



UNIVERSITY OF  
LEICESTER

# **Secession from Failed States: Ethical and Practical Issues with Current Approaches.**

Doctoral thesis.

By Edmund Arthur Brown

University of Leicester  
School of History, Politics & International Relations

2018

## Acknowledgements

My first thank you has to go to my parents Malcolm Brown and Angela Brown for their financial help and the other advice and support they have given me. Also, my grandmother Gwen Brown who without her support I would not have been able to complete the thesis, and who sadly did not live to see it completed.

I would also like to thank my partner Liz Baliol-Key for her constant support and reassurance.

Thanks must of course go to my supervisor Kelly Staples-Chappelow, who provided invaluable guidance, and also to secondary supervisor Tara McCormack and former supervisor J. Simon Rofe, the latter of whom was invaluable in helping me begin my PhD and also helping me to begin teaching for the university to help support my studies.

Finally, I would like to thank Tobias Barber of Cambridge University, who was instrumental in helping me obtain much of the literature I needed to complete the thesis.

## TABLE OF CONTENTS

<b>ABSTRACT</b> .....	<b>I</b>
<b>ABBREVIATIONS</b> .....	<b>II</b>
<b>INTRODUCTION</b> .....	<b>1</b>
<b>CHAPTER 1- APPROACHES TO SECESSION (PRACTICE)</b> .....	<b>17</b>
THE MONTEVIDEO CONVENTION .....	18
EVENTS THAT HAVE AFFECTED THE WAY ACTORS WITHIN THE INTERNATIONAL COMMUNITY APPROACH SECESSION .....	21
INDIVIDUAL EXAMPLES OF SECESSION .....	41
ATTITUDES OF INTERNATIONAL ORGANISATIONS .....	55
CHAPTER CONCLUSIONS AND RELEVANCE TO THESIS .....	70
<b>CHAPTER 2- THE CONCEPTS, PRINCIPLES AND THEORIES OF SECESSION</b> .....	<b>75</b>
THEORIES OF STATEHOOD AND THE CONCEPT OF RECOGNITION .....	78
TERRITORIAL INTEGRITY: AN INTERNATIONAL ANTI-SECESSION NORM? .....	81
SELF-DETERMINATION: DEFINITIONS, IMPORTANCE AND ISSUES .....	96
THEORIES OF SECESSION .....	110
CHAPTER CONCLUSION.....	125
<b>CHAPTER 3- SECESSION AND STATE FAILURE</b> .....	<b>128</b>
WHAT IS A 'FAILED STATE'? .....	129
TO WHAT EXTENT DO ETHNIC, NATIONAL AND TRIBAL DIVISIONS CAUSE/AGITATE STATE FAILURE? ..	139
TO WHAT EXTENT DOES STATE FAILURE ENCOURAGE SECESSION? .....	146
COULD SECESSION MAKE IT HARDER FOR A FAILED STATE TO STABILISE?.....	154
TO WHAT EXTENT IS A FAILED STATE SOVEREIGN, AND WHAT ARE THE IMPLICATIONS FOR TERRITORIAL INTEGRITY IN A FAILED STATE? .....	158
CHAPTER CONCLUSION.....	169
<b>CHAPTER 4- CASE STUDY: SOMALIA</b> .....	<b>172</b>
WHAT IS THE NATURE OF STATE FAILURE IN SOMALIA? .....	174
WHAT EFFECT DOES THE CLAN SYSTEM HAVE ON NATIONAL UNITY? .....	182
HOW 'LEGITIMATE' WAS THE TRANSITIONAL FEDERAL GOVERNMENT? .....	189
THE FEDERAL GOVERNMENT OF SOMALIA .....	195
CURRENT ATTITUDES TOWARDS SOVEREIGNTY IN SOMALIA AND RECOGNITION OF SOMALILAND.....	197
SOMALILAND: THE CASE FOR RECOGNITION .....	206
CHAPTER CONCLUSION.....	211
<b>CHAPTER 5- CASE STUDY: SUDAN</b> .....	<b>213</b>
WHAT IS THE NATURE OF SUDANESE STATE FAILURE? .....	216
THE BUILD-UP TO SECESSION .....	228
WHY WAS SOUTH SUDAN RECOGNISED? .....	242
WAS SOUTH SUDAN RECOGNISED BECAUSE IT SECEDED FROM A FAILED STATE? .....	251
CHAPTER CONCLUSION .....	254
<b>CHAPTER 6- HOW SECESSION FROM FAILED STATES IS APPROACHED</b> .....	<b>256</b>
PATTERNS IN THE APPROACHES TO SECESSION IN GENERAL .....	257
HOW DO THE CLASSIC ARGUMENTS AGAINST SECESSION HOLD UP IN THE CONTEXT OF A FAILED STATE? .....	272
RECOGNITION OF SECESSION FROM FAILED AND CONFLICTED STATES. ....	278
A COMPARATIVE ANALYSIS OF THE APPROACHES TOWARDS THE SECESSION OF SOMALILAND AND SOUTH SUDAN.....	282

ARE SECESSIONS FROM FAILED STATES TREATED DIFFERENTLY TO SECESSIONS FROM STABLE STATES IN ETHICAL AND PRACTICAL TERMS? .....	291
WAYS IN WHICH THE APPROACHES TOWARDS SECESSION FROM FAILED STATES CAN BE REVISED. ....	294
CHAPTER CONCLUSION.....	302
<b>THESIS CONCLUSION .....</b>	<b>305</b>
<b>BIBLIOGRAPHY .....</b>	<b>312</b>

## Thesis abstract: Secession from Failed States: Ethical and Practical Issues with Current Approaches.

The thesis examines two threats to sovereignty: secession and state failure. It focuses on how the secession from failed states is approached, with particular concern for recognition and the associated ethical and practical issues.

Many issues surrounding secession from failed states originated in the decolonisation era. However, the phenomenon began to become more prominent following the end of the Cold War, in part due to the fall of regimes supported by the superpowers. It is important to engage with these phenomena and their interrelationships as they have implications for sovereignty and state recognition, and in turn for the international system of states. Secession borne through state failure usually involves civil war perpetuated by a lack of central government control. This requires an approach from the international community that will settle grievances and ensure legitimate governance (whether in a unified or secessionist state, or both the secessionist and parent state) without leaving groups vulnerable or setting a precedent of secession that could undermine the international states system.

The thesis examines attitudes within the international community towards secession and the concepts behind it and the ethical and practical issues involved, it then analyses the nature of state failure and its relationship with secession. It then examines two case studies of secession from failed states: South Sudan, and Somaliland. Generally, maintaining territorial integrity is favoured over allowing self-determination through recognising secession, except in situations where it is expedient, or a government is undermining its people's rights (including that of self-determination). In cases of failed states, people's security and basic human rights are neglected or subject to active persecution. The current anti-secessionist paradigm may therefore need to be altered in the context of state failure, since a failed state has less of a claim to sovereignty due to the absence of a legitimate government.

## Abbreviations

ABC- Abyei Boundary Commission

AMISOM- African Union Mission in Somalia

AU- African Union

BBC- British Broadcasting Corporation

CIC- Council of Islamic Courts

CPA- Comprehensive Peace Agreement

CSCE- Conference on Security and Co-operation in Europe

DR- Democratic Republic (as in DR Congo)

EEC- European Economic Community

EU/EC- European Union/European Community

EPRDF- Ethiopian People's Revolutionary Democratic Front

EPLF- Eritrean People's Liberation Front

FFP- Fund For Peace

FRY- Federal Republic of Yugoslavia

FYR- Former Yugoslav Republic (as in FRY Macedonia)

ICJ- International Court of Justice

IGAD- Inter-Governmental Authority for Development

ISF- Integrated Strategic Framework (UN)

MP- Member of Parliament

NATO- North Atlantic Treaty Organisation

NGO- Non-Governmental Organisation

OAU- Organisation of African Unity

OSCE- Organisation for Security and Co-operation in Europe

SDA- Somali Democratic Alliance

SDM- Somali Democratic Movement

SFRY- Socialist Federal Republic of Yugoslavia

SNM- Somali National Movement

SPLM/A- Sudan People's Liberation Movement/Army

SPM- Somali Patriotic Movement

SRC- Supreme Revolutionary Council.

SSC- Sool Sanaag and Cayn movement

SSDF- Somali Salvation Democratic Front

SSRM- South Sudan Resistance Movement

SYL- Somali Youth League

TFG- Transitional Federal Government

TNG- Transitional National Government.

TRNC- Turkish Republic of Northern Cyprus

UK- United Kingdom

UN- United Nations

UNESCO- United Nations Educational, Scientific and Cultural Organization

UNISFA- United Nations Interim Security Force for Abyei

UNITAF- United Task Force

UNMISS- United Nations Mission in South Sudan

UNOSOM-United Nations Operations in Somalia

USA- United States of America

USC- United Somali Congress

USSR- Union of Soviet Socialist Republics

NKR- Nagorno-Karabakh Republic

## Introduction

Since the end of the Cold War, the concept and practice of statehood has encountered certain issues. Firstly, the term ‘failed state’ has come into common usage in the field of International Relations. A ‘failed state’ is a nation in which the central government has no or limited effective control over the state’s territory.<sup>1</sup> Reasons for such a loss of control often involve civil war and/or division between the communities within a state, be they ethnic, national, linguistic or religious. Failed states became more prevalent after the Cold War, since many governments were dependent on support from the superpowers. Following the collapse of the Soviet Union, there was no longer any need for the USA to sponsor their Cold War allies. Many of these states, notably Somalia, had been held together by tyrannical dictators, and without superpower support were quickly overthrown by populations dissatisfied with their rule. In instances like Somalia, a power-vacuum followed which no government has been able to adequately fill.

The concept and practice of statehood has also been challenged through the secession of states, in which new states break away from a ‘parent state’. This has also often been due to a lack of a strong power holding the state together, which can be linked to the end of the Cold War. It is no coincidence that that a vast number of secessions have occurred in the former Soviet Bloc since the end of the Cold War, including those which have been recognised, such as those states that broke away from the former USSR or former

---

<sup>1</sup> The definitions of a failed state are somewhat contested as noted in Chapter 3. However, as will be noted in said chapter’s analysis, there is something of a consensus that state failure involves a loss of control over territory.

Yugoslavia as well as many which remain unrecognised, such as Transdnistria, South Ossetia and Abkhazia.<sup>2</sup>

Both state failure and secession also have roots in decolonisation. Ethnically heterogeneous countries were held together by colonial powers while they ruled them (the colonisers often empowering one group in particular to help them rule). Following decolonisation, these countries were often held together by tyrannical dictators, often (but not always) exploiting superpower allegiance during the Cold War in order to stay in power. With state failure, once the power was gone the integrity of the state diminished, and peoples who had striven for independence could seize the opportunity to make a secessionist claim. Again, a prime example of this is Somalia, which was formerly two separate colonies united after decolonisation and administered for many years under a dictatorship. The country collapsed into state failure once the dictator was overthrown, following which Somaliland, formerly a separate colony and an area oppressed by the dictatorship, declared independence.<sup>3</sup>

State failure does not always lead to secession, and states have remained ostensibly intact despite weak governments and/or civil war (non-government forces can aim to take over a whole country as opposed to starting a new one), while relatively stable countries have

---

<sup>2</sup> UN-recognised states that broke from the USSR include Ukraine, Belarus, Latvia, Estonia, Lithuania, Georgia, Azerbaijan, Armenia, Kazakhstan, Uzbekistan, Moldova, Russia, Tajikistan, Turkmenistan and Kyrgyzstan.

UN-recognised states that broke from Yugoslavia include Croatia, Slovenia, Bosnia-Herzegovina, Macedonia, Serbia and Montenegro.

<sup>3</sup> BBC: 'Somaliland profile', <<http://www.bbc.co.uk/news/world-africa-14115069>> accessed 12 October 2013

split peacefully, such as Czechoslovakia. However, when secession from a failed state does occur, it throws up different ethical and practical issues to those that arise in secession from a stable state, such as particular issues over a lack of legitimacy and sovereignty of the parent state and arguments over whether in certain cases a secessionist state may be more legitimate. This thesis explores these circumstances involving secession from a failed state, and will critically assess the approaches of the actors within the international community towards secession in such a context.

The thesis notes that up until this point recognition of secession from failed states has only been used in situations of conflict resolution, usually as a last resort, preferring to keep the international norm of territorial integrity.

Through an examination of the idea of sovereignty being based on a state upholding the social contract and practicing responsible governance, this thesis postulates that the international norm of territorial integrity is of limited applicability in the context of a failed state, the state having failed in the duties that bestow sovereignty, such as providing security and basic human rights. The norm of the primacy of territorial integrity is noted to be changing with the advent of the Responsibility to Protect. Whilst this has advocated sovereignty being compromised through external intervention rather than a breaking up a country, it has set a precedent where territorial integrity and sovereignty are no longer sacrosanct. Indeed, many interventions have led to secession, notably in the Balkans.

Remedial secession has been put forward by scholars, notably Allan Buchanan, as a solution to protect a people who are being oppressed.<sup>4</sup> The extension of this theory, ‘earned sovereignty’ has been noted by some such as Grace Bolton and Gesim Visoka to be a mechanism for a remedial secession to prove itself as a viable, legitimate state and thus give a level of guarantee that the solution will not be ineffective and will partially prevent setting a secessionist precedent.<sup>5</sup> This thesis looks at these ideas in the context of legitimacy, both that of the parent state and the secessionist state, arguing that there is a ‘balance of legitimacy’ that can in theory be tipped towards the secessionists, which would make a stronger case for recognition. In a failed state, the parent-state by definition lacks legitimacy, therefore if there is a secessionist entity that can provide better security and rights for its citizens, as well as holding the belief of its population in its legitimacy (which are the key tenets of legitimacy according to writers such as David Beetham and Max Weber) then the ‘balance of legitimacy’ is tipped towards them.<sup>6</sup> The thesis argues that this has been the case in Somaliland. The thesis proposes broadening the remedial right to secede to situations in which the parent state is passively undermining the rights and security of its population by being unable to uphold them, as well as situations where rights and security are actively undermined through oppression.

A key problem for secessionist movements within failed states is that the criteria for gaining international recognition are unclear. The existing literature offers useful

---

<sup>4</sup>Allen Buchanan *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law* (New York: Oxford University Press, 2004) p217

<sup>5</sup>Grace Bolton and Gezim Visoka “Recognizing Kosovo’s Independence: Remedial Secession or Earned Sovereignty” Occasional Paper 10/11, St Anthony’s College- Oxford University, October 2010, p6

<sup>6</sup> David Beetham *Max Weber and the Theory of Modern Politics* (London: George Allen & Unwin Ltd, 1974) p115  
David Beetham *The Legitimation of Power* (Basingstoke: Macmillan, 1991) p6

analytical tools and theories of secession, as well as important information about state failure, how it occurs, and the nature of so-called 'state failure'. However, little has been written on the relationship between secession and state failure.<sup>7</sup> This is in part due to the fact that secession from failed states is a relatively new concept and has only relatively recently gained the attention of academics and actors within the international community such as states and international organisations.

As things stand, there are certain ways of approaching secession from failed states that can be classified as schools of thought on the issue: The more conservative school of thought focusses on the primacy of territorial integrity, suggesting that the most important consideration in cases of secession is the consequences for the international system of states.<sup>8</sup> A more liberal school of thought suggests that it is more important to consider issues of state legitimacy and the welfare of the people involved in the secession. This school of thought suggests that there is indeed a right to secede if the people of the secessionist entity wish to do so. However, as this thesis will discover, the right to secede needs to be more limited in order to avoid the breakdown of the states system and also to protect minorities within secessionist states.<sup>9</sup> A more restrictive liberal theory advocates advocating a remedial right to secede.<sup>10</sup> The realist perspective looks at the influence that states' self-interest has on recognition, arguing that states will only recognise secession if it is in their interests to do so implying that wider security and stability

---

<sup>7</sup> Aaron C. Kreuter, "Self-Determination, Sovereignty, and the Failure of States: Somaliland and the Case for Justified Secession", *Minnesota Journal of International Law* 19(2) 2010, p363.

