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The International Recognition of States

A Study of a legal and political concept through the comparison of
South Sudan and Somaliland

Master's thesis

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International Relations – Global order in Historical Perspective

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LIST OF ABBREVIATIONS

AU: African Union

CPA: Comprehensive Peace Agreement

EC: European Community

OAU: Organization of African Unity

SNM: Somali National Movement

SPLA: Movement Sudan People's Liberation Army

SPLM: Sudan's People Liberation Movement Sudan People's Liberation Army

SSLM: South Sudan Liberation Front

SRC: Supreme Revolutionary Council

TNG: Transitional National Government

UN: United Nations

1 Introduction

1.1 Background and Research Question

In the twentieth century, the international community of states has witnessed a significant enlargement of its members. Indeed, in less than a century, 150 new states emerged and were recognized as new actors of the international system. Nevertheless, despite this unprecedented emergence of states, the processes surrounding the recognition of statehood is not entirely understood by the academic community. Recognition of states is not to be confused with recognition of governments. Indeed, recognition of the government of a state assumes that the state is already recognized. And if a state refuses to recognize the government of another state, it does not imply that this state is not recognized as a member of the community of states¹.

Recognition by a state can be defined as the “acceptance by a state of any fact or situation occurring in its relations with other states”². Nevertheless, practices of states show that rules of international law with regard to recognition of new states are not implemented consistently by recognizing states. The reason is that recognition constitutes a complex process overlapping the fields of international law and international relations. Therefore, recognition is still a matter of fierce debate within the academic community as it touches upon fundamental notions such as statehood, sovereignty, and the ability for a state to interact with others in the international arena. As Lauterpacht puts it perfectly, “there are only very few branches of international law which are of greater, or more persistent, interest and significance for the law of nations than the question of recognition of states... Yet there is probably no other subject in the field of international relations in which law and politics appear to be more closely interwoven”³.

Traditionally, international law has considered two theories with regard to recognition. The constitutive theory postulates that recognition is a “necessary act before the recognized entity can enjoy personality”⁴. In other words, recognition is a political act constitutive of statehood. On the other hand, the declaratory theory postulates that a political community becomes a state if it meets certain criteria of effectiveness. The Montevideo convention stipulates that a state becomes a person of international law by possessing a permanent population, a defined

¹ Oppenheim, 2008: 146.

² Michael Schoiswohl, 2004: 6.

³ Hersch Lauterpacht, 1944. Page not retrieved due to the closing of the library during the coronavirus pandemic.

⁴ Jure Vidmar, 2012: 37.

territory, a government, and the capacity to enter relations with the other states⁵. When those criteria are met, the act of recognition is only a political act from recognizing states to acknowledge the established situation. Statehood is therefore created on legal grounds regardless of recognition. And if the entity proves its effectiveness and is not recognized by other states, it still possesses rights and duties in its international relations with other states.

Nonetheless, as Kelsen says, the problem of recognition “has neither in theory nor in practice been solved satisfactorily”⁶. Indeed, if contemporary scholars contend that international recognition is now analysed from a declaratory angle, practices of states show that ineffective entities are still recognized as states whereas effective entities are not recognized and evolve in diplomatic limbo by not enjoying international rights. Furthermore, practices leave no doubt that recognition is of crucial importance as it determines the legal capacity of an actor to enjoy international rights and duties in its relations with other states. Indeed, as Fabry states, recognition is essential for “the political, security, legal, economic, and sociocultural development of states”⁷. Indeed, whether recognition creates statehood or not, it is nevertheless considered as an essential element to acquire a status both in international relations and international law. And the quest for recognition remains a major factor of political conflicts, especially when an entity wishes to secede from its parent state and achieve independence.

This gap between theory and practice is highlighted by the cases of South Sudan and Somaliland. Indeed, by declaring its independence from Sudan in 2011, South Sudan is the newest member to enter the international community of states⁸. And although doubts were raised whether South Sudan met the legal criteria of statehood, its secession from Sudan was unanimously recognized by the international community. On the other hand, Somaliland, a stable and democratic *de facto* state with an effective control over its territory since it unilaterally declared its independence from Somalia in 1991, may better qualify for statehood than South Sudan⁹. Nevertheless, if recognition has been the ultimate objective for Somaliland since 1991, it is still not recognized by any members of the international community.

Therefore, this thesis aims to contribute to the existing literature on state’s recognition by proceeding to a comparative analysis of South Sudan and Somaliland. The thesis does presume to speculate on general findings about the practices of recognition. Rather, the focus will be put

⁵ Montevideo Convention on Rights and Duties of States art. 1, 26 December 1933.

⁶ Hans Kelsen, 1941: 605

⁷ Mikulas Fabry, 2010: 2

⁸ Redie Bereketab, 2012: 4

⁹ Redie Bereketab, 2012: 4

on the secessionist movements of South Sudan and Somaliland in order to explain how their comparison can help to understand the various dynamics leading to the decision to recognize one state but not another. The intention is to study the relationship between law and politics in the process of recognition. Therefore, this paper will put the emphasis on two different phenomena believed to have had an influence in the decision-making processes that led to the international recognition of South Sudan but not Somaliland. The first phenomenon under study is the role of international law, and especially of legal norms, defined by Krasner as “standards of behaviour defined in terms of rights and obligations”¹⁰. This paper will then put the focus on regulative norms of international law¹¹, understood as constraining states’ behaviour with regard to recognition of new states. The second phenomenon is the influence of international politics in the granting of recognition to an aspiring state. More specifically, I intend to analyse the influence of external and powerful actors in the recognition of states. With this in mind, this thesis will attempt to respond to the following research question:

Why was the independence of South Sudan unanimously recognized while Somaliland remains unrecognized by the international community?

In order to answer this overarching question, the following sub-questions will be addressed:

- What is the role of international legal norms in the process of international recognition?
- What political influence does the external actors have in the achievement of international recognition?

1.2 Research Design

1.2.1 Comparative Analysis

The method used in this thesis will be the comparative case study method. Indeed, the choice of the qualitative method of comparison is driven by its relevance for explaining differences between cases by following a common framework of analysis¹². As Bennett and Elman say, the comparative analysis has come to play an increasing role in the domain of international relations

¹⁰ Stephen, Krasner, 1982: 186.

¹¹ Finnemorre, Martha and Sikkink, Kathryn, 1998: 891.

¹² Chris Pickvance, 2005: 2.

due to its suitability for studying “complex and relatively unstructured and infrequent phenomena”¹³. The case study method appears then appropriate to study the causal processes that led to different outcomes between similar phenomena. More specifically, the case study method used in this paper will be the most-similar case comparison. This method is derived from the logic of Mill’s method of difference, consisting in choosing cases that “are as similar as possible in all but one independent variable and that differ in their outcomes”¹⁴. By doing so, it becomes possible to attest that the different outcomes between the cases originate from the difference in the independent variable. With regards to the gathering of sources, the option chosen is the qualitative method of document analysis. Indeed, this technique allows to interpret a wide range of documents in order to find patterns and answer my research questions.

1.2.2 Case Studies

The choice of the two case studies are justified by their similarities in many aspects. Both South Sudan and Somaliland are situated in the same sub-region of the horn of Africa. Therefore, the two movements were subjected to the same regional dynamics and mechanisms arising from common neighbouring countries. Furthermore, both struggles for secession and claims for recognition were initiated after of the process of decolonisation, whose era was particular with regard to international responses to recognition of statehood. Also, in both cases, the population seeking secession suffered violence and human rights abuses from their parent states. And both case studies are identified with a specific population and territory within the parent state. Thus, South Sudan and Somaliland both used similar strategies to legitimize secession, by referring to the same legal norms of international law, among which the right of self-determination and remedial secession. Finally, another common feature lies in the referendums implemented demonstrating a strong popular support for secession from the parent state.

The different outcome between South Sudan and Somaliland is the success of the secessionist movements considered as the achievement of statehood through the recognition of the entity as a sovereign state by the international community. To explain this different outcome, the difference between the two cases is the influence of external actors, more specifically the great powers, in the legitimization of the secession and its international recognition.

¹³ Andrew Bennett and Colin Elman, 2007: 171.

¹⁴ Andrew Bennett and Colin Elman, 2007 175.

The next chapter of the thesis will consist to present the legal and political implications of the process of recognition. It will attempt to provide a comprehensive understanding of the dynamics surrounding the issue of state's recognition. Therefore, after presenting the dynamics surrounding the debate between the constitutive and declaratory theories, I will explain why this debate does not provide a satisfactory framework to properly understand the practice of recognition. Thus, the focus will be put on the influence of the principle of self-determination as a legal norm for recognition. Finally, the influence of international politics in state's recognition will be described. The second chapter will consist of the comparative analysis of South Sudan and Somaliland. Therefore, by analysing the similarities and differences between the two cases, this thesis will attempt to provide an answer to the research questions.

2 State Recognition

2.1 International Law: The great debate

Among scholars of international law, the debate about the creation of statehood has been historically dominated by two competing theories: the declaratory and the constitutive theories. The debate is still a source of academic research, as the theories defend conflicting interpretations about the legal function of state's recognition.

The constitutive theory makes recognition by other states as a prerequisite for the creation of statehood. As Oppenheim says, “a state is, and becomes, and International Person through recognition only and exclusively”¹⁵. Indeed, as the international community is constituted of states, they are directly concerned and should have a key role in the admission of new members¹⁶. Discretion of states is seen as indispensable to maintain international stability. Therefore, recognition is not automatic but a voluntary and political choice. The constitutive view was popular during the nineteenth century. As Nicholson and Grant show, if international law is considered as “a system of rules applying between states”, the states must be able to shape it¹⁷. Constitutive theorists do not argue that legal criteria should be ignored, but that without recognition, a state does not exist in the legal sense, having no rights among the international community.

Criticism of the constitutive theory have argued that it is subjective and can freely ignore facts on the ground. But the main criticism points to the unlimited discretion of recognizing states. As Worster argues, a constitutive recognition makes the state subject to recognizing states' choices¹⁸. Thus, states could abuse their position by using recognition as a tool to follow self-interested considerations¹⁹. It is thus argued that the constitutive model opens the door to *realpolitik* by introducing international politics into international law²⁰. Furthermore, the constitutive theory is considered as eroding equal sovereignty between states. If states are equal, how the creation of a state can be unilaterally decided by others? Another problem comes from the incoherencies created by the discretion of states. Indeed, by making statehood dependent

¹⁵ Thomas Grant, 1999: 2.

¹⁶ Oppenheim, 2008: 128.

¹⁷ Thomas Grant and Rowan Nicholson, 2020: 28.

¹⁸ William Thomas Worster, 2009: 148.

