendum of May 2001 and 97% voted in approval of an independence constitution and reaffirmed the 1991 restoration of independence to Somaliland (Pijovic, 2014; Meservey, 2021).

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### 3. DE JURE STATEHOOD DETERMINANTS AND DE FACTO SOMALILAND

De jure statehood in the context of this study is the state that has international legal personality or exists in accordance with international law. The criteria or conditions to fulfill statehood under international law are enshrined in Article I of the 1933 Montevideo Convention of the Rights and duties of states. Accordingly four elements are specified as requirement for statehood and these are: (a) a defined territory (b) permanent population (c) government (d) capacity to enter into relations with other states (Beyene, 2019; Fakude, 2017). Territory and population provide the physical structure for the existence of a state while government and capacity to enter into relations are the legal proof that the state can effectively function with the comity of nations (Hole, 2000). Evidently, Somaliland fulfils the Montevideo criteria for statehood.

Somaliland has a defined territory of 137,600 square kilometers located between Latitude 8°00' to 11°30' north of the equator and Longitude 42°30' to 49°00' east; encompassing the regions of Galbeed, Woqooyi, Awdal, Togdheer, Sanaag, Sool, and Sahil. This territory dates back to the Scramble for Africa when the border of British Somaliland was determined on the premise of international treaties among colonial powers between 1888 and 1897. As is the case with other African countries this colonial boundaries became the Republic of Somaliland upon independence in 1960. The northern fringe of Somaliland is very strategically positioned because it has a massive coastline along the Gulf of Aden – which is an indispensable sea route from the Indian Ocean to the Mediterranean and access to the Red Sea. Neighbouring countries are

Somalia, Ethiopia, Eritrea and Djibouti (Klobucista, 2018; Hoch, & Rudincová, 2015). Somaliland has a population of people which is another criterion of statehood under the law of nations. The population of Somaliland is approximately 3.5 million people with an estimated growth rate of 3.1% (Beyene, 2019). The population is dominated by the Isaaq ethnic group and distinct from other Somali people. There is the objective and subjective criteria for determining what constitutes a people. A large group of individuals living in a certain area and having a common language, ethnicity, culture, religion etc. are considered to be a people from the objective perspective (Markus, 2006).

In contrast to the objective criteria the subjective criteria of what constitute a people focuses on self-perception and external-perception as determining parameter. A group of individuals inhabiting a given area are said to be a distinct people if they perceive and consider themselves as distinct people. It has to do with respecting the sense of identity and belief of a group of individuals who consider them to be a distinct people (Beyene, 2019). Subjective criteria have to do with the external perception or opinion of people about a group of individuals with regard to distinct identity. The perception of others about a given people has a way of making them distinct. There are situations when outsiders perceive a group of people as different or unique as is the case with the Jews whose bond of affinity is anti-Semitism. Invariably the anti-Semitic behaviour of other people has played a major role creating a distinct identity for the Jews. In sum, people as criteria for population in statehood may arise when a group identifies themselves as distinct or because outsiders define them as such. In some case there is a

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blend of internal and external perception of population of people identity (Beyene, 2019).

The Swahili language is spoken in several African countries such as Democratic Republic of Congo, Kenya, Tanzania, and Uganda who see themselves as distinct population of people for Statehood (Beyene, 2019; Lambert, 1995). The people of Norway, Sweden, and Denmark also share the same culture and Old-Norse language (Beyene, 2019; Lars, 2000). This is also applicable to Somaliland and Somalia who speak the same language and share the same culture because it is the group of individuals that perceive or identify who they are as a population of people (Beyene, 2019). There is an array of disparity in the way of life between Somaliland and Somalia, despite similar language. In terms of occupation the people of Somaliland are mainly animal herding agriculturists while the people of Somalia are plant farming agriculturist (Lewis 2003).

Oppression, persecutions and war against a group of individuals have the propensity of carving out a distinct identity in the subjective context, for people who share the same language. This is especially the case when the language is spoken in a massive landmass as is the case with Swahili, Somali etc. In this subjective context, the shared experiences of colonialism and the persecutions of Siad Barre have consolidated their identity as a people entitled to statehood self determination (Hoch, & Rudincová, 2015).