<sup>8</sup> Susanna Mancini "Secession and Self Determination" in Michel Rosenfeld and Andras Sajó (eds) *The Oxford Handbook of International Law* (Oxford: Oxford University Press, 2012) p481

<sup>9</sup> A. H. Birch "Another Liberal Theory of Secession" *Political Studies* 32, 1984, p597

<sup>10</sup> Buchanan, 2004, p217

concerns are important when considering secession.<sup>11</sup> This thesis acknowledges all three of these schools of thought in so much that it recognises that there is a consensus that territorial integrity is important, but also recognises that there is evidence of humanitarian concerns being taken into account, including cases where the remedial right to secede has been apparent. The thesis also notes that whilst states' self-interest is indeed a powerful influence when it comes to how actors within the international community approach secession, principle is also evident. However, whilst it can be argued that principle is often used to justify pragmatism, the fact that principle is used by these actors to justify their actions, even if only ostensibly, shows that it is important to understand both pragmatism and principle in the actors approaches to secession.

As discussed in this thesis, there is a strong case to be made that state failure encourages secession. There are three important reasons for this, as already mentioned. Firstly, the fall of an authoritarian power holding a state comprised of different peoples together by force could provide an opportunity for a formerly-oppressed people to form their own state in order to prevent future oppression. Secondly, in the case of failed states such as Sudan, an authoritarian regime was in power yet had limited control over its territory, and so had limited capabilities to counter and contain violent groups seeking to resolve grievances brought about by oppression. Thirdly, in failed states in which the

---

<sup>11</sup> Peter Radan "Secession and international Law" *H-Net: Humanities and Social Sciences Online* 20 November 2015 <<https://networks.h-net.org/node/3911/discussions/97535/secessionism-and-separatism-monthly-series-%E2%80%9Csecession-and>> accessed 28 July 2017

Michael E. Solomon "The Legality of Secession: The Legitimacy of Separatist Movements in Western Sahara, Somaliland and South Sudan" *Xavier Journal of Politics* 3(1), 2012, p49

government has negligible control over their territory, such as in Somalia, secession might occur because one group feels they have a better chance of escaping the associated anarchy and lawlessness by ‘going it alone’. These are not the sole reasons for secession from failed states, nor are they mutually exclusive. Further to this, the present thesis will explore the case that arguments against secession, such as the importance of territorial integrity, are not as relevant in the context of failed states. It is clear that no two secessionist movements seeking recognition in the context of failed states are the same. Nevertheless, from extensive case studies and examination of the existing literature, the thesis will outline some of the stronger arguments which such groups could deploy in their bids for recognition, and set out some criteria by which their bids might be judged by actors within the international community.

The overall research question for the thesis is: ‘What ethical and practical issues arise in the current practice of recognition of secession from failed states’. To answer this question, it is first necessary to discover how secession is approached in general. This will identify the context in which to frame secession from failed states, which will allow this research to explore if and how these same approaches are employed in the context of failed states, and also to critically assess the suitability of these approaches in ethical and practical terms. It is also important to note that there are a number of inconsistencies in the manner in which secession is approached. Understanding these inconsistencies will allow a better understanding of the approaches of states and organisations towards secession from failed states.

## Methodology

### Sources

The current attitudes towards secession and how certain practical and ethical issues are approached are chiefly analysed using primary source material, especially policy documents where possible. This supports the empirical side of the thesis, as it demonstrates how secession is approached in practice. For the purposes of this thesis accession to the UN general assembly is considered tantamount to near-universal recognition, so UN documents will also be important primary sources.<sup>12</sup> The UN charter has also provided something of a blueprint (albeit an inconsistent one) for how the international community approaches sovereignty and self-determination, as has the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. These documents generally espouse support for territorial integrity over self-determination, but appear to make exceptions in cases where the parent state is persecuting a people. Other primary sources to be consulted when addressing this issue include publications and documents from organisations such as NATO and the EU/EC. These organisations in particular were instrumental in shaping the way that actors within the international community reacted to the breakup of Yugoslavia, and will thus provide an insight into how the international community has dealt with secession in the recent past. This will enable the thesis to identify some of the practical issues that actors within the international community have faced when considering recognition of secession. Understanding this will help the thesis to later assess how these issues are affected if a

---

<sup>12</sup> There are a number of states on the UN general assembly that are not recognised by certain nations. However, in these cases the number of states which do not recognise are far outnumbered by those who do.

secession is from a failed state given the lack of control the government has over its territory in a failed state and the associated legitimacy issues.

Whilst primary sources are the principal resource used when analysing how actors within the international community approach and have approached secession as current practice is an important starting point in analysing the ethical and practical issues involved in secession, they are not sufficient alone. Secondary analyses are also required to assess whether, and if so how well, the approach of the states and organisations towards secession addresses ethical and practical issues, using normative analysis to critique the empirical findings. This will also give a deeper insight into the possible reasons behind the attitudes of the various actors within the international community. The thesis uses secondary analysis to critically analyse the findings from the primary analysis. Thus, it will use normative analysis to assess the implications of the empirical findings and help to answer the research question since it will enable the thesis to critically assess the ethical implications of the practice of the actors within the international community when it comes to secession from failed states. It does this by using various theories to critically reflect on the current practice of recognition of secession (or lack thereof). Using both the empirical observations of how actors within the international community have approached secession together with the normative analysis of these approaches, the thesis will begin to form the argument that territorial integrity is somewhat dependent on the conduct and legitimacy of the parent-state, both in theory through the remedial right to secede (as will be seen in Chapter 2) and caveats within UN declarations (as will be seen in Chapter 1) and in practice due to the observed actions of relevant actors.<sup>13</sup> This in turn

---

<sup>13</sup> UN: "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" United Nations

has ethical and practical implications for the recognition of secession from failed states due to the lack of legitimacy inherent in a failed state.

The thesis defines a failed state using Max Weber's idea that if a successful state is one that holds the monopoly on the legitimate use of force, then a failed state is one that has either lost the legitimacy, the monopoly or both.<sup>14</sup> To investigate the ways in which state legitimacy and state monopoly on the use of force are measured, and to explore the link between state failure and secession, the usefulness of the *Foreign Policy Fragile States Index* in quantifying state failure is assessed. Due to the contested nature of what constitutes a failed state, other indices will also be used to establish whether there is a consensus on what constitutes a failed state, positing that the Weberian definition that a failed state is one that has lost the monopoly on the legitimate use of force is a widely accepted one. In addition to this, certain criteria for state failure used by the index is analysed in the context of secession, drawing out issues which affect and cause both secession and state failure based on a loss of monopoly of the legitimate use of force due to divisions, particularly ethnic divisions, within a failed state. This will help the thesis to analyse the relationship between state failure and secession, based on disunity and the loss of monopoly on force. This subsequently allows the thesis to make an assessment as to how the context of state failure poses different ethical and practical issues for actors considering recognition of secession from a failed state. This in turn moves the argument of the thesis forward by examining the argument that the legitimacy and sovereignty of a failed state is weakened by a failure to provide political goods such as security and

---

General Assembly Resolution 2625 (XXV). Twenty-fifth session 24 October 1970, <<http://www.un-documents.net/a25r2625.htm>> accessed 19 November 2014

<sup>14</sup> *The Economist*, "Failed States: Fixing a Broken World", 29 January 2009, <<http://www.economist.com/node/13035718>> accessed 30 November 2016

basic human rights, and thus this should be taken into account by actors considering recognition of secession from a failed state. This is of particular importance if the secessionist entity is more legitimate in that it is more willing/able to provide said political goods.

In the case studies, secondary sources are referred to when providing background such as accounts of how Somalia and Sudan became failed states. This will establish the nature of state failure in Somalia and Sudan respectively, allowing the thesis to make an assessment of their legitimacy, the implications that has on their sovereignty and the strength of the secessionist claims of Somaliland and South Sudan. This will help to address the research question by noting how the ethical and practical issues created by state failure affect the strength of such a secessionist claim. The attitude of actors within the international community towards these secessions is analysed using mostly primary material, such as media sources and publications from governments and international organisations. This will give the thesis an idea of how key actors within the international community approach secession from failed states and whether the ethical and practical issues of secession from failed states are appropriately taken into account in practice at present.

The final chapter will conduct a comparative analysis of these studies. This comparative analysis will show patterns and/or inconsistencies in the approach of the relevant actors within the international community towards secession from failed states. This will help the thesis to answer the research question of what ethical and practical issues arise in the recognition of secession from failed states by discovering whether the approach is

different than to secession from stable states and thus seeing whether the different ethical and practical issues are indeed taken into account.

### Justification for Methodology

The thesis will analyse the relationship between secession and state failure using secession as the dependent variable and failed states as the independent variable. Case studies are employed, as noted, to conduct an observational analysis of this relationship using comparative methods.

One criticism of the case study approach is that there is often difficulty in generalising findings from one case to others.<sup>15</sup> However, it would be difficult for this thesis to use a large-*n* approach, in which several cases are looked at. Whilst a large-*n* approach is a strong method if information is recorded in many cases, there are a limited number of examples of secession from failed states and, as is noted in Chapter 3, what constitutes a failed state can be contested.<sup>16</sup> This thesis addresses this issue by looking at a wide range of cases of secession in the early chapters, particularly when conflict is involved, and extrapolating patterns and themes. Although only two case studies are examined in depth (Sudan and Somalia as they are the clearest cases of secession from failed states) other cases are investigated in order to establish precedent and analyse the approach of the international community towards secession. The Balkans and Eritrea are studied with a

---

<sup>15</sup> Stephen Van Evera *Guide to Methods for Students of Political Science* (Ithaca: Cornell University Press, 1997) p53

<sup>16</sup> *Ibid*, p28, 30

degree of detail, and other cases such as Bangladesh, East Timor and the USSR are also referred to.

Meanwhile, an advantage of using comparative case study research is that it can be used to test, illustrate and explain theories.<sup>17</sup> In this case, the main hypotheses are that the international community prioritises territorial integrity over self-determination (although this stance is not absolute) and that secession raises different ethical and practical issues in the context of a failed state. Looking at two case studies in depth, which allows for information to be uncovered than a less detailed observation would, whilst also noting the implications of other cases strikes a compromise between the case study and large-*n* approaches gives a balance between comparative analysis and detail.<sup>18</sup> By comparing the differing approaches towards the two main case studies, and by comparing these approaches with other examples, the thesis can establish patterns in the approach while also acknowledging any inconsistencies. Suggestions can then be made regarding ways in which these inconsistencies can be addressed. Using comparative analysis to observe patterns is particularly useful since the idea of the ‘international community’ is something of a loose concept. Nations and actors will have different approaches to secession (from failed states or otherwise), but by using comparative analysis the thesis can identify whether and when there is a consensus on the approach, and where there is not, the thesis can identify why.

---

<sup>17</sup> B. Guy Peters *Strategies for Comparative Research in Political Science* (London: Palgrave Macmillan, 2013) pp157-158

<sup>18</sup> Van Evera, 1997, p30

## Synopsis

The manner in which secession is currently dealt with and how it has been dealt with in the recent past is established first. This allows a picture to be formed regarding the way in which the recognition of secession is considered, and start to develop explanations for this approach. The first chapter argues that the primacy of territorial integrity is generally favoured over a right to secede, yet notes that the principle of territorial integrity is not absolute. This will give an idea of the current approach which can then be analysed with the ethical and practical issues in mind so that said issues can be looked at later in the context of state failure.

Having analysed how secession is dealt with in practice, it is then necessary to look at some of the theories, concepts and principles behind secession. This section uses both normative and explanatory theories and focus on state legitimacy in order to develop an explanation of the various attitudes towards secession within the international community, which also supports a critical analysis of these stances in ethical and practical terms. This allows this thesis to begin to show why secession from failed states should be approached in such a way that the parent state's territorial integrity is of secondary importance, since some of the theory justifying secession can be interpreted in a way that means a secession from a failed state can be justified by using interpretations of these theories justifying secession.

The thesis then moves on to define state failure and examine the link between state failure and secession. It focusses on the fractured society endemic to many failed states,

particularly with reference to ethnic, national, tribal and religious divisions and how these can encourage secession. It also notes the impact that secession has on state failure, and analyses the implications of secession from a failed state in terms of stability and the sovereignty of the parent state. It is at this point that it will first be posited that secession should be approached differently when seen in the context of failed states, i.e. the idea that sovereignty is not an absolute concept and if a state is incapable of upholding its sovereignty then it lacks legitimacy, weakening the argument for preserving territorial integrity.

Central to the empirical side of the thesis are the case studies, two case studies are examined, which will focus on prominent secessions from failed states. Both Somalia and Sudan have regularly entered the top three in the *Foreign Policy* failed states index, and both have experienced secessionist movements. One was successful, in that it has gained a seat on the UN General Assembly (South Sudan), while one was unsuccessful in that it remains unrecognised (Somaliland). The thesis analyses the nature of these cases, investigating how both the state failure and secession came about before going on to analyse how these secessions have been approached and the ethical and practical issue that arose from said approach. These case studies are invaluable to answering the research questions, since they demonstrate how South Sudan ostensibly achieved recognition, and shed light on the reasons why Somaliland remains unrecognised. This will provide insight into exactly what a secessionist nation which has split from a failed state requires to be recognised given the current attitudes of states and organisations, which in turn will show the ethical and practical issues with such approach. This will shed light on some of the inconsistencies in the current approach, so that the final chapter

of the thesis can show if, why and how this attitude needs to be changed in ethical and practical terms.

The final chapter addresses the issues of how secession from failed states is approached, the ethical and practical issues surrounding this approach, the inconsistencies in these approaches and whether said approaches need to be revised in ethical and practical terms by identifying themes in the approaches towards secession, and secession from failed states in particular. By critically analysing the effectiveness of these approaches in terms of whether they result in a viable secessionist state or a stable union, the thesis can assess whether there could be situations in which secession might have a stabilising effect on a failed state, evaluating the concept of secession as a tool of conflict resolution and a remedy for state failure.

## Chapter 1- Approaches to Secession (Practice)

Before analysing how the international community approaches secession from failed states, it is first necessary to understand the international community's attitudes towards secession in general. This chapter examines some of the reasons behind secession, and studies a number of examples. It goes on to analyse how the international community has approached and dealt with various secessions, and highlights a number of inconsistencies in their approach. These are explored further in the next chapter, which focuses on the theory behind secession in order to identify why these inconsistencies emerged.

This chapter notes that whilst the international community generally espouses support for territorial integrity over secession, the principle of territorial integrity is not absolute and is somewhat limited. The international community's support for territorial integrity is analysed, and the chapter establishes the circumstances in which secession has been recognised by the international community in terms of the justifications given by both the various recognising states and other relevant actors, such as international organisations. Examples of successful and failed secessions will be analysed along with the approaches of international organisations in order to examine how the international community approaches secession and what it takes for a secession to become recognised, along with examining the associated ethical and practical issues. However, principles such as territorial integrity and self-determination will often be interpreted in different ways in order to give way to pragmatism and politics.

The phrase ‘international community’ is used here to represent the widely-recognised sovereign states that are the agents that can confer recognition upon a potential secessionist state. For the purposes of this thesis, gaining a seat on the UN General Assembly will be considered the benchmark for international recognition from the international community. Although certain UN General Assembly members do not recognise each other and actors within the international community will have differing approaches to secession, the UN is the largest political organisation of states, and since a two-thirds majority of votes in the General Assembly is needed for a state to become a member, winning membership implies widespread recognition.<sup>1</sup> Whilst accession to the UN does not necessarily mean a state has achieved universal recognition, most members who vote in the UN General Assembly are generally recognised to be states.<sup>2</sup> However, since states themselves are the agents through which recognition is conferred, the attitudes of certain individual states towards secession will also be examined in the thesis. The other ‘actors’ within the international community that are examined are international organisations (as well as the UN), being made up of states their attitudes can indicate consensus amongst groups of states within the international community.