¹⁹ Jure Vidmar, 2012, 377.

²⁰ William Thomas Worster, 2009: 148.

upon recognition, what happens when a new state is recognized by a state but not by another? This situation leads to what Lauterpacht calls a “mascarade”²¹. Then comes the question: how many states are necessary for an entity to be universally accepted as a state? For instance, Kosovo received a significant amount of recognitions but remained unrecognized by many other states. Thus, is Kosovo a state or not? The question of where to put the threshold of the number of recognitions necessary for achieving statehood is currently without answer.

In response to the constitutive theory, the declaratory theory postulates that a state comes into being by meeting legal criteria of effectiveness. Those legal criteria are often referred to as the criteria outlined in the Montevideo Convention²². Signed in 1933, the Montevideo Convention refers to the attributes of statehood as being: A permanent population²³, a defined territory²⁴, a government²⁵, and the capacity to enter relations with the other states²⁶. In the declaratory model, recognition by other states is not a condition of statehood but a mere acknowledgement of the existing situation. It is a purely political act with no effect on statehood²⁷. Thus, the state can exist and have rights without being recognized. And if an entity meeting the requirements of statehood is not recognized, it has still the right to be treated as such by the international community²⁸. And as statehood is independent of recognition, discretion of states is limited. And contrary to the constitutive theory, the argument is that international stability is maintained when states are bound together by common rules of behaviour.

As for the constitutive theory, the declaratory model has raised many criticisms. A first criticism refers to the fourth criteria of the convention, the “capacity to enter relations with other states”. Sterio considers that it implies recognition as an element of statehood. As she argues, “an entity claiming to be a state cannot conduct international relations with other states, unless those other states are willing to enter into such relations with that entity”²⁹. As Crawford says, this criterion is more a consequence of statehood achieved through recognition³⁰. Furthermore, if recognition

²¹ Hersch Lauterpacht, 1944. Page not retrieved due to the closing of the library during the coronavirus pandemic.

²² The Montevideo Convention on Rights and Duties of States, December 26, 1933. Article 1.

²³ Peter Radan refers to the community around which the new state organizes itself. No rule about the size of the population is specified (Peter Radan, 2020: 49).

²⁴ Peter Radan refers to the exclusive and effective control of the territory, with no regards to its size or contiguity (Peter Radan, 2020: 49).

²⁵ James Crawford defines it as the “the actual exercise of authority, and the right or title to exercise that authority” (James Crawford, 2007: 57), while Radan refers to the “existence of effective government” exercising authority over its territory and its people (Peter Radan, 2020: 49).

²⁶ James Crawford refers to the ability of the territorial entity’s government to act on his own behalf in its relations with the international community (James Crawford, 2007: 62).

²⁷ Milena Sterio, 2013: 48.

²⁸ Jure Vidmar, 2012: 362.

²⁹ Milena Sterio, 2013: 48.

³⁰ James Crawford, 2007: 61.

is now believed to be declaratory, constitutivists argue that it is not followed by the practices of states. Thus, practices leave no doubt that without recognition, the so-called states do not enjoy legal rights within the international society. Moreover, some states do not or have never met the criteria of the Convention, and still they are fully recognized as states. Thus, a large proportion of African ex-colonial states are what Robert Jackson calls “quasi-states”³¹. Their statehood is considered incomplete as they display a considerable lack of basic features of states. Somalia for example, does not have a functional government and no effective control over its territory since the 1990s³². And yet, no states ceased to recognize it. Furthermore, some entities fully meet the requirements without being a state or even claiming to be one, as with Taiwan which claims to represent the Republic of China³³.

Furthermore, criteria are considered incomplete and only based on principles of effectiveness. As Grant says, the convention summarizes statehood only as “the ability of a government to exercise control over a definite territory and people”³⁴. How the government came to power and how it governs is no relevant as long as effectiveness is demonstrated. Therefore, it is argued that additional criteria are necessary. Among them is the willingness to comply with international law. Crawford claims that if an entity seems unable or reluctant to conform with peremptory norms of international law, “it is not entitled to be regarded or recognized as a sovereign and independent power”³⁵. In 1969, the Vienna Convention of the law of treaties defined a peremptory norm as “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted”³⁶. Those norms aim to protect the international order by codifying the use of force and the protection of human rights³⁷. Therefore, Radan and Grant put forward the protection of human rights, especially minority rights, as a precondition for statehood³⁸. Indeed, protection of minorities has evolved as a rising concern for international law. During the break-up of Yugoslavia in 1991, the EC made the recognition of Croatia and Slovenia dependent upon the commitment to additional requirements among which was the obligation to protect the democratic rights of ethnic minorities³⁹. Similarly, Crawford and Grant consider that democracy is well positioned for becoming a new

³¹ Robert Jackson, 1993 : 21.

³² Thomas Grant and Rowan Nicholson, 2020: 27.

³³ Thomas Grant, 1999: 439. In: *Defining Statehood: The Montevideo Consent and its Discontents*.

³⁴ Thomas Grant, 1999: 105.

³⁵ James Crawford, 2007: 91.

³⁶ James Crawford, 2007: 100.

³⁷ James Crawford, 2007: 101.

³⁸ Peter Radan, 2020: 52. Thomas Grant, 1999: 97.

³⁹ Peter Radan, 2020: 52. Thomas Grant, 1999: 98.

criterion⁴⁰. In the context of the achievement of statehood, Crawford sees the “consent of the governed” as a precondition for recognition⁴¹. Thus, the use of violence or disregard for elections should be sufficient to deny recognition⁴². Finally, self-determination as the right of a ‘people’ to freely determine their political status is proposed by some as a new criterion for statehood. Indeed, self-determination offers the right to statehood to a people under alien subjugation. Crawford believes that people entitled with this right and seeking independence should be recognized⁴³. Nevertheless, the addition of criteria is not necessarily reflected by the practices of recognition. As Grant argues, they are based on politically-inspired norms of international law. Additional criteria are thus not universally accepted as legitimate because they can be manipulated to legitimize political outcomes⁴⁴.

In an attempt to reconcile the two theories, some scholars have proposed hybrid approaches to recognition. Indeed, neither the declaratory and constitutive doctrines are satisfactory to address the process of recognition. As Kelsen explains, the reason is that recognition is “a subject of enormous complexity, principally because it is an amalgam of political and legal elements in a degree which is unusual even for international law”⁴⁵. Lauterpacht proposed a theory of collective recognition⁴⁶. Admitting that recognition is “constitutive, as between the recognizing state and the new community, of international rights and duties associated with full statehood”⁴⁷, he asserts that an international organ should be tasked with granting it⁴⁸. And in the absence of such an organ, Lauterpacht argues that existing states have a duty to recognize entities when they meet the legal criteria of statehood⁴⁹. But as Kelsen says, “existing states are only empowered, they are not obliged, to perform the act of recognition”⁵⁰. In the same vein as Lauterpacht, Dugard considers that admission to the UN should imply a duty to recognize⁵¹. However, as Radan shows, it is not sufficient as practices show that members states are not obliged to recognize other members⁵². For instance, Israel is a member of the UN even though it is not recognized by some other members⁵³. Finally, Schoiswohl considers that recognition

⁴⁰ Thomas Grant, 1999: 94.

⁴¹ James Crawford, 2007: 150.

⁴² Thomas Grant, 1999: 94.

⁴³ Thomas Grant, 1999: 87.

⁴⁴ William Thomas Worster, 2009: 159.

⁴⁵ Joseph Kuntz, 1950: 713.

⁴⁶ Hersch Lauterpacht, 1944. Page not retrieved due to the closing of the library during the coronavirus pandemic.

⁴⁷ Hersch Lauterpacht, 1944. Page not retrieved due to the closing of the library during the coronavirus pandemic.

⁴⁸ Thomas Grant, 1999: 126.

⁴⁹ Jens Bartelson, 2013: 315.

⁵⁰ Hans Kelsen, 1941: 610.

⁵¹ William Thomas Worster, 2009: 121.

⁵² Peter Radan, 2020: 54.

⁵³ Peter Radan, 2020: 54.

should be both declaratory and constitutive. As he argues, in cases where there are no doubts about the fulfilment of the criteria by an entity, and when its new status is not disputed, recognition has no legal effect and should be declaratory⁵⁴. However, when it is disputed whether the entity have met the requirements of statehood, recognition is essential and then constitutive of the entity's new status⁵⁵.

2.2 The principle of Self-determination

The principle of self-determination is of special importance as it has a long history in state's creation. Generally speaking, self-determination refers to the concept according to which a socially cohesive group of people is recognized as having a legitimate right to freely determine its political status, whether it be through political autonomy, association, or statehood⁵⁶. As Fabry shows, self-determination started to play a role in state's creation during the 19th century as a negative right for ethnic people to determine their political destiny provided that facts evidence that they can do it⁵⁷. Recognition was granted only to assumed 'civilized' entities that could effectively control their territory⁵⁸. It is in the aftermath of the Second World War that the concept found its way towards a legal and positive right under international law. The prerequisite of effectiveness was abandoned when the UN charter stated that its purpose was "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". The idea was to encourage member states to allow minority groups to more self-governance⁵⁹. As Crawford shows, more than a rule of international law, self-determination was understood as a "principle of justice and of liberty"⁶⁰, and therefore led to varied interpretations in its application. Thus, self-determination was strongly connected to the process of decolonization as it became the spearhead of colonized people in their struggle with colonial powers to achieve statehood. This connection was made clear in 1960, when the *Declaration on the Granting of Independence to Colonial Countries and Peoples*, stated that the people entitled with the right of self-determination were the "specific peoples of colonial non-self-governing and trust territories"⁶¹. It was therefore embedded in international law as a

⁵⁴ Michael Schoiswohl, 2004: 42.

⁵⁵ Michael Schoiswohl, 2004: 43.

⁵⁶ Michael Schoiswohl, 2004: 60.

⁵⁷ Mikulas Fabry, 2020: 39.

⁵⁸ Mikulas Fabry, 2020: 41.

⁵⁹ Milena Sterio, 2013: 11.

⁶⁰ James Crawford, 2007: 111.

⁶¹ Mikulas Fabry, 2020: 41.

legal norm for all people under colonial rule to achieve statehood and been recognized as such by the international community. As Jackson says, most of African countries achieved statehood not through criteria of effectiveness but only through the obtainment of a “title to exercise authority over a certain territory”⁶².