Somaliland has an autonomous government with all the features of democracy. There is a revered constitution that is the supreme law of the land and guides governance at every level. There is clear separation of power amongst the executive, legislative and judicial arms of government (Beyene, 2019; Fred, 2006). The procedures and peaceful transition of government to Vice-President Kahin when

President Egal died in 2002 speak volume of the level of maturity of democracy in Somaliland (Pijovic, 2013). There are political parties as well as independent and relatively free media. Free and fair elections have been conducted at different occasions wherein executive and legislative positions are occupied by different political parties. Independent observes of the 2005 and 2010 elections in Somaliland reported that it was free and fair (Bradbury, 2008; Pijovic, 2013; Pijovic, 2014). These periodic elections are indications that Somaliland operates a democratic system of government. It has also served to legitimize the statehood of Somaliland and the dissolution of its union with Somalia (Beyene, 2019; Pijovic, 2014).

As earlier stated, the four criteria of statehood are population, territory, government and sovereignty. Although recognition is an essential determinant of the ability of a new state to enter into relations with other states it is not an indispensable condition for statehood. Recognition is a political act that can be explicitly or tacitly done hinged on the discretion of the state that is doing the recognition but has no significant position in international law. The implication is that a state has the right to defend its territorial integrity and sovereignty, define the jurisdiction and competence of its courts, administer services, legislate upon its interests, provide for its prosperity, and organise itself as it deems fit for the good of its people even before recognition (Beyene, 2019).

These notwithstanding, the positive benefits of recognition are overwhelmingly indispensable as unrecognised States are non-recipients of a myriad of international largesse and benefits such as: Political Influence, Foreign Direct Investment (FDI), Loans from IMF and World Bank, Multilateral and bilateral treaties,

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International personality status legible to receive audience by the International Court of Justice (ICJ) on grievances or transgressions, International trade flows and foreign aid, Transactions of tangible goods and commodities, Membership of International Organisations such as the United Nations etc. (Schwartz, 2021) Little wonder why Somaliland has been desperately seeking international recognition since the unilateral dissolution of the union.

#### **4. THE WAY OUT THE DE FACTO STATUS PLIGHT OF SOMALI**

A de facto State is an entity that exhibits the Montevideo elements of statehood; such as having a population, territory, government, and capacity to enter into relations with other States but deficient in international recognition (Richards, & Smith, 2015). A de facto State is a territory where the government is largely in control of its territorial parcels and must have sought but not received recognition as an independent State for a period of two years. Some entities are de facto States despite the fact that they have been recognised by a couple of States because they have not been able to achieve widespread recognition (Hoch, & Rudincová, 2015). Somaliland is “a political entity which has all the attributes of a modern state except for international recognition” (Hagmann, & Peclard, 2010 p.159; Brady, 2011).

Somaliland has remained a de facto State for the past thirty-one years because it has not received recognition from other States. African countries under the aegis of the African Union are reluctant to recognise Somaliland because of some factors. The most pertinent impediment to the recognition of Somaliland by African States is the tenacious cling to the sanctity of territorial integrity as bequeathed by colonial masters at independence as well as

working against actions that are perceived as capable of creating a dangerous precedent for secessionism in Africa (Pijovic, 2014). We would at this point present *sui generis* factors that makes compelling the recognition of Somaliland.