### The Montevideo Convention

The Montevideo Convention on the Rights and Duties of States is important to this thesis, as it is perhaps the clearest expression of what makes a state in modern times. It may in fact be the most significant agreement since the Treaty of Westphalia as it sets the criteria for achieving statehood, at least in theory. According to the Convention, for a state to be

---

<sup>1</sup> UN: *About UN Membership*, <<http://www.un.org/en/members/about.shtml>> accessed 7 January 2016

<sup>2</sup> Anthony Aust, *Handbook of International Law*, (Cambridge: Cambridge University Press, 2005) p18

recognised in international law it must have “a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.”<sup>3</sup> However, like so many conventions, its practical implementation has been inconsistent. There exist *de facto* states and state-like entities that fit these criteria yet are not recognised by the UN, such as the Turkish Republic of Northern Cyprus (TRNC), Somaliland, and Abkhazia. The convention adds ambiguity by stating:

The political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.<sup>4</sup>

Importantly to this thesis, academics such as Thomas D. Grant and James R. Crawford contend that the existence of a state is not precluded by occupation or a lack of control over its territory.<sup>5</sup> Precedent for this view comes from the fact that the governments of European countries occupied during World War II continued to be recognised by the Allies, and the fact that the government of Somalia remains recognised despite lacking effective control over its territory.<sup>6</sup> This brings the territorial aspects of the Montevideo Convention into question, since the convention requires a state to have a ‘defined territory’; if a government does not have control over the territory it claims, then it would not have *de facto* possession of it and therefore have no ‘defined territory’ as such. This

---

<sup>3</sup> The Montevideo Convention on Rights and Duties of States, 26<sup>th</sup> December 1933, Article 1. <[http://avalon.law.yale.edu/20th\\_century/intam03.asp](http://avalon.law.yale.edu/20th_century/intam03.asp)> accessed 31 October 2016

<sup>4</sup> *Ibid.*, Article 3

<sup>5</sup> James R. Crawford *The Creation of States in International Law* (1979) pp78-79 and Yemi Osinbajo, “Legality in a Collapsed State: The Somali Experience” *International and Comparative Law Quarterly* 45(4) 2008 p910 noted in Thomas D. Grant, “Defining Statehood: The Montevideo Convention and its Discontents” *Columbia Journal of Transnational Law* 37(403) 1998-1999 p435

<sup>6</sup> *Ibid.*

criticism of the convention can be countered through the suggestion that a disputed territory can still be defined. However, this raises an issue regarding the legitimacy and morality of the disputants when it comes to who has the right to govern disputed territory. Legitimacy is a recurring issue in this thesis.

It appears that criteria for statehood are “at best, policy guidelines rather than legal norms”,<sup>7</sup> since some states that fulfil the Montevideo criteria have not been recognized, while other states that do not fulfil them have been.<sup>8</sup> At the very least this demonstrates that the Montevideo Convention criteria are not a universally applied set of standards for recognition of statehood. It can thus be argued that independence and recognition are separate concepts. However, while this thesis primarily addresses inconsistencies of recognition when it comes to the attitude of actors within the international community towards secession from failed states, this ambiguity highlights an important issue: can a state exist independently of recognition? If not, then what is required for a state to become not only independent, but also achieve recognition?

The next chapter considers theoretical issues regarding what makes a state and when a prospective state should be recognised, and addresses the issue of when a prospective state becomes recognised. In this chapter and the next chapter, several inconsistencies in the approach towards secession of states and groups of states in search of an explanation. It is also important to establish whether actors within the international community

---

<sup>7</sup> Jure Vidmar *Democratic Statehood in International Law* p241 in Dapo Akande “The Importance of Legal Criteria for Statehood: A Response to Jure Vidmar” *European Journal for International Law*, 2013 <<http://www.ejiltalk.org/the-importance-of-legal-criteria-for-statehood-a-response-to-jure-vidmar/>>\_accessed 7 January 2016

<sup>8</sup> Ibid

follows any norms, laws and guidelines when it comes to secession. Alternatively, an argument could be made that recognition is based more on the self-interest, pragmatism and politics of states.

### [Events That Have Affected the Way Actors Within the International Community Approach Secession.](#)

This section examines a number of critical events where actors within the international community have had to take an explicit stance on secession and what makes a state. The importance of this is that, as in law, when precedent is often cited in order to establish laws and norms, here, by looking at precedent the chapter can establish some of the rules and norms by which actors within the international community have approached secession, and we can see how the practice has fitted (or not) with the principles of the Montevideo Convention. From these precedents and norms, a comprehensive picture of how actors within the international community approach secession can be formed. Following this, the policies and practices of various international organisations will be examined so that the thesis can determine how precedent compares to principle. The thesis then transposes this onto the context of failed states from Chapter 3 onwards to establish the extent to which actors within the international community differ in their approach to secession in the context of a failed state.

Three major twentieth-century developments have had a significant influence on the way actors within the international community have approached secession: the establishment of the United Nations, decolonisation in the decades following the Second World War, and the collapse of Communism in Eastern Europe, particularly the fall of Yugoslavia.

The establishment of the UN brought with it several norms and principles that, at least ostensibly, form the basis for conduct within international relations, even if the reality is often affected by politics. These include self-determination, which is sometimes used as an argument for secession, and territorial integrity, which is sometimes used as an argument against. The attitude of the UN is particularly important to this thesis, as it is an embodiment of the international community and having a vote on the UN General Assembly can be seen as tantamount to recognition by the international community. As the world's foremost international organisation, its actions and policies have shaped how statehood has been approached by the international community.

Decolonisation following World War II brought to the fore the notion of the self-determination of peoples. This idea had been advanced previously, most notably by Woodrow Wilson. However, his interpretation arguably referred largely to minority rights within states rather than the creation of new nations (with specific exceptions regarding the breakup of the German and Austro-Hungarian Empires).<sup>9</sup> However, it now appeared that the definition of self-determination was being expanded to include non-self-governing territories, i.e. colonies, annexes and other occupied territories. Decolonisation would also create many complications caused by arbitrary borders imposed by the colonial powers, who displayed little to no regard for the demographics of the regions involved. The retention of colonial borders following decolonisation led to independence movements from minorities caught within post-colonial states.

---

<sup>9</sup> Patricia Carley, "Self-Determination: Sovereignty, Territorial Integrity and the Right to Secession" Report from a Roundtable Held in Conjunction with the US Department of State's Policy Planning Staff, United States Institute for Peace 1996 p.v

Examples of such post-colonial independence movements include Biafra, South Sudan, Eritrea and Bangladesh. It is thus clear that while the principle of self-determination of peoples has resolved some issues, it has also caused problems within the international order of states.

A people's right to self-determination is enshrined in the UN charter and so is ostensibly supported by the international community, as was illustrated by the widespread international support for decolonisation.<sup>10</sup> However, the relationship between decolonisation and self-determination is complex. Although the colonies gained self-determination in that they became independent states, this did not necessarily mean self-determination for the various peoples within them. The UN charter also upholds the principle of the territorial integrity of states, of which secession is seen as a violation.<sup>11</sup> The general support within the international community for territorial integrity is illustrated by the fact that independence movements within post-colonial states have often failed to gain recognition. However, they have been recognised at times, for example in the cases of Bangladesh and South Sudan, illustrating a degree of inconsistency in the approach of states. So why are some of these movements recognised and others not? The current chapter addresses this question.

Another major development that greatly affected the approach of actors within the international community to secessionism, self-determination and territorial integrity was

---

<sup>10</sup> Charter of the United Nations, Chapter 1, Article 1 (2) <<http://www.un.org/en/sections/un-charter/chapter-i/index.html>> accessed 30 November 2016

<sup>11</sup> Charter of the United Nations, Chapter 1, Article 2 (4) Article 1 (2) <<http://www.un.org/en/sections/un-charter/chapter-i/index.html>> accessed 30 November 2016

the fall of communism in Eastern Europe, which resulted in the breaking-up of both the Soviet Union and Yugoslavia. This ‘mass secession’, as it were, had a profound impact on the way that actors within the international community approached secession. The secessions from the USSR and Yugoslavia were mostly recognised, albeit with notable exceptions. These events showed that secession is sometimes inevitable when the parent-state’s legitimacy has been compromised, and the way in which actors within the international community responded to these events has affected the precedent on approaches to secession. This chapter examines the breakdown of the state of Yugoslavia, as the violence involved and the questions raised regarding the legitimacy of the parent-state can provide a preliminary insight into how actors within the international community might approach secession from failed states and throw light on the ethical and practical issues involved.

#### The Establishment of the United Nations

The UN charter expresses that peoples have the right to self-determination,<sup>12</sup> yet also makes clear that the integrity of states is vital. According to the ‘Declaration on the Granting of Independence to Colonial Countries and Peoples’, “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.”<sup>13</sup>

It is now necessary to analyse this ambiguity so that it can be interpreted and explained. As noted, with the establishment of the UN, self-determination came to the fore once more with the era of decolonisation. ‘Self-determination’ was seen by some, such as the

---

<sup>12</sup> Charter of the United Nations, Chapter 1, Article 1, Paragraph 2, Article 1 (2)  
<<http://www.un.org/en/sections/un-charter/chapter-i/index.html>> accessed 30 November 2016

<sup>13</sup> UN Resolution 1514 (XV) 6 “Declaration on the Granting of Independence to Colonial Countries and Peoples” 14 December 1960

Soviet Foreign Minister at the time of the founding of the UN, to apply to existing states and colonies rather than peoples.<sup>14</sup> This goes some way to reconciling the ambiguity between the UN's support for both self-determination and territorial integrity.

According to the Declaration on the Granting of Independence to Colonial Countries and Peoples, the UN defines a 'people' as "the population of an independent state or colonial entity".<sup>15</sup> The reasoning behind this is that while the document espouses the right to self-determination, it prohibits the disruption of national unity. In the context of the declaration, this leads to the conclusion that a 'people' refers to the population of the colonies involved.<sup>16</sup> This can be explained by the effect independence for every ethnic or cultural group would have on the states system on which the UN runs, i.e. a mass proliferation of states that would be greatly detrimental to the efficiency of an organisation such as the UN. There has been widespread opposition to this definition, as demonstrated by the abundance of secessionist movements in the world, and some textual analysis of UN documentation has suggested that 'a people' means people of a certain ethnicity or culture.<sup>17</sup> This is evidenced by the fact that there are often more than one 'people' within a state, Canada being an example with the English speakers and French Speaking Quebecois, as the Canadian court ruled in the Quebec case.<sup>18</sup> While it is not a UN undertaking, according to the Badinter Commission with regard to the breakup of Yugoslavia the definition could also refer to the population of a federal unit.<sup>19</sup> This is

---

<sup>14</sup> Frederic L. Kirgis, Jr. "The Degrees of Self-Determination in the United Nations Era", *The American Journal of International Law* 88(2) 1994 p304

<sup>15</sup> Aleksandar Pavkovic and Peter Radan, *Creating New States: Theory and Practice of Secession* (Aldershot: Ashgate, 2007) p233

<sup>16</sup> UN Resolution 1514 (XV) 2 and 6 "Declaration on the Granting of Independence to Colonial Countries and Peoples" 14/12/60

<sup>17</sup> Ibid, p234

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

further compounded in the UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. This stipulates that:

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.<sup>20</sup>

The issue of exactly what constitutes a ‘people’ is discussed in more depth in the next chapter, which focusses on the concepts and theories surrounding secession. This chapter and the rest of the thesis argues that the definition of ‘people’ has been applied inconsistently by actors within the international community, whilst self-determination has been granted in the form of recognition by the UN in certain cases. Generally speaking, the UN has chosen to support territorial integrity over self-determination, since this seems to be the will of many member states.<sup>21</sup> This is arguably an unjust system, not least for minorities trapped within states that they feel do not represent them. Indeed, condensing minorities into a particular region can increase the risk of belligerency and violence. One example of this would be the situation in Chechnya, where the Russians are ready to use force to prevent secession while the secessionists are ready to use force to achieve it.<sup>22</sup> This is very important to this thesis as a whole, as this belligerence can exacerbate state failure and perhaps even cause it, indicating that the general approach towards secession from failed states is in need of revision.

---

<sup>20</sup> UN: “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations” United Nations General Assembly Resolution 2625 (XXV). Twenty-fifth session 24 December 1970, on <<http://www.un-documents.net/a25r2625.htm>> accessed 19 November 2014

<sup>21</sup> Nicholas Kulish and C J Chivers “Kosovo Is Recognized but Rebuked by Others”, *New York Times* 19 February 2008 <[http://www.nytimes.com/2008/02/19/world/europe/19kosovo.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2008/02/19/world/europe/19kosovo.html?pagewanted=all&_r=0)> accessed 19 November 2014

<sup>22</sup> Carley, 1996, pp1-2  
Pavkovic and Radan, 2007, pp118-119

As will be seen in Chapter 3, a state can be said to have failed if it has lost the monopoly on the legitimate use of force. If either the monopoly or the legitimacy is called into question, as would happen in a violent secession, then the state could be said to have failed. This calls into question the presumption of territorial integrity, since territorial integrity can be challenged even if the parent-state is recognised to be intact. Indeed, if a parent-state uses force to prevent secession, said force may be illegitimate if the government of the parent-state does not represent the people of the secessionist state. As Principle 7 of the UN Declaration on Friendly Relations and Cooperation states, territorial integrity is only protected if the state in question has “*a government representing the whole people belonging to the territory without distinction as to race, creed or colour*”.<sup>23</sup> This shows a clear limit to the concept of territorial integrity, and begins to explain why some secessions are recognised but others are not.

Further limits to the principle of territorial integrity are seen in Principle 5 of the UN Declaration on Friendly Relations, where it is stated that:

A state’s right to territorial integrity prevails over the right of any of its peoples to self-determination, *provided that state conducts itself in accordance with the principles of equal rights and self-determination of peoples* [emphasis added].<sup>24</sup>

This can be linked with previous points regarding the state’s duty to represent minorities within its territory. It also implies that should a state fail to uphold the rights of these

---

<sup>23</sup> Ibid, p126

<sup>24</sup> UN: “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations” United Nations General Assembly Resolution 2625 (XXV). Twenty-fifth session 24 October 1970, <<http://www.un-documents.net/a25r2625.htm>> accessed 19 November 2014

minorities, or worse persecute the peoples involved, then secession could be justified and the secessionist entity recognised. To this extent territorial integrity appears conditional upon the sovereign's ability to uphold it responsibly, since a state cannot expect to have its sovereignty and therefore its borders respected if a) it abuses its sovereignty to perpetrate human rights breaches, and b) it appears unable to uphold said sovereignty by way of failing to provide security for its citizens. This would suggest that territorial integrity is conditional upon the state upholding its duties towards minorities and thus proving itself responsible for their rights. This is an argument that is examined throughout this thesis, as it applies in a number of cases that are analysed.

The idea that sovereignty is conditional is supported by the evolving consensus within the UN of a 'Responsibility to Protect', that is, a state's responsibility to protect the security of its population, in particular to protect them from "genocide, war crimes, crimes against humanity and ethnic cleansing".<sup>25</sup> The third pillar of the Responsibility to Protect doctrine states that: "If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations."<sup>26</sup> One report from the UN Secretary General on the responsibility to protect noted that: "Responsible sovereignty is based on the politics of inclusion, not exclusion."<sup>27</sup> This implies that

---

<sup>25</sup> UN Office of the Special Advisor on the Prevention of Genocide: 'Responsibility to Protect', <<http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>> accessed 30 November 2016

<sup>26</sup> Ibid.

<sup>27</sup> UN General Assembly "Implementing the Responsibility to Protect: Report of the Secretary General" 12 January 2009 <[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/63/677](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/63/677)> accessed 9 August 2016

minority rights are important to the UN, and as such a state's sovereignty and territorial integrity are dependent upon upholding them.