But a problem emerged when the principle continued to be called upon after the decolonization context by movements wishing to secede from their parent state. Indeed, secessionist claims for the right of self-determination started to pose a serious challenge to the territorial integrity of states⁶³. Especially to newly African independent states that achieved statehood through the decolonial process, as they display a high level of ethnic heterogeneity within borders inherited from the colonial era. If it was clear during the colonial context that the bearer of the right were the multi-ethnic people “as a whole” living under colonial rule, no definition of the people was provided after the decolonization⁶⁴. In other words, if the ‘people’ first corresponded to the territory of the colony, with no regards to the diverse ethnic groups living in it⁶⁵, the question raised to whether distinctive features like religion, language, cultural heritage, or racial background were sufficient to qualify a people as entitled to the right of self-determination once colonies achieved their independence⁶⁶. The issue relied in the subjectivity going along with the self-perception of a group as a ‘distinct people’ that should form its own political community⁶⁷.

In 1970, the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States*, reaffirmed that the right of self-determination was referring to the people living under European colonial rule. The right to independence was limited to the decolonization process and newly established states should enjoy a right to territorial integrity as long as they represent the entire people “belonging to the territory without distinction as to race, creed or colour”⁶⁸. Outside the colonial context, claims of self-determination by ethnic groups were then subordinated to the territorial integrity of states and understood as a right to more participation within the inalienable borders of their state. Henceforth, as Laoutides shows, the principle of *Uti Possidetis* was introduced to confirm “the borders of colonies as the borders of the new independent states”⁶⁹. Thus, as Kohen explains, the stability of African borders

⁶² Gerard Kreijen, 2004: 148.

⁶³ Marcelo Kohen, 2006: 102.

⁶⁴ Milena Sterio, 2013: 11.

⁶⁵ Milena Sterio, 2013: 11.

⁶⁶ Stephen Oeter, 2015: 131.

⁶⁷ Stephen Oeter, 2015: 131 and Milena Sterio, 2013: 16.

⁶⁸ Milena Sterio, 2013: 12.

⁶⁹ Costas Laoutides, 2020: 64.

since the decolonization is due to the introduction of the principle by the OAU in the Cairo Resolution in 1964 as a new criterion to the interpretation of self-determination⁷⁰. Establishing the definitive delimitation of African borders fixed by colonial powers, no challenges by ethnic groups to the existing borders were allowed without the consent of the parent state. *Uti possidetis* became thus the main means to prevent secessionist movements from being recognized. For instance, Biafra's secession from Nigeria in 1967 was not recognized because the OAU was supportive of the territorial integrity of its parent state⁷¹.

Therefore, two conceptions of the right to self-determination emerged, an internal and an external one. If the external right of self-determination, understood as the achievement of statehood, was assumed to have been already achieved during the decolonization process. The internal aspect aimed to find a balance between respect for territorial integrity and protection of human rights. As Gadkowski defines it, it refers to "the right of peoples organised as states to freely decide on the political, social and economic system that their state should adopt"⁷². Thus, outside the colonial context, the right of external self-determination fell by the wayside as it coincides with the concept of unilateral secession, defined by Kohen as "the separation of part of the territory of a state which takes place in the absence of the prior consent of the previous sovereign". An issue about which international law prefers to be neutral, as it is of direct relevance with the sovereignty of states⁷³. Indeed, as Moore outlines, the right of self-determination had a potential "destabilizing effect for the international system"⁷⁴ if considered as a universal right to independence for all ethnic groups. As the Vienna Declaration stated in 1993, the right of self-determination "shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory without distinction of any kind"⁷⁵. The idea was that states enjoy their territorial integrity if they behave in accordance with the internal right of self-determination.

But what happens when a state does not act in compliance with an equal representation of its people? International law remains unclear on the issue. Indeed, by not addressing the issue of

⁷⁰ Marcelo Kohen, 2006: 27.

⁷¹ James Crawford, 2007: 406.

⁷² Tadeusz Gadkowski, 2017: 27.

⁷³ Marcelo Kohen, 2006: 27.

⁷⁴ Margaret Moore, 2003: 4.

⁷⁵ James Crawford, 2007: 118.

secession outside the colonial context, Sterio argues that international law became “outdated”⁷⁶. Today, if secession is authorized when the parent state consents to it, international law remains relatively silent on the question of unilateral secession, neither formerly prohibiting or allowing it, except in two ways. When an entity is still considered as a colony and wish to break away from its metropolitan state, and when a territory is considered as being under occupation⁷⁷. Nevertheless, if it wants to be coherent with its emphasis on the protection of human rights, international law should give more importance to the question of the morality of secession.

Therefore, contemporary scholars came to consider that the denial of rights entails a right to external self-determination, and then a moral right to secession for non-colonial people. Among them, Buchanan developed what is called the ‘remedial right’ to secession. Derived from John Locke’s theory on the right to revolution, whereby “the people have the right to overthrow the government if and only if their fundamental rights are violated, and more peaceful means have been to no avail”⁷⁸, Buchanan states that a group’s right to secede is morally justified “if and only if it has suffered certain injustices, for which secession is the appropriate remedy of last resort”⁷⁹. As a just-cause theory of secession, the ‘remedial secession’ states that a group needs a “just cause” to have the right to secede⁸⁰. Buchanan refers to a group whose physical survival is “threatened by actions of the state”⁸¹. The denial of the internal self-determination is not sufficient for a ‘remedial’ secession as the group must be victim of extreme violence. Another condition for the right to ‘remedial secession’ refers to the injustice created when a territory has been illegally taken away and incorporated into another state⁸². Only under those conditions the remedial right to secede can be applied.

This section outlined the incoherencies surrounding the principle of self-determination as a legal right to achieve statehood. It shows that the belief whereby statehood must be subjected to effectiveness was not supported by the practices during the colonial context. Most colonial states are then considered as ‘juridical’, as they lack the basic features of states as prescribed by international law. As Bull and Watson argue, they are recognized as states in the legal sense because the international community decided to “only by courtesy”⁸³. Nevertheless, as the principle continues to fuel claims to statehood, the challenge of self-determination, a legal right

⁷⁶ Milena Sterio, 2015: 299.

⁷⁷ Allen Buchanan, 2004: 333.

⁷⁸ Allen Buchanan, 1997: 35.

⁷⁹ Allen Buchanan, 1997: 35.

⁸⁰ Milena Sterio, 2013: 19.

⁸¹ Allen Buchanan, 1997: 37.

⁸² Allen Buchanan, 1997: 37.

⁸³ Gerard Kreijen, 2004: 149.

enshrined in international law, is that respect for self-determination of peoples and territorial integrity of states must be balanced in a sensitive manner.

2.3 The influence of International Politics

In an attempt to explain the gap between theory and practice, other scholars came to consider that recognition is motivated by international politics. Taking for granted that recognition has a constitutive effect in the sense that it is external legitimacy that determines if statehood can be exercised within the international community, those scholars outline the influence of external actors in the process of recognition. Indeed, as Coggins says, states are not equal and the most powerful ones, the so-called ‘great powers’, play a “especially important role in the selection of new members”⁸⁴. As Sterio says, great powers are super-states, because they are the most “militarily, economically, and politically potent players” of the international system⁸⁵. According to Levy, a great power has “unusual capabilities with which to pursue its interests in interstate relation; uses those capabilities to pursue unusually broad and expansive foreign policies beyond its immediate neighbourhood or region; and seeks to influence the course of international affairs”⁸⁶. However, identifying great power’s status remains subjective, depending on which capabilities qualify a state as such. If members of the UN security council, with their veto power, are often referred to as great powers, as they possess a tremendous political influence over international issues, others would refer to economic powers and include the members of the G8⁸⁷.

Therefore, because states are not equal in their influential capabilities, international issues like recognition of states will reflect this inequality. Thus, because they have a greater relational power, great powers’ decisions are the most important ones on the question of recognition as they can influence other states’ decision-making processes⁸⁸. Therefore, when a secessionist movement advances the interests of the most powerful states, it will be more likely recognized as a state. Sterio considers thus the support of the great powers as a new criterion in the interpretation of the right of self-determination. Indeed, she argues that if a secessionist people seeking self-determination must first show that it has suffered massive abuses from the parent

⁸⁴ Bridget Coggins, 2014: 216.

⁸⁵ Milena Sterio, 2013: 44.

⁸⁶ Volgy, Thomas J., et al. 2011: 6.

⁸⁷ Milena Sterio, 2013: 45.

⁸⁸ Bridget Coggins, 2014: 9.

state, it must also obtain the great powers' support in order to legitimize its secession⁸⁹. This additional criterion is what Sterio calls the "great powers rule"⁹⁰. Indeed, as many smaller states depend on the great powers for economics and political issues, they often follow their foreign policies. Therefore, as Coggins calls it, recognition by great powers often leads to a "cascade" of recognitions by other states⁹¹.

Nevertheless, great powers have no advantage in having unlimited discretion to decide which state to recognize. And great powers are incentivized to coordinate their actions to maintain international order⁹². Indeed, international stability is threatened when great powers disagree with each other. By collectively aligning their own preferences, great powers avoid conflict between them and maintain the international order. Thus, great powers may choose not to support an entity aspiring to external self-determination if it will be perceived as a provocation by another powerful state. Furthermore, a collective recognition from the great powers ensure more legitimacy for the aspiring state. Thus, as Coggins says, some aspiring states were universally recognized despite dubiously meeting the legal criteria of statehood because self-interested considerations from the great powers aligned positively with each other⁹³. However, when the great powers' interests do not converge, international stability is at risk and the situation will remain in status quo. The secessionist movement remains unnoticed by the international community by not receiving substantial media attention. Therefore, as Sterio says, the support of the great powers "has determined the outcome of almost every self-determination struggle over the last few decades"⁹⁴. And as Coggins outlines, as international politics are dynamic, great powers' interests can evolve over time, and with them the chances of a secessionist movement to achieve statehood⁹⁵.

But great powers' alignment of preferences is not sufficient to legitimize recognition of a new state. As Fabry shows, even great powers have to justify their recognition choices through legal norms⁹⁶. Otherwise, recognition in violation of a norm will put the system's stability at risk. Indeed, great powers prefer to evolve in a stable international system based on shared rules and norms, as it restrains their respective powers in their relations with each other⁹⁷. However, in

⁸⁹ Milena Sterio, 2013: 60.

⁹⁰ Milena Sterio, 2013: 60.

⁹¹ Bridget Coggins, 2011: 449.

⁹² Bridget Coggins, 2014

⁹³ Bridget Coggins, 2014: 10.

⁹⁴ Milena Sterio, 2013: 69.

⁹⁵ Bridget Coggins, 2018: 30.

⁹⁶ Mikulas Fabry, 2020: 45.