The first factor is the inviolability of colonial State boundaries. Over the years, the international community has attached very high premium on the sanctity of territorial integrity and the inviolability of the borders of a State. In the context of Africa, the Organisation of African Unity engrained in its Charter some very laudable articles and resolutions viz. Resolution AHG/Res. 16(1) on Border Disputes between African States – that sternly opposes the alterations of borders bequeathed by colonial masters at independence for reasons of eschewing secessionist movements as well as maintaining peace and stability (Hoch, & Rudincová, 2015). This disinclination to intrude in territorial borders of African countries by the Organisation of African Unity has been passed on to the African Union, whose Constitutive Act in Article 4 mandates members to respect borders inherited from colonial masters at independence for similar reasons (Pijovic, 2014). “The Declaration on the Granting of Independence to Colonial Countries and Peoples is predicated on the principle of self-determination for the justification of decolonization” (Beyene, 2019 p.198). Invariably, colonial boundaries are the fulcrum for the recognition of the territorial parcels of independent States by the African Union. This principle is applicable to Somaliland in every ramification. The territory of Somaliland is in line with this criteria and it’s sanctity a product of colonial boundaries inherited at independence. It is a “legitimate exercise of self-determination under the decolonization

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framework of the Declaration on the Granting of Independence to Colonial Countries and Peoples” (Beyene, 2019 p.199).

At the formation of the United Nations Organisation after the Second World War, the conventional requirement for independent statehood was hinged on the right of self-determination predicated on decolonization process which revolved on the orbit of the existence of colonial borders. Somaliland should be a *de jure* states by virtue of recognition since borders were clearly demarcated when it was a British protectorate and remains so till date (Pegg, 1998). The independence of Somaliland is not in violation of the sovereignty and territorial integrity of Somaliland because as a former British colony it has the statutory right to self-determination for independence. Somaliland was once an independent sovereign State that was recognised by the United Nations and more than 70% of the recognised independent countries of the world as at June 1960 (Pijovic, 2014; Kreuter, 2010; Pijovic, 2013).

The second factor is that Somaliland has been independent for the past thirty-one years and still progressing. The secession of Somaliland is uniquely in a class of its own and should be referred to as either disintegration or dissolution of union. Unlike Eritrea, Kosovo, South Sudan and other break away States; Somaliland has previously existed as an independent State and in 1991 chose to revert or return to her original status as an independent State within her colonial borders which is the acceptable standard in international law and the Constitutive Act of the AU (Pijovic, 2014; Meservey, 2021). Resurrection of previous statehood at the dissolution of the union with Somalia rightly explains the action of Somaliland and not secession in the actual sense. As a former

colony, Somaliland decided to exercise its legitimate right of self-determination (Hoch, & Rudincová, 2015; Kreuter, 2010) Somaliland is a reality because it is already in existence as a country with all the major institutions and backed by the strong will of the people to survive (Snaddon, 2019). Somaliland has as democratic government, security forces and issues its own currency as well as passport (Klobucista, 2018).

Undue marginalization and the absence of internal self determination is the third factor. Violation and denial of the internal self-determination rights of a people can legitimately trigger rebellion and propel the quest for external self-determination. This was the case with Somaliland in their union with Somalia because they were marginalized in important positions at the executive, legislative and judicial arms of government. Mogadishu in Somalia was made the State capital at the expense of Hargeysa and appointments into lucrative positions of authority were exclusively reserved for the population of Somalia to the detriment of the people of Somaliland. These blatant denials of right to internal self-determination made the population of Somaliland vote against the adoption of the referendum of 20 June 1961 (Beyene, 2019; Hoch, & Rudincová, 2015). “Also, within the first few years the enthusiasm for the unification waned as northerners began to realise how politically and economically marginalised they were becoming” (Bradbury, 2008 p.33). The concentration of opportunities and investments in a centralised system that empowered Southern Somalia aggrieved the population of Northern Somalia as the felt politically and economically marginalised (Pijovic, 2013). It also instigated the search for legitimate modalities to dissolve the union and restore their independence.