The issue of the Responsibility to Protect is revisited in Chapter 3. However, the concept of the legitimacy of a state's government has been encountered here. There is an argument that the legitimacy of political power is dependent on how well an agent of political power (government) upholds basic human rights.<sup>28</sup> Given the UN declaration that a state's territorial integrity is dependent on it upholding 'the principles of equal rights and self-determination', should a state fail to do so then by this argument it will lose legitimacy. Following such an event, secessionist groups may gain legitimacy if they are seen to be protecting the rights of their people.

### Decolonisation

The decolonisation that occurred during the latter half of the twentieth century went some way towards settling the ambiguity in the international community's support for both self-determination and territorial integrity. In the UN Declaration on the Granting of Independence to Colonial Countries, colonial borders were considered to be the borders of the newly independent states and as such were inviolable, a position upheld by the African Union (formerly the Organisation for African Unity).<sup>29</sup> However, these borders were arbitrarily drawn by the colonial powers with little regard for the ethnicity, religion,

---

<sup>28</sup> Allen Buchanan, *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law* (New York: Oxford University Press, 2004), p247

<sup>29</sup> United Nations "Declaration on the Granting of Independence to Colonial Countries and Peoples" Assembly resolution 1514 (XV) 14 December 1960, <<http://www.un.org/en/decolonization/declaration.shtml>> accessed 20 August 2014  
OAU: Organisation of African Unity Assembly Resolution 16(I) 17-21 July, 1964, <[http://www.au.int/en/sites/default/files/ASSEMBLY\\_EN\\_17\\_21\\_JULY\\_1964\\_ASSEMBLY\\_HEADS\\_STATE\\_GOVERNMENT\\_FIRST\\_ORDINARY\\_SESSION.pdf](http://www.au.int/en/sites/default/files/ASSEMBLY_EN_17_21_JULY_1964_ASSEMBLY_HEADS_STATE_GOVERNMENT_FIRST_ORDINARY_SESSION.pdf)> accessed 19 August 2014

culture or language of the inhabitants.<sup>30</sup> This in turn led to further secessionist conflict within the newly independent states.<sup>31</sup> Very few of these secession movements within former colonial states have become recognised as this thesis will see. This has been attributed to the primacy given to territorial integrity by actors within the international community, and this in turn has led to unrecognised *de facto* states, of which Somaliland is an example.<sup>32</sup> This shows that certain principles and norms can be at odds with the actual politics of the situation, since those engaged in the process of decolonisation paid as little attention to the demographics of the region as the colonisers who drew the borders.

The language in the UN Declaration on the Granting of Independence to Colonial Countries and Peoples made it appear as though the UN defined ‘self-determination’ as the absence of subjugation by an alien power rather than the independence of a people within a state. Whilst this implies that it is worse to be subjugated by another state as opposed to your own, the Responsibility to Protect is challenging this norm. As will be demonstrated throughout the thesis; this places limits on territorial integrity.

The declaration also states that “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>33</sup> However, this could be interpreted using

---

<sup>30</sup> BBC: “Will Sudan Split Set an African Precedent?” 07 January 2011

<<http://www.bbc.co.uk/news/world-africa-12130613>> accessed 14 August 2014

<sup>31</sup> Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States Since 1776* (Oxford: Oxford University Press, 2010) p149

<sup>32</sup> *Ibid*, p150

<sup>33</sup> UN: “Declaration on the Granting of Independence to Colonial Countries and Peoples” Assembly resolution 1514 (XV) 14 December 1960

the former definition, the absence of subjugation by an alien power. The fact that the Declaration also states that “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations” would tend to undermine the latter definition, the independence of a people within a state. This is especially the case since it is explicitly stated in the declaration that “The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.”<sup>34</sup> This explicitly supports a definition of self-determination as the absence of subjugation by an alien power.

However, two arguments can still be made which support the definition of self-determination as the independence of a people within a state. Firstly, this resolution was made specifically in relation to decolonisation rather than to secession, so the extent to which it is applicable is debatable. Secondly, there is again a degree of ambiguity as questions are raised regarding when a people or a region can be deemed ‘occupied’ by an ‘alien’ power, since a people within a sovereign state could be considered ‘occupied’ by a parent-state that they see as ‘alien’. This argument has been used by the people of Sabah, who wish to separate from Malaysia.<sup>35</sup> Further to this, delegations within the UN have voiced their support for the self-determination of regions within sovereign states based on their view that said regions are under occupation from an alien force. Examples of such include Observer Member Palestine, who claim to be under Israeli occupation,

---

<sup>34</sup> Ibid.

<sup>35</sup> John Joseph “It’s about decolonisation, not secession” *Free Malaysia Today* 1 September 2014 <<http://www.freemalaysiatoday.com/category/nation/2014/09/01/its-about-decolonisation-not-secession/>> accessed on 05 December 2014

and Armenia with regards to the Nagorno-Karabakh Republic (NKR), which they consider to be occupied by Azerbaijan.<sup>36</sup> Mikulas Fabry argues that this was particularly evident following decolonisation: “The biggest challenge to the territorial integrity of new states [came] from the many acts of secession in which ethnonational groups announced ... that they had a right of self-determination and were entitled to a sovereign state too.”<sup>37</sup> This shows that whilst on balance the UN seems to favour the definition of self-determination as a territory under occupation from an alien power, the same definition can in turn be used by territories within a sovereign state.

The arbitrary nature of post-colonial borders would appear to make post-colonial states especially prone to secession, particularly in Africa (although the legacy of colonisation has also been an observable factor in secessions elsewhere, such as Bangladesh) with the added issues of weak governments and “undiversified commodity driven economies that are conducive to fuelling conflict.”<sup>38</sup> However, academics including Pierre Englebort and Rebecca Hummel have noted that there has been something of a secessionist deficit in Africa, as fewer secessions have taken place than one might expect given the ripe conditions. They have partly attributed this to the fact that African nationalism is often built on “common colonial subjugation”.<sup>39</sup> This argument is undermined to an extent by the fact that whilst few secessions have been recognised since decolonisation, there has

---

<sup>36</sup> UN General Assembly Press Release: “Viewed Narrowly as a Right to Secede, Self Determination Could Threaten Territorial Integrity of States, Third Committee Told.” Third Committee, 29<sup>th</sup> Meeting, 29 October 2002

<<http://www.un.org/press/en/2002/gashc3708.doc.htm>> accessed 05 December 2014

<sup>37</sup> Fabry, 2010, p163

<sup>38</sup> Andrew Kuntz “Redrawing Borders in Africa: Norms and Exceptions”, 2013, <<https://ojs.geneseo.edu/index.php/great/article/download/147/407>> accessed 19 August 2014 p257

<sup>39</sup>Pierre Englebort and Rebecca Hummel “Let’s Stick Together: Understanding Africa’s Secessionist Deficit”, *African Affairs* 104 (416), 2005, p410

been no shortage of separatist movements: Biafra from Nigeria, Katanga from the Democratic Republic of Congo, Somaliland from Somalia, Azawad from Mali, Zanzibar from Tanzania, and Cabinda from Angola, among others.<sup>40</sup> This makes it appear more likely that the objections of the African Union (AU) and its member states are the predominant factor in the secessionist deficit in terms of recognition, given that the AU upholds the former colonial borders as inviolable national boundaries in order to “prevent Africa’s newly-independent states from squabbling and promote stability on the continent.”<sup>41</sup> Nonetheless there have been important exceptions, most notably Eritrea and South Sudan, both of which have been successfully recognised and attained membership of the UN General Assembly. Each of these cases will be analysed in this thesis, South Sudan in particular since its parent-state Sudan repeatedly features highly in the *Foreign Policy* Fragile States Index (formerly the Failed States Index) and South Sudan topped the 2014 index.<sup>42</sup> It is vital to understand why some of these secessions in Africa become recognised whilst others were not, particularly from less stable states as it reveals a great deal about how the international community approaches secession from failed states. The case studies conducted in this thesis illustrate and examine the apparent inconsistencies in the international community’s approach, and will discuss a number of possible reasons behind the discrepancies whilst also critically analysing the inconsistencies and the reasons given for them.

---

<sup>40</sup> Kuntz, 2013, p257

Luc Torres, Clar Ni Chonghaile, Finbarr Sheehy and Paddy Allen “The Separatist Map of Africa”, *The Guardian* 6 September 2012, <<http://www.theguardian.com/world/interactive/2012/sep/06/africa-map-separatist-movements-interactive>> accessed 8 January 2015

<sup>41</sup> Terence McNamee “The First Crack in Africa’s Map?: Secession and Self-Determination after Sudan”, The Brenthurst Foundation, Discussion paper 2012/01, p14

<sup>42</sup> Fragile States Index 2014 *Foreign Policy*, <<http://www.foreignpolicy.com/fragile-states-2014#highlights>> accessed 19 August 2014

The foregoing analysis has demonstrated that the international community worked hard to maintain the principle of territorial integrity in the post-colonial era. However, support for the self-determination of colonial states has prompted claims from other secessionist nations claiming that they were also under colonial subjugation, despite not being formally identified as such (Sabah, the NKR and Palestine are not on the UN list of Non-Self-Governing Territories).<sup>43</sup> As seen, organisations such as the AU have argued the case for maintaining colonial borders. However, as these have been changed and the changes have been recognised, the argument for maintaining said borders has been undermined. Nevertheless, support for territorial integrity remains strong within the international community.

#### State breakdown in the Balkans

The breakup of Yugoslavia demonstrates that secession can at times be difficult to prevent and highlights the limits of the international community's support for territorial integrity, confirming that a more pragmatic approach is sometimes taken. In the case of Yugoslavia, the breakup was largely due to issues over succession; the Federal Republic of Yugoslavia (FRY) claimed to be the successor state of the Socialist Federal Republic of Yugoslavia (SFRY) in the UN following the collapse of the communist regime., However, other constituent republics of the federation rejected this claim, mainly since states such as Croatia and Slovenia wanted a looser federation than Serbia, who wanted a tighter federation in order to consolidate Belgrade's control.<sup>44</sup> As a result, the FRY

---

<sup>43</sup> UN: The United Nations and Decolonisation: Non-Self-Governing Territories <<http://www.un.org/en/decolonization/nonselgoverterritories.shtml>> accessed 7 January 2015

<sup>44</sup> Marc Weller "The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia" *The American Journal of International Law* 86(3), 1992, p569

could not take its seat at the UN.<sup>45</sup> The lack of a clear successor to the federation led the various constituent republics to declare independence. The fact that the dissolution of Yugoslavia can be viewed as the breakup of a union rather than unilateral secession from a sovereign state made it easier for the international community to recognise the resulting states, since they can still be seen to have a claim to self-determination based on their territory.

It seems apparent that the international community was wary that the situation in the Balkans could set a dangerous precedent. Indeed, the term ‘Balkanisation’ has entered common parlance, meaning the breakup of a region, sometimes with negative connotations.<sup>46</sup> Minority rights issues provided by the EC as a criterion for recognition can be seen as something of a safeguard against further secession of groups within the newly recognised states. This is a danger which the international community seems wary of and appears to work to avoid, and is an argument against secession which is examined in the next chapter. Here, however, the international community’s approach to the dissolution of the FRY and the way in which the individual states came to be recognised as independent is examined.<sup>47</sup>

The international community, voiced by the UN, EC and OSCE (then the CSCE), initially came out in support of the FRY’s territorial integrity, as they did not wish to set a

---

<sup>45</sup> Aust, 2005, p21

<sup>46</sup>The original term was used to refer to the division of the region following the fall of the Ottoman Empire. However, the region has had various unions and divisions from then until recent times. Oxford Dictionaries on <http://www.oxforddictionaries.com/definition/english/Balkanize> accessed 27 May 2014

<sup>47</sup> European Community: Declaration on Yugoslavia and on the Guidelines of recognition of New States. 16 December 1991 in *International Legal Materials*, 31(6) 1992 p1487

precedent for secession following the breakup of the USSR.<sup>48</sup> However, they eventually became recognised despite the international community's usual stance on such matters.

Indeed, the *Washington Post* said at the time that:

[N]o element of international policy has gone more askew in the break-up of Yugoslavia than recognition – whether, when, how, under what conditions – of the emerging parts.<sup>49</sup>

It is certainly worth noting that the right to secession was provided for in the constitution of the SFRY (not a unique trait; the United States Constitution also has provision for secession, and although complicated and contestable, it was invoked (albeit unsuccessfully) in the 1869 case of *Texas v White*).<sup>50</sup> However, with regards to Yugoslavia, there were no mechanisms in place should one of the republics try to exercise that right.<sup>51</sup> As noted, Belgrade was anxious to preserve the federation, so the lack of mechanisms together with the international community's original support for territorial integrity must have made life difficult for the secessionists. So how did states such as Croatia and Slovenia overcome these obstacles?

Part of the reason the republics were recognised was that an overwhelming majority in Slovenia and Croatia voted for independence. However, the international community was still reluctant to recognise their independence following these referenda.<sup>52</sup>

---

<sup>48</sup> Weller, 1992, p570

Roland Rich, "Recognition of States: The Collapse of Yugoslavia and the Soviet Union" *The European Journal of International Law* 38(4) 1993

<sup>49</sup> Rich, 1993, p37

<sup>50</sup> Pavkovic and Radan, 2007, pp221-223

<sup>51</sup> Rich, 1993, p38

<sup>52</sup> *Ibid*, p39

A more telling factor leading to the recognition of the republics was that the breakup became violent, and so recognition came about as part of the peace process. The Yugoslav National Army used military force to oppose the Slovenian and Croatian attempts to assert their independence, and the European Community stepped in to mediate the conflict.<sup>53</sup> Once the EC was involved in this way, they helped to set the path for recognition. This shows that the possibility of violent conflict and the need to prevent it is a major ethical issue that arises in situations of secession.

There is evidence that some countries, such as the EU states, recognised Croatia and Slovenia with a view to promoting peace in the region, which they did from December 1991 to January 1992.<sup>54</sup> Former West German Foreign Minister Hans-Dietrich Genscher stated that much of the conflict concerning Slovenia and Croatia could have been prevented had action been taken to recognise their independence earlier. He also suggested that the decision of the international community (in this case Europe and NATO specifically) helped to prevent further bloodshed and implemented justice: “As a result of the conflict becoming more international, in early January 1992 Milosevic declared the war to be over...So that shows it was a decision that brought peace.<sup>55</sup>” The official recognition of Croatia and Slovenia played a part in this peace, since the EU countries involved in the conflict with Milosevic had now recognised Croatia and Slovenia as independent. For Milosevic to violate their newfound sovereignty would put him in a weaker position both morally and diplomatically.

---

<sup>53</sup> Ibid.

<sup>54</sup> Hans-Dietrich Genscher: Interview with Rayna Breuer for *Deutsche Welle* 25 June 2011, <<http://www.dw.de/recognizing-slovenia-croatia-brought-peace-genscher-says/a-15182463>> accessed 8 September 2016

<sup>55</sup> Ibid.