⁹⁷ Mikulas Fabry, 2020: 45.

the absence of a universally shared organ to interpret norms with regard to recognition, the risk is that great powers may arbitrarily invoke them to follow their own political agenda⁹⁸. This situation led Krasner to consider the regime of recognition as an “organized hypocrisy”⁹⁹. As he says, if states were not pursuing self-interested politics with regard to recognition, there would be no tension between the declaratory and constitutive theories, and all entities with an effective control over its population and territory will be recognized as having rights within the international system¹⁰⁰. In his understanding of the process of recognition, Krasner refers to two different logics of state’s behaviour: the logic of consequences and the logic of appropriateness. Developed by March and Olsen, the logic of consequences postulates that the state is a rational actor whose actions are driven by a calculation of the expected outcomes in order to maximize its interests¹⁰¹. On the other hand, the logic of appropriateness emphasizes the role of rules and identities in shaping state’s behaviour in a given situation¹⁰². State’s action is then more driven by rules than interests¹⁰³. Nevertheless, the two logics are not mutually exclusive, and neither one of the two logics can solely explain state’s behaviour. Indeed, as March and Olsen states outlines, states “are constituted both by their interests, by which they evaluate their expected consequences, and by the rules embedded in their identities and political institution”¹⁰⁴. And the relationship between the two logics varies according to the given situation. Therefore, in a situation where expected outcomes are clear, and the rules are ambiguous and contradictory, a logic of consequences will be more important. On the contrary, if rules are clear but the outcomes unsure, the logic of appropriateness will dominate¹⁰⁵.

But the problem with regard to recognition is that the international system is constituted of contradictory rules and norms. Indeed, protection of human rights goes against the principle of non-intervention¹⁰⁶. And in the context of recognition, the right of self-determination is opposed to the territorial integrity of states¹⁰⁷. Therefore, according to Krasner, the logic that prevails is often the logic of consequences¹⁰⁸. And as states are unequal, the most powerful ones can easily “pick and choose between the different rules” to justify their choices and follow their self-

⁹⁸ Mikulas Fabry, 2020: 45.

⁹⁹ Stephen Krasner, 2013: 175.

¹⁰⁰ Stephen Krasner, 2013: 170.

¹⁰¹ James March and Johan Olsen, 1998: 950.

¹⁰² Stephen Krasner, 1999: 5.

¹⁰³ James March and Johan Olsen, 1998: 951.

¹⁰⁴ James March and Johan Olsen, 1998: 952.

¹⁰⁵ Stephen Krasner, 1999: 5.

¹⁰⁶ Stephen Krasner, 1999: 6.

¹⁰⁷ Ryan Griffiths, 2018: 80.

¹⁰⁸ Stephen Krasner, 2013: 175.

interested preferences with regard to recognition¹⁰⁹. And if norms and rules matter, they are part of a rational calculation from the great powers with regard to the expected outcomes offered by an aspiring state.

¹⁰⁹ Stephen Krasner, 1999: 6.

3 Comparison of South Sudan and Somaliland

3.1 South Sudan

3.1.1 Historical Background

The south Sudanese struggle for emancipation has a long history that goes beyond the post-colonial era. Indeed, before its independence on 1 January 1956, Sudan was already subject to a divide between its northern and southern parts¹¹⁰. In fact, the concept of Sudan as a united country is a colonial creation from Britain and Egypt that administered it from 1899 to 1956¹¹¹. Colonial authorities drew Sudan's borders with little regard to the ethnicity, language, and culture of the inhabitants. Therefore, colonial Sudan encompassed two different peoples, Muslim Arabs in the North and Christian Black Africans in the South. This North-South divide was exacerbated by Britain's rule that administrated the two regions differently. Indeed, different policies with regard to administration, education and language were established, and the South was marginalized as most of the investments went to the northern region¹¹². And prior to independence, political and economic domination of the north was already taking shape and protests emerged in the southern part¹¹³. At its independence, Sudan was thus already divided between an Arab North and a Black South.

In the early years of the Sudanese state, the situation worsened for the south. In 1958, General Ibrahim Abboud took power and replaced the civil government by military rule¹¹⁴. The government of Khartoum implemented a policy of 'Arabization and Islamization' of the country¹¹⁵. Arabic became the official language, conversion to Islam was encouraged, and the government financed the building of mosques and Islamic schools all over the country¹¹⁶. Southern contestations were answered militarily. In this context started the first civil war in 1962 when the southern people resolved to armed struggle by forming the SSLM and its military branch, Anya-Nya¹¹⁷. Southern people were then divided between those wanting a

¹¹⁰ Kumsa, A, 2017: 517.

¹¹¹ Mario Silva, 2014: 68.

¹¹² Solomon Dersso, 2012: 6.

¹¹³ Milena Sterio, 2013: 163.

¹¹⁴ Mario Silva, 2014: 69.

¹¹⁵ Mario Silva, 2014: 69.

¹¹⁶ Solomon Dersso, 2012: 6.

¹¹⁷ Kumsa, A, 2017: 518.

federal solution and those having separatist aspirations. The civil war finally ended in 1972 with the Addis-Ababa agreement¹¹⁸. If the question of independence was left out, the agreement granted the Southern region with internal self-determination. The distinctiveness of southern people was recognized when the 1973 constitution declared Sudan a secular state and established regional self-governance for the non-Islamic South¹¹⁹. The South enjoyed an autonomous government with its own elected assembly, and English was recognized as its main language¹²⁰. Nevertheless, as De Vries and Schomerus say, it was only a “weak semi-autonomy”¹²¹ as Khartoum kept significant control on the south. The agreement further weakened when oil was discovered in the South in the 1970s¹²². Indeed, South’s self-governance ended in 1983 when president Nimeiri abrogated the Addis-Ababa agreement¹²³. Nimeiri intended to exploit south’s natural resources. He therefore dissolved the Southern Regional Government and divided the south in three regions to reduce its influence¹²⁴. Moreover, Nimeiri revised Sudan’s laws by imposing the Islamic law throughout the country, including the Christian South. This denial of southern people’s rights and imposition of Sharia law led to the second civil war. In addition to the SSLM was then formed in 1983 the SPLM and its military branch the SPLA, under the leadership of John Garang¹²⁵. Contrary to the SSLM that wanted to secede from South Sudan, SPLM/A’s primary objective was to implement equal human rights for all religious and ethnic communities within a democratic, secular, and united Sudan¹²⁶.

Nevertheless, the civil war received only little attention from the international community, at least until 1989, when General Omar al-Bashir took power through a military coup¹²⁷. Al-Bashir established an authoritarian regime, banned all political parties, and pursued a policy of massive suppression of Southern contestations. Under his regime, Sudan became a fundamentalist Islamist state, and looked for Muslim countries’ support in its war with the South. In 1991, Iran’s president Rafsanjani declared the war a “jihad” against the south and provided Khartoum with financial and military aid¹²⁸. Moreover, Bashir’s regime aligned its policy with radical Islamist groups. Sudan opened its doors to terrorist organizations like Al-Qaida, providing them

¹¹⁸ Lotje De Vries and Mareike Schomerus, 2017: 32.

¹¹⁹ Kumsa, A, 2017: 518.

¹²⁰ Kumsa, A, 2017: 518.

¹²¹ Lotje De Vries and Mareike Schomerus, 2017: 32.

¹²² Mario Silva, 2014: 69.

¹²³ Kumsa, A, 2017: 518.

¹²⁴ Lotje De Vries and Mareike Schomerus, 2017: 32.

¹²⁵ Kumsa, A, 2017: 519.

¹²⁶ Kumsa, A, 2017: 519.

¹²⁷ Mario Silva, 2014: 70.

¹²⁸ Kumsa, A, 2017: 520.

with training bases. In this context, Ben Laden was hosted from 1992 to 1996¹²⁹. With this Islamist agenda, more and more southern rebels were considering South Sudan's independence as the only solution to end the long-lasting conflict with the North¹³⁰. Furthermore, a Christian South struggling for its independence from an oppressive Muslim North attracted the attention of the international community. Bashir's regime suffered growing pressure to respect South Sudanese people's rights¹³¹. In this context was signed in 2005 the CPA between the Sudanese government and the SPLM/A to end the war¹³². The CPA recognized the right to self-determination for the South and the future holding of a referendum to determine South Sudan's status¹³³. The internationally monitored referendum took place on 9 January 2011, in which South Sudanese had two choices: unity with the North or independence. 98,8% of the population voted for independence¹³⁴. On 9 July 2011, South Sudan declared its independence from Sudan and received unanimous recognition from the international community, becoming Africa's fifty-fourth state¹³⁵.

3.1.2 The Legal Case for Recognition

The legality of South Sudan's secession has been justified on the grounds of the right of self-determination. Indeed, in order to avoid the fragmentation of state' borders, international law recognizes the right of internal self-determination to people. There is no right to secede if the parent state behaves in compliance with this right. Therefore, South Sudan's secessionist claims have been legitimized by the fact that Sudan did not respect the right to internal self-determination of South Sudanese people. As of the independence of Sudan, southern demands for a federalist solution were declined by northern leaders¹³⁶. As Horowitz shows, after the independence, "inhabitants of South Sudan who comprised 25% of the total population of Sudan were allocated 800 posts in administration, 3 out of 43 seats in Constitutional assembly, 3% of army officers and 4% of police officers"¹³⁷. Moreover, during the civil wars, a large proportion of southern rebels were fighting for regional autonomy within Sudan and not with the primary objective of creating a new state. But there is no doubt that Sudan, by the revocation

¹²⁹ Kumsa, A, 2017: 520.

¹³⁰ Solomon Dersso, 2012: 7.

¹³¹ Milena Sterio, 2013: 164.

¹³² Lotje De Vries and Mareike Schomerus, 2017: 32.

¹³³ The Comprehensive Peace Agreement, 2005: 2.

¹³⁴ Mario Silva, 2014: 71.

¹³⁵ Matthew Arnold and Matthew LeRiche, 2013: 202.

¹³⁶ Kumsa, A, 2017: 517.

¹³⁷ Martin Riegl, 2014: 177.

of the Addis-Ababa agreement and the attempts at imposing Islamic laws to the South, did not have the intention to grant autonomy to the South. Therefore, South Sudan's right to external self-determination is justified by the constant denial of the South Sudanese people's rights and its political misrepresentation within Sudan. Furthermore, South Sudan's external self-determination has also been justified through the theory of remedial secession¹³⁸. Indeed, the civil wars have been marked by large-scale violence from the parent state. A report of the International Crisis Group estimates that 2 million people died "as a result of the fighting over the past eighteen years, victims of direct violence or related starvation and disease"¹³⁹. As South Sudan's first president Salva Kiir said in 2011: "We have been bombed, maimed, enslaved and treated worse than refugees in our own country"¹⁴⁰. And in 2009, Bashir was indicted by the international Criminal Court for crimes against humanity¹⁴¹. If it is debatable whether international law does recognize a remedial right to secession, the South Sudanese external self-determination has been defended as the only option to put an end to the long-lasting violence from the North.