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Oppression and gross violation of human rights is the fourth factor. The disintegration of Somalia was sequel to oppression and gross violation of human rights which got to its climax in the regime of General Siad Barre who conducted brutal military campaigns against the territory and people of Somaliland including the bombing of strategic cities in 1988 (Hoch, & Rudincová, 2015; Beyene, 2019). Military forces loyal to General Barre killed about fifty thousand indigenes of Somaliland and compelled half a million people to flee to neighbouring countries such as Ethiopia. Major cities of Somaliland such as Hargeisa and Barao were virtually destroyed with bombs and shells (Meservey, 2021, Peter, 2011). There were cases of gruesome killings, wanton rape, confiscation and looting of private properties, unjust imprisonment and extrajudicial executions (Bradbury, 2008) There is provision for remedial right to secession based on gross and wanton violation of human rights (Caspersen 2009; Hoch, & Rudincová, 2015). Hugo Grotius and other renowned international law jurist are of the view that a ruler cannot exercise wills to govern and to destroy at the same time. “Among the various international human rights instruments, the Preamble to the Universal Declaration of Human Rights recognises the right to rebel against a government which is guilty of grave violations of human rights” (Nanda, 1981 p.4). When the fundamental rights and freedoms of a people are under genocidal magnitude threat, they have the right to cling to self-determination for self-preservation (Nanda, 1981; Beyene, 2019). Invariably, the violation of human rights at a genocidal level is a justification for seeking self-determination. Somaliland declared independence in 1991 to forestall a repeat of the

genocidal human rights violations it suffered (Beyene, 2019).

Anarchy in the failed State of Somalia is the fifth factor. General Barre fell in 1991 but violence and lawlessness persisted in a reckless form that has plunged Somalia into the archetype of a failed State (Pijovic, 2013). Somaliland unilaterally broke away from the union for autonomy because there was no recognised government in Somalia that would legitimately facilitate the procedure for amicable dissolution. Since the fall of Barre there has been no legitimate government for negotiations concerning dissolution of union or independence (Hoch, & Rudincová, 2015). As at the time of writing in 2022, Somalia is still embroiled in anarchy wherein the Somali Transitional Government (STG) control a minute fraction of Mogadishu with the help of African Union Mission to Somalia (AMISON) in contention with Al-Shabab – an al-Qaeda affiliate, as well as clans, pirates etc. who all jostle for power and influence. The rivalry and tussle for power between the different clans is such that there is no end in sight for the anarchy of Somaliland (Beyene, 2019). There prevalent anarchy and lack of infrastructure made the United Nations to declare that “Somalia possessed none of the attributes which enabled it to be recognised as a state by the international community and United Nations” (Hole 2000, p.90). For decades Somalia has remained the most failed state in the world (Kreuter, 2010). The **sixth** factor why Somaliland should cease to be a de facto with the recognition of the international community is that a reunion with Somalia is impracticable if peace has to be sustained in the Horn of Africa. There is no sensible way of persuading the people of Somaliland to come back to Somalia for a continuation of the union that was fraught with overwhelming challenges. An attempt to

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forcefully re-integrate Somaliland with Somalia with the instrumentality of war will not only be chaotic but futile because “they would rather die fighting than become part of Somalia” (Pijovic, 2014 p.29) The people of Somaliland have been enjoying their independence even without recognition for more than thirty one years now and have lost landed property, houses, physical assets, jobs, appointments, elective positions etc. when they fled or were chased out of Somalia. More importantly, the people of Somaliland have completely lost confidence and believe they would be more marginalised and more insecure in a union with Somalia since they have lost socio-economic and political rights for decades. They would be tenants and aliens in Mogadishu the capital of the worst failed State in the world for no fault of theirs (Bradbury, 2008; Pijovic, 2014).

We would at this point critically explore the non-recognition rationale and discuss the way out.

The unilateralism in the dissolution of the union is the greatest obstacle or cog in the wheel of recognition for Somaliland. The international community expects an agreement or consent of Somalia on the withdrawal of Somaliland from the union as is the practice with remedial secession. Evidently, the United Nations only recognises breakaway states when there is a bilateral agreement between the new State and the parent State as was the case with when “Ethiopia agreed to Eritrea’s independence in 1993, Indonesia acceded to Timor Leste’s sovereignty in 2002, Serbia assented to Montenegro seceding from their Union in 2006, and Sudan agreed to South Sudan’s independence in 2011” (Schwartz, 2021 p.3).