The perceived inevitability of the breakup of Yugoslavia can be seen as the catalyst to certain actors' readiness to recognise the new states that arose. Indeed, in October of 1990 a US National Intelligence Estimate reported that:

Yugoslavia will cease to function as a federal state within a year, and will probably dissolve within two. Economic reform will not stave off the breakup. [...] A full-scale interrepublic war is unlikely, but serious intercommunal conflict will accompany the breakup and will continue afterward. The violence will be intractable and bitter. There is little the United States and its European allies can do to preserve Yugoslav unity.<sup>56</sup>

The inevitability of the split was becoming clear, as proposals for a confederation were rejected by Belgrade and negotiations aimed at keeping Yugoslavia united collapsed.<sup>57</sup>

This is further illustrated in the opinions of the Arbitration Commission of the Peace Conference on Yugoslavia, otherwise known as the Badinter-Herzog committee, which had been organised by the European Economic Community (EEC) to provide legal advice on the situation in Yugoslavia. It found that the republics other than Serbia and Montenegro claimed that the situation was not one of secession, and was in fact the breakup of Yugoslavia by general consensus (by the republics other than Serbia and Montenegro). It also found that all the republics should be seen as successors, rather than one of the republics being a continuation.<sup>58</sup> The committee thus ruled that the SFRY was indeed dissolving, and that the future of any successor state was the responsibility of the

---

<sup>56</sup> US Department of State, Office of the Historian, <<https://history.state.gov/milestones/1989-1992/breakup-yugoslavia>> accessed 31 March 2015

<sup>57</sup>Netherlands Institute for War Documentation "The background of the Yugoslav Crisis: A Review of the Literature" p34, <<http://niod.nl/sites/niod.nl/files/VI%20-%20The%20Background%20of%20the%20Yugoslav%20crisis%20-%20A%20review%20of%20the%20literature.pdf>> accessed 12 April 2015

<sup>58</sup> Alain Pellet "The opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples." *European Journal of International Law* 3 (1), 1992, p182

republics.<sup>59</sup> The lack of a ruling from the EEC combined with a lack of consensus over succession and Belgrade's inability to support its claim as successor meant that there was little choice but to recognise the republics. The fact that the FRY was unable to support its claim as successor state to the SFRY meant that the Belgrade government lacked legitimacy. This shows that the recognition of a breakaway state can be justified by the international community if the parent-state lacks legitimacy. It also demonstrates that the international community, for the most part, has acted pragmatically in situations where secession is perceived as inevitable. Indeed, it was the FRY's lack of legitimacy which made the breakup inevitable and thus served as a justification for the international community's pragmatic action in recognising the subsequent states.

Perhaps one of the most important ethical and practical issues taken into account regarding the breakup of Yugoslavia was not with regards to recognition *per se*, but with ensuring the implementation of minority rights within the countries born of the dissolution. This is particularly significant to this thesis since, as will be seen in Chapter 3, ethnic divisions are a common feature of both secessions and state failures. Much of the legal and military international intervention in the Balkans in the 1990s was intended to ensure the rights of minorities and to alleviate ethnic conflict. Provisions for minorities were prominently featured in the opinions of the Badinter-Herzog committee.<sup>60</sup> Richard Caplan suggests that the insistence on making recognition conditional upon minority rights was motivated to a significant extent by the potential "security dividends" that would be brought about by the "peaceful inter-ethnic relations" that promotion of

---

<sup>59</sup> Ibid, p183

<sup>60</sup> Ibid, p184

minority rights would bring.<sup>61</sup> This idea will be looked at again when the chapter discusses the attitudes of the EU/EC towards secession. Importantly for this thesis, the committee talked about protecting minority rights within the new republics rather than altering borders to link up the demographics with the geopolitics. The committee made clear that the existing borders the republics had within the SFRY should become their national borders following secession.<sup>62</sup> This demonstrates that when recognising states in order to quell ethnic conflict, preservation of existing borders (as much as possible) is a practical issue seen as important by the recognising parties.

It has been demonstrated that the international community made a pragmatic decision in recognising the states that emerged from the breakup of Yugoslavia. The fact that the secessions were violently suppressed by Belgrade meant that international intervention was required to create peace, which in this instance meant recognition for the breakaway states. It was apparent that secession was the popular choice for the people of the republics, meaning there was a democratic argument for recognition, and the fact that the borders of the new states were already established prior to the breakup eased issues surrounding territorial integrity. The significance of this to the thesis is that if a state fails due to the failure of a union to remain intact, then provided there are clear pre-union borders the resulting states have a chance to be recognised by the international community.

---

<sup>61</sup> Richard Caplan, "The Recognition of New States and the Protection of Minority Rights in Yugoslavia" in Jean-Christophe Merle (ed) *Spheres of Global Justice Volume 1: Global Challenges to Liberal Democracy. Political Participation, Minorities and Migrations* (Dordrecht: Springer, 2013) pp270, 275

<sup>62</sup> Pellet, 1992, p184

The perceived inevitability of the breakup played a big part in the international community's decision to recognise the secessionists. Recognition meant that actors within the international community such as the EC and NATO, could play a part in the way the new countries were established and help to make provisions for minority rights.

Perhaps the most important conclusion from the breakup of Yugoslavia for this thesis is the argument that it was not technically a secession, but came about because Milosevic's government in Belgrade lacked legitimacy. State failure often implies the government lacks legitimacy, as the thesis will go on to see. It is noted that a lack of government legitimacy on its own does not create the grounds for recognition; however, alongside other factors such as oppression of a people, a vote for independence by that people and a need for conflict resolution, it can create a demand for secession which picks up support and momentum and can be difficult to reverse.

### Individual Examples of Secession

Analysing individual examples of secession will provide insight into the ethical and practical issues that have arisen in different approaches to secession. As is usually the case in international relations, examples of secession are often very different and thus they are approached differently. Two examples of secession that have elicited different responses from (potential) recognising actors are examined here: Eritrea, which has achieved full recognition in that it has a vote in the UN General Assembly, and Kosovo, which has been recognised by over 100 countries but is not yet recognized by the UN. Reasons why the different secessions have brought about different responses from the international community are examined in order to gain a better understanding of how

varying ethical and practical issues regarding secession are approached as well as the prerequisites necessary for a secession to achieve recognition.

## Eritrea

Examining Eritrea is important since the two case studies of secession from failed states examined in this thesis (Somalia and Sudan) are both former African colonies. Analysing the successful secession of Eritrea will provide insight into how the international community dealt with a secession from a post-colonial African state.

With Eritrea's secession the international community held the usual concerns over whether recognizing the entity would set a precedent that would lead to many more secessions in Africa, particularly due to the issues caused by the arbitrary colonial borders.<sup>63</sup> So how then did Eritrea become a recognized independent state? Some commentators, including one journalist from *The Economist* (see footnotes below), claimed that it was due to the unusual strength of Eritrea's claim.<sup>64</sup> Much of this strength came from the fact that Eritrea was never originally a part of its parent-state, Ethiopia. Ethiopia annexed Eritrea after British colonial rule of Eritrea ended in 1952, when Eritrea was left under Ethiopian administration.<sup>65</sup> The argument that Eritrea was a separate entity is strengthened by the fact that the Eritreans never held a referendum to establish whether they wanted a union with Ethiopia, which would undermine the legitimacy of Addis Ababa's rule over Eritrea. This lack of consent on the part of the Eritrean people implied

---

<sup>63</sup> *The Economist* "From the Archive: Another Country" 4 January 2011 (Original article 24 April 1993), <[http://www.economist.com/blogs/baobab/2011/01/secession\\_africa](http://www.economist.com/blogs/baobab/2011/01/secession_africa)> accessed 25 February 2014

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

that Ethiopian rule amounted to an annexation of Eritrea by Ethiopia. The UN made the decision to place Eritrea under Ethiopian control after “collecting the views of ‘the principal political parties and associations’ and ‘holding hearings of the local population’”.<sup>66</sup> The fact that Eritrea was essentially annexed by Ethiopia would limit the strength of the principle of territorial integrity, which itself often limits the principle of self-determination, since the territory of Eritrea could be said to have been ‘acquired’ by Ethiopia. One of the evident inconsistencies in the international community’s approach towards secession is that whilst the argument that Eritrea was historically separate to Ethiopia was used to justify the secession of Eritrea, Somaliland remains unrecognised despite having a strikingly similar claim as it was a separate colonial entity to the rest of Somalia.

Again echoing the situation in Somalia/Somaliland, another reason for Eritrea’s secession is that it became independent following the fall of an authoritarian power that had held the two regions together: the dictatorship of Mengistu Haile Mariam. The leader of the Eritrean secessionist movement was an ally of the Ethiopian leader who deposed Mariam. The two leaders set up separate administrations in Eritrea and Ethiopia following Mariam’s fall, and the two countries then split peacefully following a referendum in 1993.<sup>67</sup> Referenda are a common feature of successful secessions; there were referenda on the secessions from the FRY and USSR, and South Sudan voted to secede from Sudan. From this one can reason that consent and democracy are crucial if

---

<sup>66</sup> Dajena Kumbaro “The Kosovo Crisis in an International Law Perspective: Self-Determination, Territorial Integrity and the NATO Intervention” NATO Office of Information and Press 16 June 2001, p31, <<http://www.nato.int/acad/fellow/99-01/kumbaro.pdf>> accessed 16 January 2015

<sup>67</sup> Katherine Southwick, “Ethiopia-Eritrea: statelessness and state succession”, <<http://www.fmreview.org/FMRpdfs/FMR32/15-17.pdf>> accessed 27 February 2014

a secession is to be successful. However, other secessionist states including Somaliland, have held referenda on independence yet remain unrecognised. There must therefore have been other factors at play which led to the recognition of Eritrea.

A. D. Smith and Ted Gurr argue that there was also an ethnic side to the secession of Eritrea, as is the case in many instances of secession.<sup>68</sup> However, other scholars such as Dominique Jaquin have noted that the ethnic makeup of Eritrea is not homogeneous and is less distinct from Ethiopia than some might claim.<sup>69</sup> This undermines the justification of Eritrea's secession on the grounds of the right to self-determination, a concept ostensibly supported by the international community and one of the strongest normative arguments in favour of secession. It perhaps also points to a predilection for a definition of a people being based around borders rather than ethnicity. Questions are also raised regarding the notion that Eritrea was not historically part of Ethiopia, since before the artificial colonial borders were drawn up the area experienced no national unity as we would understand today. Whilst this idea is in turn challenged by the African Union's decree that colonial borders are inviolable, A. D. Smith argues that as long as there is one core ethnic group to rally around then the argument for ethnic self-determination can stand.<sup>70</sup> However, this leads to a number of challenges which are discussed in the next chapter, such as the issue over minority rights within the secessionist state. Problems regarding minorities caught within a secessionist entity have been particularly evident in Kosovo, which is examined in the next section.

---

<sup>68</sup> Dominique Jaquin "Nationalism and Secession in the Horn of Africa: A Critique of the Ethnic Interpretation" PhD Thesis, London School of Economics 1999 p122  
<[http://etheses.lse.ac.uk/73/1/Jacquin\\_Nationalism\\_and\\_secession\\_in\\_the\\_Horn\\_of\\_Africa.pdf](http://etheses.lse.ac.uk/73/1/Jacquin_Nationalism_and_secession_in_the_Horn_of_Africa.pdf)  
> accessed 20 August 2014

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

In the meantime, the preceding analysis demonstrates that there are four reasons that could make Eritrea a weak case for secession. These include the apparent inconsistency in the attitude of the international community towards referenda on the issue of secession; the inapplicability of self-determination; the irrelevance of pre-colonial status; and the broader context of resistance to secession. Yet Eritrea nonetheless successfully achieved independence. The chapter has seen some counter-arguments to these obstacles (such as the inviolability of colonial borders and the idea of a core ethnic group). However, the arguments given for recognition may not have been ‘reasons’ as such for why Eritrea became recognised. Rather, they may be taken as additional justification for what was essentially a pragmatic act in light of the inevitability of the split, given the alliance between the new Ethiopian leader and his future Eritrean counterpart and the likelihood of further conflict had Eritrea been denied recognition.

It has been suggested by scholars such as Jaquin that war was a catalyst for Eritrean independence.<sup>71</sup> Jaquin notes that the great famine which occurred during Eritrea’s war for independence in 1983-5 was not solely due to drought, but was partly also a result of the military actions of Ethiopia.<sup>72</sup> It appears that the international community picked up on this since both the EC and the US started to channel aid directly to Eritrea rather than through Ethiopia, which could have been seen as a challenge to Ethiopia’s sovereignty. Indeed, the Reagan administration started to send aid directly to the Eritrean People’s Liberation Front (EPLF).<sup>73</sup> This is evidence that the conflict generated sympathy for the

---

<sup>71</sup> Ibid, p152

<sup>72</sup> Ibid, pp168-169

<sup>73</sup> Ibid.

Eritrean independence movement amongst certain actors within the international community. The war continued, and international support developed to a point where in 1985 US diplomat and then Assistant Secretary of State for African Affairs Chester Crocker told the World Affairs Council that the US and USSR agreed on the need to stop the war and grant Eritrea regional autonomy.<sup>74</sup> However, at this stage the US spoke of autonomy rather than independence. Crocker's successor Herbert Cohen stated that a negotiated political solution was necessary to end the conflict and that a federal solution was needed, but that "Ethiopia should remain whole".<sup>75</sup>

The EPLF pushed ahead with an offensive, due to either American encouragement or out of anger at the refusal of the US to accept Eritrean independence. This resulted in Ethiopian forces surrendering the city of Asmara and caused Mariam to flee. When the Ethiopian People's Revolutionary Democratic Front (EPRDF) came to power in Addis Ababa, they recognised Eritrea's right to independence through a referendum.<sup>76</sup> This is reminiscent of the Balkans, where the US was reluctant to recognise the secessionist republics until the course of the conflict left them little choice. Of course, the fact that the US was involved in both these conflicts, be it directly or indirectly, shows added political incentive for recognition. An element of pragmatism is also observable, as the politics on the ground led to recognition being the pragmatic choice. As noted when looking at the Balkans earlier, recognising secession seems to have a place in conflict resolution. Given that there is evidence that this was the case with Eritrea, a theme appears to be emerging.

---

<sup>74</sup> Ibid, p172

<sup>75</sup> Ibid, p174

<sup>76</sup> Ibid, p175

Notably, NATO claimed that the fact that Eritrean liberation movements had control over the territory of Eritrea was a deciding factor in the international community's decision to recognise Eritrea.<sup>77</sup> This is crucial to this thesis, as the question of who really controls a particular territory is a frequent and important one in the context of failed states. However, it can be seen as an inconsistent indicator of success, since many unrecognised states such as Transdnistria, the TRNC and Taiwan have *de facto* control over their territory yet remain unrecognised by the UN. This demonstrates that control over territory is a prerequisite for recognition, yet is insufficient by itself. Other criteria must also be fulfilled, such as the consent of the parent-state or brokering peace (as in the case of the Balkans), a demonstration of the legitimacy of the claim and/or a lack of legitimacy on the part of the parent-state.

Importantly, the EPRDF decreed that Eritrea had recovered its independence rather than seceded.<sup>78</sup> This meant that the UN could recognise it using the definition of self-determination as decolonisation, and thus maintain the standard of upholding territorial integrity. It also protected Ethiopia from further secessionist claims. However, much of this claim is based on Eritrea's status as a separate colonial entity to Ethiopia, and as mentioned a similar claim can be made for Somaliland which has yet to be recognised. This apparent double standard implies that recognition is political, in that it is influenced more by the situation on the ground than by fulfilling a given set of criteria.

---

<sup>77</sup> NATO: <<http://www.nato.int/acad/fellow/99-01/kumbaro.pdf>> accessed 16 January 2015

<sup>78</sup> *Ibid.*

Eritrea shows that the principle of self-determination was observed, yet recognition did not technically violate territorial integrity due to the argument that Eritrea was gaining independence from annexation rather than seceding, allowing the international community to maintain their ostensibly anti-secessionist stance. However, justifying the secession with principle would seem to be simply further justification for what was essentially a pragmatic act, recognising secession when it was inevitable a) due to the fact it was essentially by mutual consent, and b) since denying recognition may have protracted the Eritrean War of Independence. The fact that the US was initially reluctant to endorse secession before changing its stance is evidence of this.