However, the legality of South Sudan's application of the right to self-determination is debatable as it took place outside the decolonization context. Indeed, international law limited claims to secession to the colonial context in order to protect the territorial integrity of states. It only allows it when an entity is under alien occupation or considered as a colony that did not achieve its independence during the decolonization process. In order to respect the principle of *Uti Possidetis*, South Sudan's self-determination has thus come to be considered as a case of 'delayed decolonization'. Indeed, the SPLM claimed that South Sudan was a different entity than Sudan as it was administrated separately by the British¹⁴². It is thus argued that South Sudan was unlawfully incorporated into the post-colonial Sudan and should have been entitled to achieve independence during the decolonization process¹⁴³. Under this perspective, South Sudan's secession is legal under international law as a case of denied decolonization.

Nevertheless, legality of South Sudan's right to self-determination raised many questions. One of them referred to the South Sudanese people's entitlement to this right. As there is no proper definition of the 'people' under international law, does South Sudan really constitutes a people? One could say that South Sudan's population is ethnically diverse. Its population includes more

¹³⁸ Redie Bereketeab, 2012: 20.

¹³⁹ International Crisis Group, 2002: 3.

¹⁴⁰ President Kiir's Independence Speech in Full, 14 July 2011.

¹⁴¹ Milena Sterio, 2013: 170.

¹⁴² Redie Bereketeab, 2012:17.

¹⁴³ Milena Sterio, 2013: 167.

than 60 different cultural and linguistic tribes¹⁴⁴. In that sense, as Sterio says, it is difficult to consider that South Sudan constitute a “single people”¹⁴⁵. Nevertheless, it can also be argued that South Sudan constitutes a people in the sense that its population is radically different from that of the North. Indeed, Northern Sudanese are Arabs and Muslims while Southern Sudanese are mostly Black and Christians. Therefore, the recognition of the South Sudanese as a people can be built on its ethno-religious difference with the northern population. It can also be argued that South Sudan’s sense of identity was reinforced by the sentiment of oppression arising from decades of northern domination¹⁴⁶.

Furthermore, is South Sudan’s self-determination really a case of ‘delayed’ decolonization? Indeed, is it debatable whether South Sudan can justify its secession as not being in conflict with international law that proscribes secession outside the colonial context. Indeed, as Bereketeab outlines, “South Sudan was not a colonial creation in the usual sense”¹⁴⁷. Even though the British administrated it differently from the North, it was done within the colonial state of Sudan, and South Sudan was never a separate territory from the North¹⁴⁸. It can thus be argued that South Sudan’s secession happened outside the decolonization process. And under this perspective, the legality of South Sudan’s external self-determination is opened to debate.

Furthermore, it is also arguable whether South Sudan meets the legal criteria of the Montevideo Convention and was therefore entitled to recognition. As Riegl argues, if the SPLM/A “virtually controlled most of the territories” claimed prior to independence, it did not manage to implement functioning institutions to establish an effective state¹⁴⁹. Today, South Sudan’s territorial control is still not fully achieved, and tensions remain with Sudan over the disputed territories of Abyei, Blue Nile, and South Kordofan¹⁵⁰. No agreements have been found about the status of those regions claimed by both countries. But doubts with regard to South Sudan’s effectiveness are mostly supported by the observation of the domestic challenges facing the new state since its independence. The South Sudanese government did not manage to ensure an effective control over its population neither. Indeed, shortly after the independence, rebellions started to oppose the central state dominated by the SPLM/A¹⁵¹. As aforementioned, South Sudan is characterized by a significant ethno-cultural heterogeneity. If the different groups were

¹⁴⁴ Mario Silva, 2014: 78.

¹⁴⁵ Milena Sterio, 2013: 165.

¹⁴⁶ Milena Sterio, 2013: 166.

¹⁴⁷ Redie Bereketeab, 2012: 17.

¹⁴⁸ Peter Woodward, 2003: 195.

¹⁴⁹ Martin Riegl, 2014: 179.

¹⁵⁰ Walt Kilroy, 2020: 395.

¹⁵¹ Mario Silva, 2014: 78-79.

united in their opposition against Sudan, the newly independent South Sudan reignited tensions between the communities. Ethnic communities have their own armed groups, and tribal clashes became endemic in the new state. As Mario shows, out of the 10 provinces composing South Sudan, 9 are currently the theatre of inter-ethnic conflicts¹⁵². Furthermore, Salva Kiir's government, dominated by the Dinka community, is accused of trying to hold power indefinitely¹⁵³. And his government is characterized by corruption and patronage according to ethnic considerations¹⁵⁴. In that context, clashes broke out between the Dinka and Nuer communities in 2013 and plunged the country in chaos¹⁵⁵. These clashes have resulted in the displacement of thousands of people and led to a serious humanitarian crisis¹⁵⁶. In February 2017, famine was officially declared by the UN¹⁵⁷. And in the same year, Freedom House classified South Sudan as 'not free', with the least score in political rights and civil liberties¹⁵⁸. Thus, recognition of South Sudan has been considered by some as premature as it is evolving towards a failed state. Indeed, years after independence, South Sudan's government still significantly lacks the infrastructure and institutions to provide basic services to its population and establish effective governance over its territory¹⁵⁹.

3.1.3 The Role of External Actors

If South Sudan has been so quickly and unanimously recognized as a state despite a questionable meeting of the criteria of statehood, it is because the international community has supported the SPLM/A in its struggle with Sudan. Indeed, the support of external actors, especially the great powers, is a determinant factor to South Sudan's independence. In fact, the great powers' role was also previously crucial in the lack of support to South Sudan's struggle from the international community before the 1990s. Indeed, during the cold war, Sudan was supported by the USSR and China¹⁶⁰. And Sudan was at the same time the largest African recipient of American aid, as the USA were attempting to contain the communist influence in the region¹⁶¹. Therefore, South Sudan's struggle received only little attention from the

¹⁵² Mario Silva, 2014: 80.

¹⁵³ Walt Kilroy, 2020: 400.

¹⁵⁴ Walt Kilroy, 2020: 399.

¹⁵⁵ Walt Kilroy, 2020: 399.

¹⁵⁶ Walt Kilroy, 2020: 399.

¹⁵⁷ Walt Kilroy, 2020: 399.

¹⁵⁸ Freedom House, 2017: 23. Freedom House rates the degree of freedom on a scale of 1 to 7; with 1 the freest and 7 the least free. South Sudan received a 7 for both political rights and civil liberties.

¹⁵⁹ Ted Dagne, 2011: 2.

¹⁶⁰ Milena Sterio, 2013: 170.

¹⁶¹ Matthew Arnold and Matthew LeRiche, 2013: 207.

international community and Khartoum was able to crush southern rebellions with impunity and continue with its policy of imposing the Islamic law to the South¹⁶². The international community and the OAU were supportive of the territorial integrity of Sudan. The situation changed with the military coup of Bashir in 1983, after which Sudan's policy evolved towards a radical Islam and started to favour extremist Islamist groups. In the shifting of the international perception of Sudan, the role of the US is of special importance. Indeed, fearful that Sudan becomes a safe haven for international terrorism, the US foreign policy towards Sudan radically shift from support to defiance. Therefore, Washington suspended its assistance to Sudan and imposed economic sanctions to the country. In 1993, Sudan was placed on the American list of states sponsoring terrorism, and in 1996, the US closed its embassy in Khartoum¹⁶³.

Anti-SPLM/A in the 1980s, Washington started to demonstrate a strong support to the secession of South Sudan. Cooperation between the US and the SPLM/A were expanding as the US/Sudan relationship was deteriorating. In the 1990s, the US became the principal donor of humanitarian aid to South Sudan¹⁶⁴. At the same time, the Clinton administration was also supporting regional countries in order to contain Sudan. Neighbouring countries like Ethiopia, Eritrea, and Uganda received substantial financial and military aid from the US as a way to isolate Bashir's regime¹⁶⁵. After the cataclysm of the 9/11 attacks, the situation worsened for Khartoum. The international community was fearful of countries sponsoring terrorism and pressures over Sudan intensified. Bashir's regime was progressively isolated by the expansion of international sanctions. The atrocities committed by its regime were denounced and received a large media coverage. The US led a strong global campaign in support of South Sudan¹⁶⁶. And celebrities like Georges Clooney or Don Cheadle, supportive of South Sudan's independence, participated in the worldwide spread of the South Sudanese cause¹⁶⁷. Khartoum received growing pressure from western powers to negotiate with South Sudan. In 2002, the US threatened Sudan with additional economic sanctions if the government was not prone to negotiate with Southern rebels to find a peaceful resolution to the conflict¹⁶⁸. Eventually, weakened by international pressures and sanctions, Bashir's regime negotiated with the SPLM/A and signed the CPA in 2005 with the promise of holding a referendum to determine South Sudan's future status. Regional powers played a decisive role in the process. Kenya,

¹⁶² Milena Sterio, 2013: 170.

¹⁶³ Ted Dagne, 2011: 12.

¹⁶⁴ Ted Dagne, 2011: 8.

¹⁶⁵ Ted Dagne, 2011: 8.

¹⁶⁶ Martin Riegl, 2014: 184.

¹⁶⁷ Martin Riegl, 2014: 183.

¹⁶⁸ Matthew Arnold and Matthew LeRiche, 2013: 207.

considered as neutral by both Sudan and South Sudan, participated in the peace process by hosting the negotiations¹⁶⁹. In cooperation with the African Union, Ethiopia, which has supported the SPLM/A since the 1980s, facilitated the negotiations over the delimitation of the borders between the Northern and Southern parts of Sudan¹⁷⁰. During the interim period, the US reinforced their assistance to South Sudan. In addition to humanitarian aid, the focus was put on improving the SPLM's capacity to governance¹⁷¹. The US also assisted South Sudan in transforming the SPLA in a more professional army¹⁷². Furthermore, Washington made clear that Sudan would be removed from the list of countries sponsoring terrorism on the condition that Khartoum does not jeopardize the referendum and recognize the new state of South Sudan¹⁷³. When the South Sudanese people voted for independence, Bashir recognized immediately the new state. Following this, Obama declared: "The eyes of the world are on the Republic of South Sudan. And we know that Southern Sudanese have claimed their sovereignty and shown that neither their dignity nor their dream of self-determination can be denied."¹⁷⁴

Therefore, there is no doubt that the US played a decisive role in enabling South Sudan to achieve independence. Indeed, South Sudan has benefited from the evolution of the US geopolitical interests with regard to Sudan. If the US had first interests in supporting the territorial integrity of Sudan during the Cold war, its consideration of South Sudan changed when Khartoum's foreign policy did not fit in with that of the US. An independent South Sudan presented the advantage of weakening a Sudan hostile to Washington. The US involvement has then been crucial for the international support to the secession of South Sudan. And South Sudan managed to make its case internationally and enjoyed a large-scale media attention from the international community that was detrimental to the legitimization of South Sudan's recognition as a state. Furthermore, the political and economic pressures on Khartoum forced the parent state to negotiate and accept the secession of South Sudan. The role of external actors has been detrimental to the implementation of the CPA and the holding of a referendum which made South Sudan's secession legal under international law. Therefore, even though South Sudan was able to justify its secession with the principle of self-determination, it is the support of external actors, and especially the US, that helped in the application of international law and determined the status of South Sudan as a state recognized by the international community.