Like Kosovo, Somaliland had not been recognised by the United Nations because the parent state has not conceded. “In the case of

Somalia, because of the civil war and the political turbulence it has caused, Somaliland has had no opportunity to use the Somali political process since 1991 when the civil war began” (Kreuter, 2010:384). This explains the reason why talks have never gone above agreement on procedural matters despite the fact that “Somalia and Somaliland have met at the ministerial or head of state level as many as ten times in the past decade to discuss Somaliland’s status” (Schwartz, 2021 p.3)

Recognition by the African Union is the way out of the quagmire. To this end the government of Somaliland sought for the intervention of the AU and its “diplomats paid successive visits to the AU in 2003, 2004, and early 2005, and on that last visit Somaliland’s President Kahin sought observer status... have a permanent representation at the Union” (Pijovic, 2013 p.23).

Sequel to the appeal an AU Fact-Finding Mission (FFM) was dispatched and was in Somaliland from 30 April 2005 through 4 May 2005. The FFM concluded its assignment and gave very positive recommendations with respect to recognition of the independence of Somaliland. It was to the effect that the ‘secession’ of Somaliland was “unique and self-justified in African political history” (Pijovic, 2014 p.30) The FFM recommended that “the AU should be disposed to judge the case of Somaliland from an objective historical viewpoint and a moral angle vis-à-vis the aspirations of the people.” (Pijovic, 2014 p.23) In sum, the FFM was very supportive of the independence of Somaliland and recommended that the AU should treat the case of Somaliland based on its merit and peculiarities which cannot open a Pandora box because of its uniqueness that cannot be replicated in Africa (Pijovic, 2013).

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Despite the indication of willingness to treat as an outstanding case the applications of Somaliland; its bid for observer status have been relegated to the background for the past 17 years now as is the case with the very favourable reports of the FFM (Schwartz, 2021; Pijovic, 2013)

For the independence of Somaliland to be recognised by the United Nations (UN) there must be unanimous approval of the Security Council and the support of two-thirds of the General Assembly. Generally, countries grant recognition to a new State on merit and if it is in their own interest. In the assessment of the merits of an application, most countries take into consideration the position of the appropriate regional organisation such as the African Union. Somaliland would be admitted into the UN if its application is endorsed by the AU but it must first scale through the AU recognition huddle (Schwartz, 2021). Also the application of Somaliland to join the Commonwealth under observer status is still pending.

Some Western States such as Great Britain – its former colonial master, USA, France, Belgium, Sweden and even Russia have contacts and relations with Somalia. As a matter of fact the European Union, USA, Britain and France sent a delegation to observe the 2017 Presidential Election of Somaliland. This notwithstanding, no Western State at the time of writing, have accorded full recognition to Somaliland for reasons of avoiding diplomatic entanglements with the African Union (AU) – which is the primary constituency of Somaliland (Klobucista, 2018; Hoch, & Rudincová, 2015) Somaliland has tenaciously demonstrated adherence democratic government and principles. To this end USA should “provide the type of unfettered support for democracy

building activities in Somaliland” (Meservey, 2021 p.3).

Recognition by the African Union will open the way for the international recognition of Somaliland but AU is apprehensive of not setting what they perceive as dangerous precedent that would rouse other secessionist movements in Africa (Klobucista, 2018; Hoch, & Rudincová, 2015). This assumption is evidently wrong because the secession of Eritrea and South Sudan in 1993 and 2011 respectively, did not incite more secessionist movements. More so, the *sui generis* case of Somalia as a British colony that was granted independence cannot be replicated in Africa African countries such as South Africa, Ethiopia, Kenya Djibouti, and Ghana tacitly recognise the statehood of Somalia (Pijovic, 2013). In the course of formally acceding to the fact that Somaliland fulfils the requirement of Statehood as enshrined in the Montevideo Convention and accepting as legal tender the passport of Somaliland the authorities of South Africa declared that: “It is shameful that south Africa has failed to continue recognising the Somaliland passport given that other countries including the USA, UK, Kenya, Ethiopia, Djibouti and many others allow the passport to be used upon entry to their countries” (Somalia Sun, 2020 p.2).