#### Kosovo

Kosovo is a notable example of secession as it reveals much about the prerequisites for official recognition, since it has been acknowledged by around 111 UN members but is yet to achieve full recognition by the UN.<sup>79</sup> This demonstrates that states display a degree of self-interest when considering whether to recognise a secession. Many of the countries which have not recognised Kosovo have separatist movements within their own borders, such as Russia, Azerbaijan and Spain, and thus may not wish to encourage accusations of hypocrisy by recognising one secession while denying independence to another.<sup>80</sup>

---

<sup>79</sup> Kosovo Ministry of Foreign Affairs: International Recognitions of the Republic of Kosovo, <<http://www.mfa-ks.net/?page=2,224>> accessed 1 November 2016

<sup>80</sup> *Sydney Morning Herald* "Putin calls Kosovo independence 'terrible precedent'" 23 February 2008 <<http://www.smh.com.au/news/world/putin-calls-kosovo-independence-terrible-precedent/2008/02/23/1203467431503.html>> accessed on 5 March 2014

"Azerbaijan says not recognizing Kosovo independence" Reuters 18 February 2014 <<http://www.reuters.com/article/2008/02/18/us-kosovo-serbia-azerbaijan-idUSL1856553120080218>> accessed on 5 March 2014

"Spain will not officially recognise Kosovo" 18 February 2008, <<http://news-spain.euroresidentes.com/2008/02/spain-will-not-officially-recognise.html>> accessed 5 March 2014

This highlights the political and pragmatic side of the international community's approach towards secession.

Another important aspect of Kosovo's secession was that it declared independence without the consent of parent-state Serbia.<sup>81</sup> This was an act which Russian President Vladimir Putin referred to as 'very negative' as a precedent for recognition of secessionist states.<sup>82</sup> Putin was anxious not to set a precedent that might encourage secessionist movements within Russia, such as the Chechens (although he framed it in such a way that it was a threat to the states system generally).<sup>83</sup> However, Russia later softened its stance when it recognised Abkhazia and South Ossetia, holding back from further impeding Kosovo's recognition from other states.<sup>84</sup> This shows the realist side of attitudes towards recognition of secession, states can be pragmatic, opposing recognition when it is in their interest and softening stances, if not recognising, when it is in their interest.

Adding to the anomalous nature of Kosovo's secession, it must be noted that the International Court of Justice (ICJ), a UN institution, declared that Kosovo's secession did not contravene international law.<sup>85</sup> In addition to the recognition of Kosovo by many

---

<sup>81</sup> David Gollust "Clinton to Push for Wider Kosovo Recognition" *Voice of America* 13 October 2010 <<http://www.voanews.com/english/news/Clinton-to-Push-for-Wider-Kosovo-Recognition-104901414.html>> accessed 7 December 2010

<sup>82</sup> Rick Fawn, "The Kosovo and Montenegro Effect" *International Affairs* 84(2) March 2008, p287

<sup>83</sup> *Sydney Morning Herald*, 23 February 2008

<sup>84</sup> Edward Newman and Gezim Visoka "The Foreign Policy of State Recognition: Kosovo's Diplomatic Strategy to Join International Society" *Foreign Policy Analysis* orw042 (2016) on <<https://doi-org.ezproxy4.lib.le.ac.uk/10.1093/fpa/orw042>> accessed 7 September 2017 p13

<sup>85</sup> *Sydney Morning Herald*, 23 February 2008

states, this ruling demonstrates a degree of international support for secession against the will of the parent-state. This support could be attributed to the injustices the Kosovar Albanians suffered under the rule of Slobodan Milosevic's Serbia. This reason for the anomaly is supported by Principle 5 of the UN Declaration of Friendly Relations, which implies that territorial integrity may to an extent be conditional on equality and certain minority rights.

Kosovo is thus a concrete example in which the commitment to territorial integrity was weakened by a state's failure to conduct itself "in accordance with the principles of equal rights and self-determination of peoples."<sup>86</sup> It demonstrates that statehood, sovereignty and the territorial integrity that comes with it can be conditional to the state conducting itself in a manner that protects the rights of its citizens, which indicates that the international community could take a more principled approach to secession. While this is discussed further in the next two chapters, it is apparent that principle and pragmatism may not be mutually exclusive. Indeed, it is evident from these examples that principles can be interpreted in such a way as to justify a pragmatic approach, as seen with Eritrea and the Balkans. Another important aspect of the UN Declaration of Friendly Relations, as previously noted, is that a state must respect the right of its people to self-determination in order to maintain its right to territorial integrity. On the face of it this may seem to be something of an oxymoron; however, it is possible to grant self-determination to peoples within a state through regional autonomy/devolution/federalism. If a state denies distinct

---

Peter Beaumont, "Kosovo's independence is legal, UN court rules" *The Guardian* 22 July 2010 <<http://www.guardian.co.uk/world/2010/jul/22/kosovo-independence-un-ruling>> accessed 7 December 2010

<sup>86</sup> UN General Assembly's Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance With the Charter of the United Nations, Principle 5, in Pavkovic and Radan, 2007, p235

ethnic groups such self-determination, then it can be argued that they forfeit their right to territorial integrity. This idea is examined in greater detail in the next chapter.

It could certainly be argued that Milosevic's Serbia did not conduct itself 'in accordance with the principles of equal rights and self-determination of peoples' where Kosovo was concerned. Belgrade reduced Kosovo's autonomy, bringing it under central control, and conducted brutal attacks on the province which "resulted in the deaths of over 1,500 Kosovar Albanians and forced 400,000 people from their homes".<sup>87</sup> Under the UN Declaration of Friendly Relations it could be interpreted that Serbia forfeited her right to protect her territorial integrity in this way, showing again the conditionality of territorial integrity. There is a clear double standard here, since some unrecognised states, for example Nagorno-Karabakh and Abkhazia argue that they have fought wars of independence as Kosovo has yet are not recognised as having the right to secede.<sup>88</sup> However, it is uncertain whether these wars, of independence, such as those involving Nagorno-Karabakh and Abkhazia, were justified by a lack of rights granted by the parent-state.

It is also important to state here that countries such as the US and UK were amongst the first to recognise Kosovo. These countries intervened on the side of Kosovo in the Kosovo-Serbia conflict, and so by recognising Kosovo it may be that they were following through with their support of the Kosovars during their war with Serbia. However, it is worth noting that while NATO received international backing for intervention in Kosovo

---

<sup>87</sup> NATO: "NATO's Role in relation to the conflict in Kosovo" 15 July 1999

<<http://www.nato.int/kosovo/history.htm>> accessed 27 August 2014

<sup>88</sup> Fawn, 2008, p281

by promising not to break up Serbia,<sup>89</sup> the first nations to recognise Kosovo were members of NATO.<sup>90</sup> NATO has an interest in maintaining peace in the Balkans, as it is a European security issue. Serbian aggression and ethnic cleansing policy regarding the Kosovars threatened to destabilise the area due to the potential for refugees to enter the FYR Macedonia and upset “the ethnic balance there, leading to internal conflict.”<sup>91</sup> It was also speculated that said refugees could reach EU states and cause social and economic disturbances.<sup>92</sup> There is thus support for Kosovan independence from NATO countries, since giving the Kosovars their own state could prevent future oppression thus avoiding refugee issues and the associated instability. This again shows the importance of self-interest when approaching secession.

It is evident that interest from groups such as NATO can work favourably for secessionist countries seeking recognition, as it has with Kosovo and countries such as Bosnia and Croatia which seceded from the former Yugoslavia. However, it can also work against a region with secessionist ambitions; for example, NATO opposed granting Abkhazia and South Ossetia their independence.<sup>93</sup> Recognition of these secessions does not appear to be in the interests of NATO, especially due to the increased ties between NATO and

---

<sup>89</sup> Thomas Walkom “Problems with Kosovo recognition”, *The Toronto Star* 20 March 2008 <[http://www.thestar.com/opinion/editorialopinion/2008/03/20/problems\\_with\\_kosovo\\_recognition.html](http://www.thestar.com/opinion/editorialopinion/2008/03/20/problems_with_kosovo_recognition.html)> accessed 18 January 2015

<sup>90</sup> Kosovo Ministry of Foreign Affairs “Countries That Have Recognised the Republic of Kosova” <<http://www.mfa-ks.net/?page=2,33>> accessed 18 January 2015

<sup>91</sup> Christoph Zürcher “Chechnya and Kosovo: reflections in a distorting mirror” in Peter van Ham and Sergei Medvedev (eds) *Mapping European security after Kosovo* (Manchester: Manchester University Press, 2002) p189

<sup>92</sup> *Ibid.*

<sup>93</sup> NATO: Statement by the North Atlantic Council on the Russian Recognition of South Ossetia and Abkhazia regions of Georgia 22 August 2008 <[http://www.nato.int/cps/en/natohq/news\\_43517.htm?selectedLocale=en](http://www.nato.int/cps/en/natohq/news_43517.htm?selectedLocale=en)> accessed 18 January 2015

Georgia.<sup>94</sup> This shows that the self-interest of states, organisations and alliances plays a significant role in whether secessions are supported by individual patron states and groups of states, which can in turn have an effect on whether the secession in question becomes recognised by the wider international community.

Another inconsistency highlighted by the Kosovo case is that nations recognised Kosovo despite the objections of Belgrade, whereas in cases such as Eritrea consent was used to justify recognition. Serbian foreign minister Vuk Jeremic voiced his concerns to the UN regarding the possibility that they might legitimise the unilateral secession of Kosovo. He stated that such an act could encourage ethnic minorities worldwide to:

[T]ake advantage of the opportunity to write their own declarations of independence according to the Kosovo textual template. This would put them in a position to plausibly claim that such texts sufficiently legitimize their respective acts of secession, and for their proclaimed independence to be in conformity with international law.<sup>95</sup>

This highlights another inconsistency, in that the above argument has been used by the states to justify their refusal to recognise secession. In this case the same argument was ignored by states such as the US and UK, although as mentioned earlier states such as Spain refuse to recognize Kosovo on these grounds.

---

<sup>94</sup>*Tass Russian News Agency* "Georgia's NATO Bid Prompts New Treaty Between Abkhazia, Russia, Says Foreign Minister" 25 October 2015 <<http://itar-tass.com/en/world/756498>> accessed 18 January 2015

<sup>95</sup>*Serbianna* "Serbia urges UN to prevent new "secession model"" 30 July 2010 <<http://serbianna.com/news/?p=5948>> accessed 11 November 2010

The fact that Kosovo entered into an internationally-brokered negotiation over its status can be used to argue for its recognition, since this would in theory mean all alternatives to secession had been exhausted and that secession was their last resort in resolving the situation. However, James Ker-Lindsay argues that Kosovo's obstinacy during these negotiations and refusal to accept anything short of full independence meant that the negotiations were not carried out in good faith, and that whilst supporters of Kosovo's independence could argue that all paths had been explored, this was contestable.<sup>96</sup> This demonstrates that facts and situations can be interpreted and presented differently according to the interests of states involved, again showing the political dimension to recognition.

Since declaring independence Kosovo has used diplomatic lobbying to win recognition from individual countries. It has done this by appealing to the various sympathies of states depending on their political geographical region. For example, with regards to African and Latin American states, Kosovo has portrayed their secession as analogous with decolonisation and self-determination through independence. With Middle Eastern countries Kosovo has emphasised religious affinities and interfaith tolerance, and with the Pacific islands, Kosovo has accentuated solidarity amongst small nations based on mutual diplomatic recognition.<sup>97</sup> The importance of political and diplomatic lobbying in recognition will be revisited in the case study on South Sudan.

---

<sup>96</sup> James Ker-Lindsay "Preventing the Emergence of Self-Determination as a Norm of Secession: An Assessment of the Kosovo 'Unique Case' Argument" *Europe-Asia Studies* 65(5), July 2013, p846

<sup>97</sup> Newman and Visoka, 2016, p14

As with the other states that seceded from the former Yugoslavia, human rights, and particularly minority rights were seen as an issue where recognising the new state was concerned. Edward Newman and Gezim Visoka write that many states justified recognising Kosovo due to their ostensible “commitment to build a multi-ethnic and democratic state.”<sup>98</sup> However, the same authors show their concerns that this recognition was based upon words rather than actions in that it “corresponded to Kosovo’s expression of commitment rather than the realization of normative conditionality for statehood”.<sup>99</sup> This would tend to indicate that if there are any conditions for recognition they are at the very least flexible and can be broadened or narrowed depending on the situation.

Kosovo’s main lesson is that whilst there are often ethical and legal arguments both for and against secession, the realist self-interest of states also plays a significant role in whether a secessionist state is recognised. Since recognition of secession is undertaken by individual sovereign states who have differing interests, values and perspectives towards individual cases of secession, recognition will very often have a political dimension to it. An analysis of Kosovo shows that the consent of the parent-state is not strictly necessary for individual states to recognise secession.

### [Attitudes of International Organisations](#)

This chapter has analysed the importance of the UN to secession and discussed NATO involvement in Kosovo. When considering the stances of the actors within the international community towards secession, it is important that the chapter examines both

---

<sup>98</sup> Ibid, p8

<sup>99</sup> Ibid.

the stances of individual states and also of international organisations as they can have a significant influence on whether a state becomes recognised, also throwing light on whether, how and how effectively these organisations take into account the ethical and practical issues involved.

#### The International Court of Justice (ICJ)

This section demonstrates that the ICJ has a somewhat pragmatic take on secession, in that it approaches each case on its own individual merits. When assessing the case of Kosovo's secession, the ICJ stated that:

[T]he task which the Court is called upon to perform is to determine whether or not the declaration of independence was adopted in violation of international law. The Court observes that it is not required by the question it has been asked to take a position on whether international law conferred a positive entitlement on Kosovo unilaterally to declare its independence or, *a fortiori*, on whether international law generally confers an entitlement on entities situated within a State unilaterally to break away from it. Indeed, it is entirely possible for a particular act - such as a unilateral declaration of independence - not to be in violation of international law without necessarily constituting the exercise of a right conferred by it.<sup>100</sup>

This appears tantamount to saying that the ICJ can decide when secession cannot be allowed but cannot decide when it can. While this would appear to be a contradiction in terms, it basically means that the ICJ can issue a negative conclusion if not a positive one. The decision on Kosovo must be taken in context. The ICJ was acting on the request of the UN General Assembly to address the question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"<sup>101</sup> The nature of the question itself therefore limits

---

<sup>100</sup> International Court of Justice: "Accordance with international law of the unilateral declaration of independence in respect of Kosovo" Summary of the Advisory Opinion, p5, 22 July 2010 <<http://www.icj-cij.org/docket/files/141/16010.pdf>> accessed 3 February 2015

<sup>101</sup> Ibid, p1

the response from the ICJ. It is important to note from this that international law does not confer a right to secession, but does not forbid it either.

The ICJ concluded that it found no reason under international law to forbid the secession of Kosovo.<sup>102</sup> This was due to a lack of historical precedent prohibiting the unilateral declaration of independence, and the fact that the secession was ruled by the ICJ to have occurred without the “unlawful use of force”.<sup>103</sup> Crucially, the court also noted that the principle of territorial integrity applied only to relations between states.<sup>104</sup> This implies that territorial integrity means the absence of foreign intervention in internal affairs as well as the absence of foreign subjugation.<sup>105</sup> This view is severely controversial and contested since there are still many scholars and statesmen, such as Aleksandar Pavkovic, Peter Radan and Jeremic who argue that territorial integrity implies the absence of secession.<sup>106</sup> Going back to Principle 7 of the UN Declaration on Friendly Relations and Cooperation, it appears that so long as a government represents all the peoples within a territory, then all peoples within its borders can be said to be part of its territory. If a people then unilaterally secede despite having representation in the central government, then this constitutes a violation of territorial integrity.

---

<sup>102</sup> Ibid, p14

<sup>103</sup> Ibid, p7

<sup>104</sup> Ibid.

<sup>105</sup> Ibid, p8

<sup>106</sup> Pavkovic and Radan, 2007, p1

Vuk Jeremic: “Address to the Belgrade Ministerial Meeting of the Southeast Europe Cooperation Process by H.E. Mr. Vuk Jeremic Minister of Foreign Affairs of the Republic of Serbia Belgrade” 14 June 2012 <<http://www.mfa.gov.rs/en/vuk-jeremic-speeches>> accessed 12 January 2016

While the findings of the ICJ related above were not considered to be legally binding, it can be taken from this ICJ ruling that the norm of territorial integrity is not considered absolute in international law.<sup>107</sup> However, the fact that Kosovo is not universally recognised and is yet to gain a seat on the UN General Assembly shows that factors other than international law also influence states', and thus the UN's approach to secession. With regards to Kosovo, the ICJ declared that it would not be making a ruling upon whether there was a right to secede, and ruled that declarations of independence were not themselves illegal.<sup>108</sup> This implies that recognition is independent of international law as decreed by the ICJ.