¹⁶⁹ Matthew Arnold and Matthew LeRiche, 2013: 203

¹⁷⁰ Matthew Arnold and Matthew LeRiche, 2013: 204

¹⁷¹ Matthew Arnold and Matthew LeRiche, 2013: 208.

¹⁷² Matthew Arnold and Matthew LeRiche, 2013: 208.

¹⁷³ Matthew Arnold and Matthew LeRiche, 2013: 208.

¹⁷⁴ The White House, 2011. Statement of President Barack Obama; Recognition of the Republic of South Sudan.

Without the support of external powerful actors, it can be argued that South Sudan would not have been able to achieve its right to external self-determination. As Sterio says, the case of South Sudan is then a “coincidence between international law and the great powers’ rule”¹⁷⁵.

3.2 Somaliland

3.2.1 Historical Background

Unlike South Sudan, Somaliland was a separate entity during colonial times. Known as British Somaliland, the territory was administered by Britain from 1884 to 1960. With the decolonization of Africa, Britain granted independence to Somaliland in its existing borders on 26 June 1960. Somaliland was recognized as a state by 35 nations, including all members of the UN security council¹⁷⁶. But the independent state of Somaliland did not last long, as five days later, on 1 July 1960 Somaliland decided to merge with the former Italian Somalia to create the Republic of Somalia. The idea of unification was based on a shared Somali culture¹⁷⁷. Indeed, Italian and British Somalilanders are the same people, speaking the same language and sharing the same religion¹⁷⁸. And the merger was driven by the dream of a “Greater Somalia” to include all Somali communities of the region¹⁷⁹.

Nevertheless, the unification was not easy. The two territories drafted two different treaties of union. Somaliland’s treaty, the *Union of Somaliland and Somalia Law*, was ignored by the legislature of Somalia that approved another treaty, the *Atto di Unione*, on 1 July 1960. This treaty was never signed by Somaliland that favoured a federal solution instead of a unitary state¹⁸⁰. Therefore, the two countries merged into the new republic of Somalia without a valid act of unification. In the absence of such an act, in 1961 was held a referendum to approve the Somali Republic’s constitution and endorse the unification. Somalilanders massively boycotted the referendum, and of only 100 000 votes cast, 53% voted ‘no’ to the constitution¹⁸¹. A

¹⁷⁵ Milena Sterio, 2013: 171.

¹⁷⁶ Temesgen Sisay Beyene, 2019: 198.

¹⁷⁷ Michael Schoiswohl, 2004: 100.

¹⁷⁸ David Shinn, 2002: 1.

¹⁷⁹ Michael Schoiswohl, 2004: 100.

¹⁸⁰ Republic of Somaliland, 2001: 4.

¹⁸¹ Republic of Somaliland, 2002: 5.

sentiment of disillusion rose in Somaliland, as it was becoming clear that Italian Somalia will dominate the new country. The head of state and major governmental positions were overwhelmingly allocated to Southern Somalians. British Somalilanders only hold 33 seats out of the 123 composing the National Assembly¹⁸². The allocation of the prime ministership to Mohamed Egal, a British Somalilander, nurtured the illusion of equity and power-sharing between the two regions¹⁸³. In that context, an attempted coup by Somalilanders officers to restore Somaliland's independence failed in 1961¹⁸⁴. In the early years of Somalia, the illusion of democracy rapidly deteriorated as the country was being undermined by clan politics and corruption. These clan-based conflicts led to the assassination of president Shirmake in 1969¹⁸⁵. In the following days, democracy in Somalia came officially to an end when the army led a coup and put Mohamed Siyad Barre in the presidency. The SRC was established and the young country came under authoritarianism. Political power was centralized in the hands of southern clans linked to the president. The regime's political repression towards other clans provoked widespread disaffection among the population. As Kaplan says, this period saw the emergence of "ten clan-based resistance movements" across the country¹⁸⁶. Indeed, the Somalian state transformed from a decentralized to a centralized and oppressive state focused on clan-based corruption and military force¹⁸⁷. Socio-economic developments were concentrated in the South. And Northern demands for redistribution of resources were ignored by the central state. This economic marginalization and denial of political representation rapidly reignited the animosities with Northern Somalilanders and refuelled aspirations for separate statehood. In that context, the dominant clan in the North, the *Isaaq*, formed the SNM in 1981 in order to overthrow Barre's oppressive regime and reconsider the union of the two territories¹⁸⁸. Assisted by Ethiopia that had been in war against Barre's regime over the Ogaden region in 1977, the SNM established its base in the neighbouring country¹⁸⁹. But when Ethiopia and Somalia signed a peace treaty in 1988, the SNM was forced to leave and the conflict with Barre's regime escalated in a full-scale civil war¹⁹⁰. When the SNM captured the Northern cities of Hargeisa and Burao in 1988, Mogadishu responded with extreme violence by indiscriminately

¹⁸² Redie Bereketeab, 2012: 5.

¹⁸³ Redie Bereketeab, 2012: 5.

¹⁸⁴ David Shinn, 2002: 1.

¹⁸⁵ Michael Schoiswohl, 2004: 101.

¹⁸⁶ Seth Kaplan, 2008: 147.

¹⁸⁷ Michael Schoiswohl, 2004: 104.

¹⁸⁸ Asteris Huliaras, 2002: 159, Bere 7.

¹⁸⁹ Stig Jarle Hansen and Mark Bradbury, 2007: 464.

¹⁹⁰ Republic of Somaliland, 2002: 6.

bombing the northern cities. An estimated 50,000 people have died and half a million fled to Ethiopia¹⁹¹.

Eventually, the civil war led to the overthrow of Siad Barre in 1991 and the collapse of the Somali state. In that context, the *Isaaq*-dominant SNM and other northern clans gathered on 18 May 1991 at the Burao Conference in which they declared their right to self-determination and the unilateral independence of Somaliland¹⁹². The Republic of Somaliland was created, and SNM was granted a two-years mandate to govern the new country. In 1993, the Borama conference gathered the clan elders to discuss the constitutional structure of the new state. The council of elders agreed for an executive president and a bicameral parliament¹⁹³. Mohamed Egal was elected president of the Republic of Somaliland. The constitution institutionalized a power-sharing structure between rival clans by establishing an Upper House of Elders¹⁹⁴. Thus, while Somalia was becoming a failed state and its territory controlled by rival clan factions, Somaliland was building a stable governance based on democratic processes. In 2001, a referendum was held to vote on a new constitution and reaffirm the status of Somaliland as an independent state¹⁹⁵. The referendum was internationally monitored and 97% of Somalilanders voted for independence¹⁹⁶. Nevertheless, its secession has not been recognized by any members of the international community. If Somaliland's leaders have justified their right to be recognized under international law, Somaliland is still considered as part of the state of Somalia and does not enjoy international rights.

3.2.2 The Legal Case for Recognition

Somaliland's claim for recognition can be justified on many grounds. Indeed, Somaliland had a separate colonial existence from Italian Somalia. Therefore, as international law allows external self-determination for colonized entities, Somaliland's declaration of independence is justified on the basis of its colonial existence. Therefore, Somaliland's secession is not in conflict with the principle of *Uti possidetis* as it exists within the borders inherited from the British colonial administration. In addition to its separate colonial status, Somaliland's claim for recognition is based on its brief existence as an independent state. Indeed, British

¹⁹¹ Asteris Huliaras, 2002: 159.

¹⁹² Republic of Somaliland, 2001: 29.

¹⁹³ David Shinn, 2002: 2.

¹⁹⁴ Stig Jarle Hansen and Mark Bradbury, 2007: 464.

¹⁹⁵ Asteris Huliaras, 2002: 165.

¹⁹⁶ David Shinn, 2002: 2.

Somaliland has been granted independence on 26 June 1960 and recognized as a sovereign state by 35 nations. Somaliland claims that its separation from Somalia is not a case of secession but rather a restoration of its former sovereignty¹⁹⁷. Therefore, Somaliland's authorities affirm that the declaration of independence is in conformity with the Constitutive Act of the African Union that stipulates the "respect of borders existing on the achievement of independence"¹⁹⁸.

Moreover, the treaty of unification drafted by Southern Somalia, the *Atto di Unione*, has never been ratified by Somaliland's authorities. Hence, the creation of the Republic of Somaliland did not meet the legal requirements of international law. Indeed, the *Vienna convention on the Law of Treaties* stipulates that "a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States"¹⁹⁹. Therefore, the Act of Union is legally invalid under international law. Under a legal perspective, Somaliland's union with the South remained then without force. Indeed, in 1963, the charges of treason against northern military officers who attempted the coup in 1961, were dismissed by a British judge on the grounds that the Act of Union was invalid and that the court lacked the jurisdiction to act upon events that happened in Somaliland²⁰⁰. Therefore, Somaliland's government considers the Republic of Somalia as an "illusion of unity"²⁰¹. Under this perspective, is it argued that Somaliland's separation from Somalia does not constitute a dismemberment of a sovereign state²⁰² as it does not violate the territorial integrity of a united Somalia that never legally existed. And the declaration of independence is not considered by Somalilanders as a unilateral secession, but as the result of a "unsuccessful union", similar to the dissolution of Senegambia, which was accepted by the AU²⁰³. Therefore, under a legal perspective, Somaliland's claim to statehood is justified on the basis of its separate colonial experience and the restoration of its status as a sovereign state illegally incorporated into an unsuccessful union.

Somaliland's justification for recognition is also based on the denial of their internal right to self-determination by Mogadishu. Indeed, contrary to South Sudan, Somaliland inhabitants are ethnically homogenous. If they are all Somali, most of Somalilanders belong to the *Isaaq* clan, while southern Somalia is predominantly composed of Hawiye²⁰⁴. They have their own identity and culture distinct from southern Somalis. Furthermore, Somalilanders' own identity has been

¹⁹⁷ Scott Pegg, 2020: 418.

¹⁹⁸ Republic of Somaliland, 2002: 9.