“Ethiopia remains the most favourably disposed African country towards Somaliland’s recognition...it is also a key player in the AU, and can use its influence to Somaliland’s advantage.” (Pijovic, 2013 p.28) The tacit recognition of Somaliland by Ethiopia is complemented with strong bilateral agreements encompassing the use of the Port of Barbara in Somaliland and other vital socio-economic relations. The signing of the transit cooperation mechanism treaties with Somalia is an indication that the population of

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Somaliland are effectively in control of their territory and that it has the capacity to enter into relations with other States (Beyene, 2019). Despite these cooperation and close diplomatic relations “Ethiopia is against recognition of Somaliland due to its geopolitical position” (Hoch, & Rudincová, 2015).

## 5. SUMMARY, CONCLUSION AND RECOMMENDATION

Modern Somaliland is a product of dissolution of union and not secession from Somali Republic. The British Protectorate of Somaliland gained independence on 26 June 1960 after seventy-six years of colonialism and was accorded recognition by more than 70% of independent States and admitted into the United Nations. Somaliland enjoyed its independence for five days before it voluntarily joined the liberated Trust Territory of Somalia to form the Somali Republic on 1 July 1960 through the Act of Union treaty. Unfortunately, this bilateral treaty was fraught with fraud and irregularities. The leadership and people of Somaliland are of the view that the Act of the Union treaty is irrevocably terminated because of gross breaches caused by the military disruption and dictatorship of Siad Barre. The independence of Somalia on 18 May 1991 is a rebirth or restoration of the 26 June 1960 independence as was the case with the Senegambia Federation between Senegal and Gambia etc.

De jure statehood in the context of this study is a State that has international legal personality or exists in accordance with international law. The criteria or conditions to fulfill statehood under international law are enshrined in Article I of the 1933 Montevideo Convention of the Rights and duties of states. Accordingly four elements are specified as requirement for statehood and these are: (a) a defined territory (b) permanent population (c) government (d)

capacity to enter into relations with other states. Somaliland has all these features. Although recognition is an essential determinant of the ability of a new state to enter into relations with other states it is not an indispensable condition for statehood. This notwithstanding, the positive benefits of recognition are overwhelmingly indispensable as unrecognised States are non-recipients of a myriad of international largesse and benefits. Somaliland has been seeking international recognition to no avail since 1991 rebirth of its statehood.

Somaliland has remained a de facto State for the past thirty-one years because it has not received recognition from other States. African countries under the aegis of the African Union are reluctant to recognise Somaliland because of some factors. The most pertinent impediment to the recognition of Somaliland by African States is the tenacious cling to the sanctity of territorial integrity as bequeathed by colonial masters at independence as well as the working against actions that are perceived as capable of creating a dangerous precedent for secessionism in Africa. The *sui generis* features of Somaliland present compelling rationale for it to be recognised. An AU Fact Finding Mission (FFM) was dispatched to Somaliland from 30 April 2005 through 4 May 2005. The AU FFM was very supportive of the independence of Somaliland and recommended recognition. The favourable reports have been relegated to the background for the past 17 years now.

The study concludes that Somaliland meets the criteria for statehood under international law and as enshrined in Article I of the 1933 Montevideo Convention. The *sui generis* features of Somaliland present compelling rationale for it to be recognised. The African Union has the power and authority to decisively address the plight of Somaliland but the lack of



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interest is overwhelming. Recognition by the African Union will open the way for the international recognition of Somaliland. The international community is not also doing enough to savage Somaliland from its de facto statehood. The study recommends that there should be accelerated implementation of the 2005 African Union Fact Finding Mission. The international community should not use the consent of Somalia as determining factor for the recognition of Somaliland because the union was voluntary and Somalia is not only a failed State but the worse failed state in the world for decades and there is no end in sight. The United States and other developed democracies should reward the sincere commitment of Somaliland to democratic government by recognising it. The international community should as a matter of urgency; show interest and recognise the de facto State of Somaliland.

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