The points about the unlawful use of force and territorial integrity applying to inter-state relations also relate to the 2014 secession of Crimea from Ukraine. Ukraine plans to file a lawsuit regarding this case with the ICJ against Russia, who support the secession.<sup>109</sup> The fact that the pro-Russian rebels supported by Russia are using 'unlawful force', in that they are violating Ukraine's territorial integrity, supports Ukraine's case, as does the fact that it can be seen as a violation of territorial integrity by another state given Russia's involvement. It can be concluded from this that secession involving 'unlawful use of force' by a patron state is unlikely to be sanctioned by the ICJ, since it constitutes a violation of territorial integrity in terms of relations between states.

---

<sup>107</sup> Peter Beaumont, "Kosovo's independence is legal, UN court rules" *The Guardian* 22 July 2010 <<http://www.theguardian.com/world/2010/jul/22/kosovo-independence-un-ruling>> accessed 3 February 2015

<sup>108</sup> ICJ, <<http://www.icj-cij.org/docket/files/141/16010.pdf>>, accessed 13 September 2016, p8

<sup>109</sup> Gaiane Nuridzhanyan "Ukraine vs, Russia in International Courts and Tribunals" *European Journal of International Law* 09 March 2016 on <<http://www.ejiltalk.org/ukraine-versus-russia-in-international-courts-and-tribunals/>> accessed 1 December 2016

## The EU/EC

As a supra-national organisation, the European Community and the European Union that developed out of it examined the concepts of statehood and sovereignty in detail, and produced some relevant guidelines. The EU/EC's position on secession is mostly concerned with the provision of minority rights and the consent both of the parent state and the citizens of the secessionist state to allow the secession. Minority rights are mentioned in the EC's secession policy, particularly regarding the breakup of Yugoslavia and the USSR. Their criteria for the recognition of the states seceding from Yugoslavia maintain that states must "include provisions for minority rights and renounce any claims, even rhetorical, against other states."<sup>110</sup> This appears to be a safeguard against further secession, as well as a safeguard against the risks of creating a state based on ethnicity, such as the danger of ethnic cleansing. There were good reasons for this since there have been a number of attempts at ethnic cleansing, such as those which occurred in the Balkans, Chechnya and Nagorno-Karabakh.<sup>111</sup> This issue is discussed in further detail in Chapter 2.

Whilst the short-term security aims of the EC's insistence on the provision of minority rights had limited success due to the conflict in the immediate aftermath of the secessions, Caplan argues that there are 'positive trends' that are evolving into long-term norms. Provision for minority rights has been enshrined in the constitutions of Slovenia and Macedonia, and Croatia have also passed legislation on the Freedoms and Rights of

---

<sup>110</sup> Fawn, 2008, p275

<sup>111</sup> Jennifer Jackson Preece, "Ethnic Cleansing as an Instrument of Nation-State Creation: Changing State Practices and Evolving Legal Norms" *Human Rights Quarterly* 20(4) 1998 p820

Ethnic and National Minorities.<sup>112</sup> Caplan goes on to say that whilst the enforcement of these laws may have been limited:

Formal Commitments establish a domestic standard that both international authorities and local interest groups can invoke in support of reforms, as indeed these parties have. Moreover, they can serve as the basis for further conditionality – in trade relations and aid giving ... [and to] help to reinforce a gradual but distinct shift that has been taking place since the end of the Cold War from the treatment of minorities as a matter of domestic politics to a view of minority rights as a legitimate subject for international concern.<sup>113</sup>

Caplan states that this is evident from the fact that all former Yugoslav republics have ratified the Council of Europe's Framework Convention for the Protection of National Minorities.<sup>114</sup> Caplan goes so far as to say that this emerging norm of the importance of minority rights to statehood has given a new meaning of what it means to be a state, citing the fact that respect for minority rights is a requirement for EU membership.<sup>115</sup> This shows that the issue of minority rights, which is both an ethical issue and a practical one (due to the aforementioned security issues) is one that actors within the international community take into account when considering recognition of secession.

The following will again examine whether territorial integrity might be conditional, this time upon the consent of its citizens. The EC's criteria on the recognition of states seceding from the USSR and Yugoslavia stated that one of the conditions for recognition

---

<sup>112</sup> Caplan in Merle (ed), 2013, p275

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid, p276

was that they had “constituted themselves on a democratic basis”.<sup>116</sup> This introduces the important issue of democracy in secession. One of the major inconsistencies in the approach towards secession is that some secessions based on referenda have become widely recognised (Montenegro, South Sudan) but not others (Somaliland, Transdnistria, Crimea). Part of the inconsistency is explained in the criteria document, which states that prospective secessionist states must also “have accepted the appropriate international obligations and have committed themselves in good faith to a peaceful process and to negotiations.”<sup>117</sup> It further states that the parties involved must show “respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement”.<sup>118</sup> This would imply that for a secession to become recognised, it must be established with the consent of the parent-state.

Consent is an important factor to consider when investigating how secession is approached. This goes to show that should the secession happen peacefully, as it did in Czechoslovakia for example, then the breakdown of territorial integrity is not so much of a concern. If the secession has happened by mutual agreement and the new territories have their territorial integrity intact, then said secession is not breaking away from the norm of territorial integrity. Instead a new norm is being created, since the new borders will have been mutually agreed upon and respected by all parties.

---

<sup>116</sup> European Community: Declaration on Yugoslavia and on the Guidelines of recognition of New States. 16 December 1991 *International Legal Materials*, 31 (6) (1992) p1487

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

Inconsistency is shown here in the case of the Yugoslav states that broke away initially without the consent of Belgrade. However, in this case the fact that the seceding republics could claim persecution from Belgrade lessened the importance of consent. Additionally, the inevitability of the breakup and Belgrade's inability to prevent it without the perpetual violence that unfolded gave the EC an incentive to recognise the new states as a conflict-resolution measure, with the conditions set in order to avoid setting a precedent that would cause a break from the norm of territorial integrity. It was seen earlier that Grant and Crawford argue that a lack of government control over a state's territory does not undermine the existence of the state, which would appear to contradict the above point. However, as will be seen in Chapter 2, the *legitimacy* of a government and state is dependent to an extent on the belief of its citizens in its legitimacy. If said legitimacy is disputed, as it was by the seceding republics, then there is a discrepancy over who has the right to make territorial changes. This undermines the aforementioned points about the necessity of consent, and runs contrary to the conditions set down by the EC. The conclusion here is that the conditions were set as damage limitation in an attempt to broker peace.

Issues of democracy in secession are very important to the issue of legitimacy in secession. It would appear from the above that a secession must be established democratically in order to be legitimate, but a democratic secession itself is not sufficient to ensure legitimacy. It was noted earlier that certain secessionist referenda were not recognised by the international community. In the case of Crimea, it was claimed by Daniel W. Drezner that the reason it was not recognised is that further criteria are usually necessary. These include a commitment to negotiation, as mentioned earlier; he also

suggested the necessity of the secessionists being victims of injustice on the part of the parent-state, which as noted is an argument against the legitimacy of said parent-state.<sup>119</sup>

Drezner suggested that the reason that the Crimean independence referendum was not seen as legitimate while Kosovo's was (by a number of states at least) was due to Kosovo's commitment to negotiation combined with the oppression Kosovo had suffered prior to the declaration, whereas these criteria were absent in Crimea.<sup>120</sup> This is important since a) the commitment to negotiations shows a willingness to make provision for the interests of all involved, and b) secession can be seen as a last resort having exhausted all other options. This claim is undermined by Ker-Lindsay's earlier assertion that Pristina held an inflexible position during said negotiations.<sup>121</sup> Nevertheless, negotiations were undertaken, and the failure of the other parties to soften the Kosovar position does not necessarily show a complete disregard for negotiation.

The next chapter examines how secession can be seen as a protection against further oppression. There is a degree of interpretation involved when it comes to oppression however. Russian-speaking Ukrainians claimed they were oppressed when a law was passed banning Russian as an official language in Ukraine; however, this law was subsequently vetoed by interim President Oleksandr Turchynov.<sup>122</sup>

---

<sup>119</sup> Daniel W. Drezner "Putin's excuse for a referendum is wrong: Crimea isn't Kosovo – at all" *The Guardian* 17 March 2014 <<http://www.theguardian.com/commentisfree/2014/mar/17/putin-referendum-crimea-kosovo>> accessed 17 March 2015

<sup>120</sup> Ibid.

<sup>121</sup> Ker-Lindsay, 2014, p846

<sup>122</sup> Askold Krushelnycky, "Crimea's War of Nerves" *Foreign Policy* 4 March 2014 <<http://foreignpolicy.com/2014/03/04/crimeas-war-of-nerve/>> accessed 14 January 2016

It seems in the case of Crimea that the EU objects to secession based on Russia's involvement on the side of the secessionists, having invoked Article 2, Paragraph 4 of the United Nations Charter, which was examined earlier in this chapter.<sup>123</sup> This can be countered by pointing to NATO involvement in Kosovo; however, said involvement was ostensibly to prevent human rights abuses and not to promote secession, at least initially.<sup>124</sup> Whilst Russia could argue along similar lines they actually acted unilaterally, whereas NATO could point to UN Security Council Resolution 1199. This particular resolution highlighted concerns about human rights abuses:<sup>125</sup>

[T]he excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army which have resulted in numerous civilian casualties and, according to the estimate of the Secretary-General, the displacement of over 230,000 persons from their homes.<sup>126</sup>

The same resolution reaffirmed support for the territorial integrity of Serbia (or the FRY as it was referred to).<sup>127</sup> This could be evidence that the initial intervention was not based on support for Kosovan secession.

It seems that the EC and EU believe that secessions can be permitted if conducted democratically, with the consent of the parent-state and when provisions for minorities within the secessionist state are made. It also appears that secessions can be allowed without the consent of the parent-state if it seems pragmatic to do so, for reasons such as

---

<sup>123</sup> Chrisella Herzog 'Political Legitimacy and International Law in Crimea: Pushing the U.S. and Russia Apart' *Diplomatic Courier* 8 May 14 <<http://www.diplomaticcourier.com/political-legitimacy-and-international-law-in-crimea-pushing-the-u-s-and-russia-apart/>> accessed 14 January 2016

<sup>124</sup> Drezner, 17 March 2014

<sup>125</sup> Ibid.

<sup>126</sup> UN Security Council Resolution 1199, 23 September 1998 <<http://www.shape.nato.int/resources/site7423/general/documents/unscr1199.pdf>> accessed 14 September 2016

<sup>127</sup> Ibid.

conflict resolution. Conversely, secessions which involve the unlawful use of force are not sanctioned by the EU.

## The OSCE

The Helsinki Final Act laid the foundations for the Conference for Security and Co-operation in Europe (CSCE), which became the Organisation for Security and Co-operation in Europe (OSCE). This act had articles which, like the UN charter, stressed support for both territorial integrity and self-determination.<sup>128</sup> The Helsinki Final Act states “that frontiers can be changed, in accordance with international law, by peaceful means and by agreement.”<sup>129</sup> This suggests that secession can only be sanctioned under the OSCE by mutual consent. One interpretation of this is that territorial integrity is supported by the OSCE, yet is conditional on the consent of the population of said territory. Additionally, the OSCE stated in reference to Crimea that for a secession to be legitimate it must also fit in with the constitution of the parent-state.<sup>130</sup> This does not take into account the legitimacy of the parent-state itself and its constitution. The OSCE declared the 2014 election in Crimea’s parent-state of Ukraine to be legitimate despite several polling stations in breakaway areas being closed, a fact that could be used to undermine the legitimacy of the Kiev government.<sup>131</sup> This suggests that there appears to be a bias toward the parent-state where legitimacy is concerned.

---

<sup>128</sup> Conference on Security and Co-operation in Europe Final Act, Helsinki 1975, Preamble p2, <<http://www.osce.org/mc/39501?download=true>> accessed 21 November 2014

<sup>129</sup> Conference on Security and Co-operation in Europe Final Act, Helsinki 1975, I. Sovereign equality, respect for the rights inherent in sovereignty, p4, <<http://www.osce.org/mc/39501?download=true>> accessed 23 November 2014

<sup>130</sup> OSCE Newsroom: “OSCE Chair says Crimean referendum in its current form is illegal and calls for alternative ways to address the Crimean issue” 11 March 2014 <<http://www.osce.org/cio/116313>> accessed 19 March 2015

<sup>131</sup> *Euronews* “OSCE Declares Ukraine Presidential Election Legitimate” 27 May 2014 <<http://www.euronews.com/2014/05/27/osce-declares-ukraine-presidential-election-legitimate/>> accessed 19 March 2015

On the side of self-determination, the act states that peoples “have the right, in full freedom, to determine, when and as they wish, their internal and external political status”, suggesting a right to secession.<sup>132</sup> However, prior to this it maintains that states must act in “conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.”<sup>133</sup> While this is somewhat ambiguous it is possible to have self-determination without secession, as will be related in the next chapter, and the Helsinki Final Act could be interpreted as referring to such self-determination. However, the wording of the statement “full freedom, to determine, when and *as they wish*, their internal and *external* political status [emphasis added]”<sup>134</sup> could suggest a right to secession.

In later life the OSCE developed an outspoken anti-secessionist stance. However, it recognises the need to address minority rights within states in order to prevent secessionist conflict. Max van der Stoel, the Minorities Commissioner for the OSCE, noted that “A minority that has the opportunity to fully develop its identity is more likely to remain loyal to the state than a minority which is denied its identity”.<sup>135</sup> Granting autonomy to a minority in a federal system could be interpreted as allowing a minority to ‘fully develop its identity’, so this statement raises a question: how many alternative

---

<sup>132</sup> Conference on Security and Co-operation in Europe Final Act, Helsinki 1975, VIII. Equal rights and self-determination of peoples, p7 <<http://www.osce.org/mc/39501?download=true>> accessed 24 November 2014

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Max van der Stoel, “The Protection of Minorities in the OSCE region” Address to the OSCE Parliamentary Assembly Seminar “New Risks and Challenges: Minorities in the Twenty-First Century” Antalya, Turkey, 12-13 April 2000, p4

options will be considered before recognition of secession is considered? It seems that options such as federalism and further devolution are considered in negotiations regarding secession, and are sometimes rejected as in the case of Kosovo, and sometimes accepted as in the case of Scotland.<sup>136</sup>

It appears then that the OSCE's approach, like that of the UN, is somewhat ambiguous and open to interpretation. However, in general it comes down on the side of upholding territorial integrity.

## NATO

NATO has supported territorial integrity over self-determination in most cases, notably in its attitude towards the secessions of Abkhazia and South Ossetia from Georgia, and Crimea from Ukraine.<sup>137</sup> However, NATO took a different stance when it came to the secession of Kosovo, since it has not overtly condemned it. Significantly, whilst NATO appeared to be largely supportive of the independence of Kosovo, it expressed concern that the situation in Kosovo might have spread with secessionists eating further into

---

<sup>136</sup> Scott Macnab, "Scottish Independence: Most Scots Back 'Devo Max'" *The Scotsman*, 19 February 2014, <<http://www.scotsman.com/news/politics/top-stories/scottish-independence-most-scots-back-devo-max-1-3310342>> accessed 23 September 2014

Grace Bolton and Gezim Visoka "Recognizing Kosovo's Independence: Remedial Secession or Earned Sovereignty" Occasional Paper 10/11, St Anthony's College, Oxford University, October 2010, pp14-16

<sup>137</sup> NATO: "Framework document on the establishment of the NATO-Georgia Commission" September 2008, <[http://www.nato.int/cps/en/natolive/news\\_46406.htm?selectedLocale=en](http://www.nato.int/cps/en/natolive/news_46406.htm?selectedLocale=en)> accessed 26 May 2014

NATO: "Russia's accusations - setting the record straight" April 2014, <[http://www.nato.int/cps/en/natolive/topics\\_109141.htm?selectedLocale=en](http://www.nato.int/cps/en/natolive/topics_109141.htm?selectedLocale=en)> accessed 26 May 2014

Serbian territory.<sup>138</sup> It was believed by Belgrade that many ethnic Albanians living in the areas of Serbia bordering Kosovo had ambitions to break away from Serbia and join Kosovo. NATO shared these concerns, to the point that NATO's Supreme Commander for Europe flew to Albania in an attempt to persuade the Albanian government to help curtail this issue.<sup>139</sup> This is evidence that NATO saw the secession of Kosovo as exceptional, and that in general the organisation is opposed to secession.