¹⁹⁹ Vienna convention article 24.2.

²⁰⁰ Scott Pegg, 2020: 418.

²⁰¹ Republic of Somaliland, 2002: 4.

²⁰² Temesgen Sisay Beyene, 2019: 204.

²⁰³ Seth Kaplan, 2008: 152, Republic of Somaliland, 2002: 9.

²⁰⁴ Martin Riegl, 2014: 180.

built on their common colonial history and their sentiment of marginalization under Barre's regime²⁰⁵. There is no doubt that Somalilanders have been unable to exercise their internal right to self-determination within the Republic of Somalia. With Siad Barre as president, Northern aspirations to regional autonomy were systemically dismissed, and Somalilanders were politically and economically marginalized. Somaliland's declaration of its external self-determination is thus justified under international law as a result of the violation of the internal right to self-determination to people by Barre's regime²⁰⁶. Moreover, as South Sudan, Somaliland also justifies its external right to self-determination by the grave violations of human rights committed by the central state. Indeed, in its war with the SNM, the *Isaaq* population has been targeted by Barre's regime. The government's reaction to the SNM attacks of Hargeisa and Burao stood out by its brutality towards the population accused of supporting the SNM. It is estimated that the civil war killed between 50,000 and 100,000 Somalilanders²⁰⁷. Amnesty International reported that "the war was fought by the Somali armed forces without any respect for standards of international humanitarian law. No effort was made to distinguish between civilians and armed combatants. The shelling of Hargeisa was indiscriminate, and unarmed civilians were rounded up *en masse* and shot"²⁰⁸. Therefore, if we assume that violations of human rights imply a right to remedial secession, Somaliland's independence can also be justified on this basis. As president Egal said: "we have a moral right to be recognized [...] and international lawyers tell us any nation which has been victimized by a state of which it was part has the right to secede"²⁰⁹.

Furthermore, Somaliland has claimed that it has 'earned' its sovereignty by meeting the legal requirements of statehood provided by the Montevideo Convention. Indeed, Somaliland has a permanent population and a defined territory inherited from the British protectorate. Its territory was internationally fixed by the Anglo-French treaty in 1888, the Anglo-Italian treaty in 1894, and the Anglo-Ethiopian treaty in 1897²¹⁰. Its defined territory is composed of a stable population estimated at 3,5 million people. And the 2001 referendum demonstrated the cohesion of the population in the support of an independent Somaliland²¹¹. Moreover, Somaliland has been able to develop a stable and effective government structure, with a clear

²⁰⁵ Temesgen Sisay Beyene, 2019: 201.

²⁰⁶ Temesgen Sisay Beyene, 2019: 205.

²⁰⁷ Scott Pegg, 2020: 419.

²⁰⁸ Amnesty International Report, 1998.

²⁰⁹ Michael Schoiswohl, 2004: 162.

²¹⁰ Republic of Somaliland, 2002: 7.

²¹¹ Temesgen Sisay Beyene, 2019: 208.

separation between the executive, legislative, and judicial branches²¹². Somaliland managed to bring peace and stability to the region by building an inclusive and democratic governance. The House of Elders was established to include and represent the different clan minorities. The stability of Somaliland's governance is evidenced by the staging of peaceful democratic elections. Important enough in Africa to be stressed, Somaliland has demonstrated democratic transitions. In its first presidential election in 2003, only 72 votes decided the election of president Kahin, who was confirmed without contestation²¹³. And in 2010, the second presidential elections saw the peaceful transfer of power from Kahin to Silanyo²¹⁴. As Wallis outlines, by this time, only three African states had seen “incumbent presidents stand down after being defeated in elections”²¹⁵. And today, Somaliland distinguishes itself by its stability and effective governance. And ironically, Somaliland's meeting of the criteria of effectiveness is better than its parent-state that does not have a functioning administration and control over large parts of its territory since 1991²¹⁶.

Finally, Somaliland also developed its capacity to enter into relations with other states. Somaliland has managed to establish diplomatic relations with many states. Indeed, Somaliland has signed bilateral agreements of co-operation with the neighbouring countries of Ethiopia and Djibouti, the only states accepting Somaliland passports²¹⁷. In fact, by demonstrating its effectiveness in governance, Somaliland managed to achieve *de facto* recognition from a number of states. *De facto* recognition refers to the political acceptance that an entity has effective authority over a territory. Therefore, it reckons the *de facto* state as an actor of international relations with which contacts can be established, without recognizing its statehood under international law²¹⁸. It differs then from *de jure* recognition which refers to the legal and definitive recognition of statehood²¹⁹. Somaliland has thus opened liaison offices in many states, among which the USA, UK, France, Belgium, South Africa, and South Sudan²²⁰. And the UN, the EU, and other international organizations have established offices in Somaliland to

²¹² Temesgen Sisay Beyene, 2019: 209.

²¹³ Jacques Demi, et al, 2016: 11.

²¹⁴ Jacques Demi, et al, 2016: 11

²¹⁵ William Wallis, “Election victor takes power in Somaliland”. 27 July 2010.

²¹⁶ Seth Kaplan, 2008: 153.

²¹⁷ Seth Kaplan, 2008: 153.

²¹⁸ Michael Schoiswohl, 2004: 206.

²¹⁹ Hans Kelsen, 1941: 612.

²²⁰ Temesgen Sisay Beyene, 2019: 20.

operate humanitarian programs²²¹. Furthermore, the US and European countries are operating with Somaliland authorities for security and counterterrorism operations in the region²²².

3.2.3 The Role of External Actors

Somaliland fulfils both the requirements of the right of self-determination and the attributes of statehood. Furthermore, Somaliland's claim to independence conforms with the AU policy with regard to the respect of colonial boundaries. Nevertheless, given Somaliland's strong case for recognition, the international community has remained surprisingly silent on the case, and Somaliland remains unrecognized. The reason lies in the consideration of Somaliland as a case of unilateral secession that violates the territorial integrity of Somalia. Indeed, to maintain peace and stability on the continent, the AU emphasizes the 'sacrosanctity' of existing African borders and is hostile to situations that could lead to dismemberment of its member states²²³. It is thus feared that the international recognition of Somaliland would open a 'Pandora's box' that will lead to the fragmentation of states and the destabilization of the region²²⁴. Indeed, given the ethnic heterogeneity of African states, the fragmentation of Somalia bears the risk of triggering a 'balkanization' of the region²²⁵. It could set a precedent and incite other secessionist movements to redraw the colonial borders.

Consequently, the international community has widely been hostile to the recognition of Somaliland, as it condemns secession without the consent of the parent state. Indeed, Somaliland's main obstacle to its recognition lies in the lack of consent from Somalia. Nevertheless, the Somaliland's case draws the distinction between secession and dissolution. Indeed, secession from a state requires the consent of the parent-state to be legitimized under international law. In the case of the dissolution of the parent-state, there cannot be consent as the mother state ceased to exist²²⁶. As Crawford outlines, it can be sometimes difficult to distinguish a dissolution "initially triggered by the secession", with a secession as a direct consequence of the dissolution²²⁷. For instance, the recognition of the ex-Yugoslav republics without the consent of Yugoslavia was justified on the basis that it dissolved and no longer

²²¹ Scott Pegg, 2020: 421 and Seth Kaplan, 2008: 153.

²²² Scott Pegg, 2020: 422.

²²³ Redie Bereketeab, 2012:19.

²²⁴ Michael Schoiswohl, 2004: 176.

²²⁵ Carroll, Anthony and Rajagopal, B, 1993: 679.

²²⁶ James Crawford, 2007: 390.

²²⁷ James Crawford, 2007: 390.

existed as a state²²⁸. In the case of Somaliland, the independence was declared following the collapse of the Republic in Somalia in 1991. Today, Somalia is a failed state, and there is no functioning authority to discuss with in order to reach an agreement on Somaliland's status. It is thus argued by some that Somaliland's independence is the result of the dissolution of its parent-state, and that Somaliland's recognition conforms to international law²²⁹.

Thus, in 2005, an AU fact-finding mission reported that Somaliland's claim for recognition was "unique and self-justified in African political history" and that "the case should not be linked to the notion 'of opening a Pandora's box'"²³⁰. It was added 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"²³¹. It seems then that the non-recognition of Somaliland is not based on legal considerations but on political considerations.

Western countries tend to be reluctant to engage on the question of Somaliland's recognition as they consider the issue as an "internal African affair"²³². In fact, western powers are more engaged in the restoration of diplomatic relations with Somalia due to its strategic location on the coast of the Horn of Africa and its potential destabilizing effect for the region. In the early years of Somaliland's existence, the Clinton administration prioritized the re-establishment of the Somalian state to tackle the spread of terrorism and Islamic radicalism²³³. And since the American intervention in 1992, the US foreign policy has focused on the restoration of order in Somalia through assistance in the state-building process²³⁴. Indeed, Somalia's collapse is not seen as irreversible. In 2001, the TNG was formed to represent the Somalian state internationally and reclaim its seat at the AU among other international organizations²³⁵. Therefore, the focus of the international community has been put on the re-establishment of a functioning and stable authority in Somalia through the support to the TNG.

Nevertheless, the US and UK have expressed readiness to recognize Somaliland. Britain proposed that the EU recognizes the referendum as bringing "further stability, prosperity and democracy to the people of Somaliland"²³⁶. The proposition was rejected by several European countries, and especially Italy, arguing that it was implying a recognition of Somaliland which

²²⁸ James Crawford, 2007: 390.

²²⁹ Redie Bereketeab, 2012: 19.

²³⁰ AU fact-finding mission to Somaliland, 2005: 4.

²³¹ AU fact-finding mission to Somaliland, 2005: 4.

²³² Seth Kaplan, 2008: 154.

²³³ Asteris Huliaras, 2002: 171.

²³⁴ Webersik, Christian, Hansen Stig Harle, And Egal, Adam, 2018: 29.

²³⁵ Asteris Huliaras, 2002: 168.

²³⁶ Asteris Huliaras, 2002: 171.

was not in conformity with the international community's position on the question. The US position is that the recognition of Somaliland should wait for the AU to recognize it first. As the US Assistant Secretary of State Jendayi Frazer said: "We do not want to get ahead of the continental organization on an issue of such importance"²³⁷. Consequently, Somaliland's authorities did not manage to attract the support of western powers. This situation was summarized in 2001 by Mohamed Egal when he declared: "Originally, when I was elected in Borama, one of the main reasons I was so unanimously elected and the whole country approved of my election, was the fact there was a sense that this man is a friend of the western governments and he is much more likely than anyone else to get recognition from them. That was an idea that has proven to be false"²³⁸. Indeed, as Schraeder states, the position of western powers has endorsed the concept "African solutions for African problems"²³⁹.

However, the AU is actually paralysed by different positions from its members with regards to the issue. Indeed, while countries like South Africa, Rwanda or Zambia support the recognition of Somaliland, Somaliland's neighbours have geopolitical interests in non-recognizing its independence. While Egypt was supportive of South Sudan's independence, it however still supports a reconciliation of Somaliland with Somalia. Indeed, Cairo believes that a united Somalia can be an ally in its conflict with Ethiopia over the Nile river basin²⁴⁰. Djibouti is also opposed to an independent Somaliland. Indeed, Somaliland is considered as a threat to the internal security of Djibouti. During the civil war, Djibouti did not support the SNM, as the *Isaaq* clan had relations with the *Afar* opposition in Djibouti²⁴¹. Somaliland also accused Djibouti of trying to influence Elders to oppose the separation from Somalia²⁴². Furthermore, the port of Berbera in Somaliland is seen as a threat to Djibouti's own ports on which its economy is based²⁴³. Eritrea is another neighbour opposed to the recognition of Somaliland, as it favours a united Somalia as a counterweight to the Ethiopian influence. In its war with Ethiopia, Eritrea also tried to foster the opposition to the independence in Somaliland when Ethiopia used the port of Berbera²⁴⁴. Ethiopia's position is more blurred. Although it benefits from the use of Somaliland's port, an independent Somaliland also poses a threat to its own Somali irredentism in the Ogaden region²⁴⁵. In the same way, Ethiopia's interests are not going

²³⁷ Ann Scott Tyson, "U.S. Debating Shift of Support in Somali Conflict". 4 December 2017.

²³⁸ IRIN Interview with Muhammad Ibrahim Egal, President of Somaliland. 28 May 2001. The New Humanitarian.

²³⁹ Peter Schraeder, "Why the United States Should Recognize Somaliland's Independence" 16 December 2016.

²⁴⁰ Scott Pegg, 2020: 422.

²⁴¹ Asteris Huliaras, 2002: 169.

²⁴² Asteris Huliaras, 2002: 169.

²⁴³ Seth Kaplan, 2008: 154.

²⁴⁴ Asteris Huliaras, 2002: 169.

²⁴⁵ Seth Kaplan, 2008: 154.

towards a united Somalia, that could wish again to reunite all Somali people into one country, as under Barre's regime. Consequently, if Ethiopia has today extended political and economic relations with Somaliland, Addis-Ababa does not seem ready to be the first to recognize it as a state and take the risk to bring more division within the AU²⁴⁶.

3.3 Why South Sudan and not Somaliland?

The analysis of the case studies has shown that South Sudan's legal case for recognition is weaker than that of Somaliland. And yet, South Sudan was unanimously recognized as a state while Somaliland has still not been recognized by a single member of the international community. This thesis postulates that the reason for this discrepancy lies in the political choices made by powerful actors of the international system with regards to their support for the two secessionists movements.

Indeed, South Sudan's secession from Sudan enjoyed the support of the great powers, and particularly the US. Therefore, the SPLM/A has been able to legitimize its cause in the eyes of the international community, and the Republic of Sudan has been forced to negotiate and recognize South Sudan's decision to achieve its own statehood. On the other hand, Somaliland's separation from Somalia, despite meeting the requirements of statehood and being in accordance with the right of self-determination, did not attract the support of external actors. In Krasner's words, Somaliland is a "small and not very important place"²⁴⁷, which has found itself not significant enough for the geopolitical interests of the great powers. Moreover, the non-recognition of Somaliland was driven by the fear of further destabilizing a region already plunged in clan-based conflicts. Nevertheless, the situation could evolve for Somaliland. Indeed, it has been reported in 2018 that Russia expressed readiness to recognize Somaliland as an independent state while negotiating with its authorities for the establishment of a military naval base in Somaliland²⁴⁸. If it happens, Russia will have no difficulties to justify its decision under international law. In the same year, the UK also expressed its willingness to reinforce its political and economic relations with Somaliland and to establish a military naval base in Berbera²⁴⁹. This 'bargaining' situation reinforces this thesis's assumption whereby the

²⁴⁶ Scott Pegg, 2020: 422.

²⁴⁷ Stephen Krasner, 2013: 173.

²⁴⁸ Addis Getachew, "Somaliland seeks recognition by hosting naval bases". 11 January 2019.

²⁴⁹ Addis Getachew, "Somaliland seeks recognition by hosting naval bases". 11 January 2019.

achievement of international recognition is closely connected to the geopolitical interests of powerful external actors. Therefore, it provides an answer to our research question “What political influence does the external actors have in the achievement of international recognition?”, which is that powerful actors play a crucial role in the legitimization of a secessionist movement when it suits their geopolitical preferences.

With regards to the role of legal norms, the comparison of South Sudan and Somaliland shows that they have been selectively applied to legitimize political choices from the recognizing states. South Sudan’s recognition was justified by the right to external self-determination and ‘remedial secession’ on the basis of the political misrepresentation and suffering the South Sudanese people have experienced under Bashir’s regime. Those same norms did not apply to Somaliland that had a similar experience under Barre’s regime, because the idea of a united Somalia is still privileged by external actors. It is therefore argued in this thesis that the recognizing state have selected the legal norms that suited their objectives.

Therefore, this thesis outlines the relationship between rationality and norms. Indeed, rational choices and norms tend to be considered as opposed concepts. Nevertheless, in the process of recognition of new states, rationality and norms are to be considered as interconnected. It opposes the strict opposition between the constructivist and rationalist theories of international relations. Indeed, constructivism postulates that state’s interests are ‘constructed’ through shared norms and ideas, which determine the appropriate state’s behaviour in a given situation²⁵⁰. Here, states’ behaviour is defined by norms. The rationalist theory, on the other hand, considers that international relations are made of rational states pursuing only their own interests²⁵¹. Here, interests and norms are distinct concepts, and norms only exist to constrain states’ behaviour. But as Abbott outlines, rational choice and constructivism must be seen as complementary because states “sometimes respond to interest-based incentives and sometimes to norms or identities”²⁵². Indeed, interests and norms must be considered here as the two sides of the same coin that determines states’ behaviour. State’s behaviour is constituted both by rational choices and adherence to norms. They are both part of the calculation from rational states to determine their decisions. In Abbott’s words, interests and norms “belong in the analytical toolkit to be used when appropriate”²⁵³.

²⁵⁰ Kenneth Abbott, 2008: 12.

²⁵¹ Finnemorre, Martha and Sikkink, Kathryn, 1998: 894.

²⁵² Kenneth Abbott, 2008: 14.

²⁵³ Kenneth Abbott, 2008: 14.

Thus, this thesis argues that in the case of South Sudan and Somaliland, the great powers' behaviour with regards to norms has been determined by a logic of consequences. Indeed, the geopolitical consequences in recognizing South Sudan were clear for the great powers: weakening an Islamic Sudan hostile to the West and supportive of terrorist organizations. Therefore, the application of the right to self-determination to South Sudan is believed to have been driven by the expected outcomes it could provide. In the case of Somaliland, the respect to the territorial integrity of Somalia have predominated over the right to self-determination of Somalilanders because the neighbouring countries have geopolitical interests in the non-recognition of Somalia as a sovereign state. Therefore, what is the role of international legal norms in the process of international recognition? The answer proposed in this thesis is that legal norms provide legal justifications for states to legitimize their political preferences in recognizing or not new states.

The comparative analysis of South Sudan and Somaliland has then attempted to show that the practices of recognition can be closely connected to the geopolitical interests of powerful external actors. Indeed, international politics is essential to understand the incoherencies surrounding the recognition of South Sudan and the non-recognition of Somaliland. And as international law is composed of opposing norms and rules, recognizing states benefit from a variety of norms to legitimize their political decisions in supporting or not a secessionist movement according to their preferences.

4 Conclusion

The comparison of South Sudan and Somaliland goes against the position of contemporary scholars according to which recognition is considered through a declaratory perspective. Indeed, under the declaratory theory, Somaliland should have been granted international recognition as it fulfils the legal requirements for statehood. On the contrary, South Sudan did not satisfy the criteria and a declaratory position from the international community would have prevented the secessionist movement from achieving statehood. Nevertheless, the discrepancy between the two secessionist movements with regards to the achievement of statehood cannot be neither explained through the constitutive theory only. Even though recognition has been constitutive as granting international rights to South Sudan and denying those of Somaliland, the recognizing states did not have unlimited discretion and had to justify their choices through legal norms of international law. Those legal norms have been the right to self-determination for South Sudan and the respect to the territorial integrity of Somalia for Somaliland. The different outcome between the two cases has therefore been the result of both political choices and legal arguments.

Consequently, this thesis claims that the traditional debate between the constitutive and declaratory theories is not satisfactory to fully understand states' practices with regard to recognition of new states. Indeed, recognition of new states cannot be understood as either a matter of law or politics. And limiting the debate to the two theories does not allow to grasp the crucial influence of international politics in the process of recognition. As the thesis has attempted to underline, recognition must be understood through a complex interplay between law and politics. Indeed, international recognition is a process that encompasses both political and legal considerations from external actors. Therefore, it can be argued that state's creation encompasses two acts of recognition: The acknowledgement of the validity of the aspiring entity's claims to recognition under international law, and whether or not other states recognize it as a new member of the international community with international rights.

Finally, this thesis encourages to conduct further research on the meaning of statehood and its relationship with recognition. Indeed, there are different conceptions of statehood. The legal conception refers to the normative nature of the state, and as Kelsen defines it, the state is a "coercive, relatively centralized legal order"²⁵⁴. The state is a legal entity, understood as a

²⁵⁴ Hans Kelsen, 1941: 607.

bundle of rights, whose creation is codified by law²⁵⁵. On the other hand is the non-legal notion of a state, referring to the concept of nation. As Worster sees it, it refers to “a community, sharing a common culture and a clearly demarcated territory, having a common past and a common project for the future, and claiming the right to rule itself”²⁵⁶. Therefore, as there is no consensus on the nature of the state, because it encompasses both legal and non-legal aspects, the present situation whereby statehood is understood as the entitlement to international rights and determined by political choices from recognizing states becomes problematic. As practices of recognition can lead to ineffective recognized states like South Sudan and effective unrecognized states like Somaliland, it is argued that recognition should be theoretically distinct from statehood. In that manner, in order to avoid further incoherencies with regards to the recognition of statehood, this thesis endorses Hersch Lauterpacht’s statement for the need of an international organ tasked with assessing claims to statehood and granting recognition to aspiring states.

²⁵⁵ Gerard Kreijen, 2004: 48.

²⁵⁶ William Thomas Worster, 2009: 143.

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