A NATO report on Kosovo stated that unilateral secession should not be recognised in cases where there are democratic institutions and mechanisms through which ethnic groups can express their identity.<sup>140</sup> This implies that where these institutions do not exist, secession should be considered in a different context and thus be approached differently. This supports the argument that a government's legitimacy is ostensibly dependent on it holding up the rights of its citizens. In turn this suggests that territorial integrity is not absolute, and is thus conditional on a state ensuring that the peoples within said state have a voice and the ability to determine their own fate, which could be defined as self-determination. However, realistically this principle cannot be absolute; a great many states do not uphold the rights of their citizens yet are still recognised, demonstrating that the international community are pragmatic and realistic in their approach to recognition. This view will be examined in greater detail in the next chapter, as a government which oppresses its people and/or has limited control of its territory,

---

<sup>138</sup> R Jeffrey Smith, "NATO Anxious About Albanian Secession Ideas" in *Washington Post* 28/02/00, <<http://www.washingtonpost.com/wp-srv/WPcap/2000-02/28/035r-022800-idx.html>> accessed 25 November 2014

<sup>139</sup> Ibid.

<sup>140</sup> NATO: <<http://www.nato.int/acad/fellow/99-01/kumbaro.pdf>> accessed 16 January 2015

which are common features of a failed state, would not be able to provide the democratic mechanisms needed to ensure the self-determination of its peoples.

#### The OAU/AU

These are particularly important organisations, partly because both major case studies examined in this thesis are in Africa, and partly because the post-colonial nature of many African states makes them ripe for state failure and secession due to factors such as their arbitrarily-drawn borders.

The AU has generally opposed secession, not least due to the fact that their ripeness for secession means that there is a real danger of setting a precedent whereby the current order of states in Africa could completely break down.<sup>141</sup> As seen when analysing decolonisation, this is the reason that the AU and the OAU before it decreed that the borders left in place by the colonial powers remain the borders of the post-colonial states, and are inviolable.<sup>142</sup> However, this initially meant that parent-states were supported against secessionists regardless of their regime and regardless of whether peoples were adequately represented within the state.<sup>143</sup> This suggests that territorial integrity is not conditional, although as seen with Eritrea and will be seen with South Sudan, this stance is flexible.

---

<sup>141</sup>*The Economist* "South Sudan: A Necessary Secession" 6 January 2011, <<http://www.economist.com/node/17851379>> accessed, 4 February 2016

<sup>142</sup>OAU, Organisation of African Unity Assembly Resolution 16(I) 17-21 July, 1964, <[http://www.au.int/en/sites/default/files/ASSEMBLY\\_EN\\_17\\_21\\_JULY\\_1964\\_ASSEMBLY\\_HEADS\\_STATE\\_GOVERNMENT\\_FIRST\\_ORDINARY\\_SESSION.pdf](http://www.au.int/en/sites/default/files/ASSEMBLY_EN_17_21_JULY_1964_ASSEMBLY_HEADS_STATE_GOVERNMENT_FIRST_ORDINARY_SESSION.pdf)> accessed 19 August 2014

<sup>143</sup>Bjørn Møller "The African Union as Security Actor: African Solutions to African Problems" *Crisis States Working Papers*, London School of Economics August 2009 p6

Regarding the case of the attempted secession of Biafra, the OAU's official stance was to support the parent-state Nigeria. While most members supported this line a number of states came out in support for the secession, including Cote d'Ivoire, Gabon, Tanzania and Zambia.<sup>144</sup> This demonstrates that an organisation's policy does not necessarily represent the viewpoint of all its members. However, the fact that the OAU officially opposed the secession prevented Biafra from gaining recognition outside of Africa, since the OAU was seen as taking responsibility for the issue. Biafra was therefore seen by the rest of the world as an African problem, with even the UN reluctant to get involved.<sup>145</sup> This demonstrates the impact that the stance of regional organisations can have on the prospects for recognition from the wider international community.

#### Chapter conclusions and relevance to thesis

The analysis in this chapter highlighted a number of key points that have considerable impact on our understanding of how the ethical and practical issues surrounding secession are approached. These conclusions will be used as a template with which to compare and contrast the manner in which secession from failed states is approached.

This chapter established that the international norm is anti-secession. Territorial integrity is generally seen to take priority over the right to self-determination, as illustrated by the insistence on the retention of colonial borders following decolonisation. This is largely due to fear of setting a precedent that might undermine the international system of states, a theory that will be examined further in the next chapter. However, it has also been

---

<sup>144</sup> Olayiwola Abegunrin *Nigerian Foreign Policy Under Military Rule, 1966-1999* (Westport: Greenwood Publishing Group, 2003) p34

<sup>145</sup> *Ibid*, pp34-35

observed that in certain cases the international community has allowed secession, even if it was reluctant to endorse it to begin with. Ethical and legal arguments have been used to justify recognising these secessionist states, such as reverting to previous borders, breaking up along regional borders, acknowledging the outcome of referenda, granting sovereign rights to a subjugated people, or a combination of arguments. However, a degree of inconsistency has been observed with regards to these justifications. For example, there is the fact that referenda have been recognised in Eritrea and (eventually) in the Balkans, but not in Somaliland. Similarly, the reversion to previous borders was recognised in the case of Eritrea but not Somaliland.

Territorial integrity is challenged both by structural and societal issues, such as the ethnic makeup of a state, particularly if that state is made up of a union of territories. A group's desire for self-determination can also test this principle, as can contextual and circumstantial issues such as the legitimacy of the government of the parent-state, which could be undermined by the refusal of a parent-state to grant said group a satisfactory degree of autonomy and/or their active persecution of said group. As we saw, the UN Declaration of Friendly Relations states that the territorial integrity of a state is dependent on whether it respects the principles of equal rights and self-determination.<sup>146</sup> This clearly shows that despite the UN's outspoken support for territorial integrity, that support is not absolute. Additionally, the AU has been forthright in its opposition to secession, yet has still allowed it in the cases of Eritrea and South Sudan, showing that official policy is not always absolute.

---

<sup>146</sup> UN: "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" United Nations General Assembly Resolution 2625 (XXV). Twenty-fifth session 24 October 1970 <<http://www.un-documents.net/a25r2625.htm>> accessed 19 November 2014

The EU/EC have added to this idea that territorial integrity is conditional by creating conditions whereby secession might be legitimised, if based on democratic consent and a commitment to upholding minority rights within the secessionist state. NATO has also demonstrated that support for territorial integrity is not unreserved with regards to their stance on Kosovo. Whilst recognition of Kosovo as a sovereign state is not universal amongst all member states of these organisations, the fact that several member states have spoken out in support for recognition of the territory as sovereign shows that there is no consensus amongst the organisations that territorial integrity is an absolute concept. This lack of consensus and absence of an agreement over the recognition of Kosovo illustrates the political nature of recognition.

The fact that certain secessions have become recognised despite the international community's generally anti-secession stance means it is clear that the international community takes a pragmatic view of secession. This pragmatism can lead the international community to recognise secessionist states when secession seems inevitable because it is occurring by mutual consent or with the consent of the parent-state. This was eventually the case with Eritrea, leaving the international community with no compelling reason to oppose the new states. Recognition of secession can also occur because of overwhelming support for secession in the region and the inability (or unwillingness) of the parent-state to prevent the secession. In this event the international community will often recognise the secession in an attempt to control the situation, prevent further conflict, and in some cases extend their influence to the new country or countries in question. This was illustrated by the breakup of Yugoslavia, and is

particularly pertinent to this thesis since in a failed state the parent-state has less ability to prevent secession. This thesis will therefore explore the question over whether such secession is or should be approached in a different manner and whether any different ethical and/or practical issues arise in such situations.

The chapter has discussed limits to the right to territorial integrity based on the parent-state's ability to maintain it, as well as the ability of the parent-state to maintain it responsibly, granting all peoples within it a voice, the ability to exercise self-determination and freedom from oppression. As the thesis will go on to see, a key tenet of legitimacy is this willingness and ability to protect the security of its citizens, if not their freedoms. When this is not done it has been the case that the parent-state was seen to forfeit the right to territorial integrity, as in the Balkans and Eritrea. As will be seen in Chapter 3, in failed states it is often the case that the central government does not grant rights such as self-determination, freedom from oppression or even security to peoples within their territory, often to due unwillingness, inability or both. This shows the importance of understanding how secession is approached from such states and the importance of analysing the effectiveness of said approach in addressing the associated ethical and practical issues.



## Chapter 2- The Concepts, Principles and Theories of Secession.

The previous chapter analysed the ways in which actors within the international community approached secession from the latter half of the twentieth century, and examined a number of different situations involving the recognition and non-recognition of secessionist states. A range of different reactions to secession and conditions for recognition were identified, and various inconsistencies in the reasons given for recognition were noted. It is now necessary to analyse the theories, principles and concepts surrounding secession, in order to assess the extent to which the international community's approach was appropriate. This will help to further explain how the international community approaches secession. The chapter also draws on ethical arguments from authors such as Allen Buchanan to critically analyse the current approach.

Analysing the theory behind secession will also grant a better understanding of *why* states secede and *why* the international community is generally reluctant to recognise secession. This will be invaluable when analysing how the international community deals with states wishing to secede, as it will allow the thesis to compare and contrast how the international community approaches secession from failed states with the way they approach secession generally. An understanding of theory will also be useful when this paper comes to evaluating whether the international community needs to approach secession from failed states differently given the ethical and practical issues involved.

This chapter will answer many of the ethical and practical questions surrounding secession and the approach of the international community, including: what alternatives could there be to secession in light of the fact that the international community is generally anti-secession? What are the implications for democracy and pluralism in the event of a secession? What defines a ‘people’ as a group with the right to self-determination?

The chapter as whole thinks more conceptually about statehood and the grounds for secession. It looks first at the theory and practice of statehood, before revisiting the strongest anti-secession principle – territorial integrity. It then draws on the secondary literature to consider the concept of a right to self-determination, then going on to address the literature on whether there can be a right to secede and the conditions under which secession can be recognised if there is. The chapter culminates in the argument that legitimacy is key to both statehood and secession.

The chapter begins to conduct this analysis and address the aforementioned questions by looking at theories of statehood, notably the declaratory and constitutive theories. This will provide a clearer picture of exactly what makes a state a state. It then analyses the status quo in terms of the international community’s current attitude towards secession. This continues the discussion from the previous chapter, adding an explanatory dimension to the empirical evidence already seen.

Secondly, the chapter reassesses support for territorial integrity, considering the secondary literature on some of the risks associated with its breach, such as the fear of secession setting a precedent that could undermine the international system of states. This is then taken further by analysing sequential and recursive secession. Additionally, arguments against secession based on theories of state as well as the principles of pluralism and liberal democracy will be considered. Thirdly, the chapter revisits the principle of self-determination, this time examining the secondary literature on the subject. This continues to illustrate some of the limits to the right to territorial integrity, but in doing so will also examine in greater depth some of the limits to the right to self-determination. These include the possibility of self-determination without secession, such as devolution and/or federalism, and the practicalities surrounding such concepts. Finally, the chapter examines theories of secession. Theories of when secession may be condoned by the international community are taken further, and situations are examined in which recognising secession might be the ethical choice. It will conclude by examining the limits to ethical recognition of secession, and the manner in which such cases are handled by the international community.

After addressing the theory behind statehood and secession and analysing the concepts of territorial integrity and self-determination in the light of the relevant literature, this chapter argues that legitimacy is of fundamental importance to the approach of the international community to secession, since it is a significant aspect of what makes a state a state. As discussed in the previous chapter, it may also have had an impact on the international community's decision-making when evaluating whether or not to recognise a secession (although this has often been implicit).

## Theories of Statehood and the Concept of Recognition

It is necessary to understand exactly what statehood means early in the analysis, in order to critically assess the approaches to recognition outlined in Chapter 1. The two major theories of statehood are examined here in order to begin to further the understanding of what makes a state in the eyes of the international community.

### Declaratory Theory

The declaratory theory of secession echoes the declaration of the Montevideo Convention, in that a state exists if it possesses a permanent population, a defined territory, a government and the capacity to enter into relations with other states. As seen in the previous chapter, if a state fulfils these criteria then it exists regardless of recognition.<sup>1</sup> However all theories have their limitations, and this approach is no exception. For example, a secessionist state may claim that it has a defined territory, but there may be other claims to that territory in whole or in part (from the parent-state or otherwise).<sup>2</sup> This would undermine the secessionist's claim to statehood. Indeed, Hersch Lauterpacht argues that "A temporary success resulting in ... independence would not, so long as there exists a reasonable prospect of the mother country reasserting her authority, justify in law the recognition of statehood."<sup>3</sup> This can be seen as a reason as to why so many *de facto* states remain unrecognised, such as Transnistria, Abkhazia or

---

<sup>1</sup> Amy E. Eckert, "Constructing States: The Role of the International Community in the Creation of New States" *Journal of Public and International Affairs* Vol. 13, Spring, 2002, p21

<sup>2</sup> *Ibid*, p22

<sup>3</sup> Hersch Lauterpacht, *Recognition in International Law* (Cambridge: Cambridge University Press, 1947) p46

the TRNC. However, a question remains over this approach if the parent-state does not have a 'reasonable prospect' of 'reasserting her authority' as would likely be the case in a failed state as the subsequent chapters will see. This will be one of the ethical questions examined throughout the thesis.

While this tells us a little more about the existential issue of what makes a state a state, this only goes as far as explaining what gives an entity statehood, not necessarily recognition as such. A large part of what this thesis is investigating in examining how the international community deals with secession is recognition. There is an argument made in the constitutive theory of state to suggest that even a state is not truly a state unless recognised as such by other states.

### Constitutive Theory

The constitutive theory of secession puts more emphasis on *recognition* of statehood rather than statehood alone. Whilst the declaratory theory asserts that the existence of a state is independent of recognition, the constitutive theory stresses that for a state to exist it must receive formal recognition specifically, as well as possess the capacity to enter into relations with other states, which many unrecognised states have the ability to do.<sup>4</sup> This theory matches the anti-secessionist nature of the international community, since it makes the success of the secession dependant on the consent of the international community through widespread recognition.<sup>5</sup> Indeed, Lauterpacht writes that it has been posited that recognition is necessary for a state to become part of the juridical community

---

<sup>4</sup> Eckert, 2002, p24

<sup>5</sup> Ibid.

of states, giving said state the ability to participate in the formulation of, and be protected by, international law.<sup>6</sup>

Statehood being dependent on recognition raises some questions however, as there are varying definitions and theories of recognition. Robert D. Sloane has argued that there are three different forms of recognition, including political recognition, which is the formal act of one state recognising another; legal recognition, which is recognition that fulfils a set of legal criteria (such as the Montevideo criteria); and finally civil recognition, which is recognition based on moral consensus.<sup>7</sup> A major criticism of the constitutive theory is that a just secession could fail to achieve recognition due to expedience on the part of the international community, i.e. not recognising the secession for political reasons and/or not wanting to set a precedent. However, as Sloane writes, “An unjustly denied claim to legal recognition often, but not always, animates civil recognition.”<sup>8</sup> Civil recognition may act as a catalyst for political if not legal recognition. It was seen in the previous chapter that Kosovo had a degree of civil recognition, and went on to achieve a degree of political recognition. However, as will be seen with Somaliland in Chapter 4, civil recognition does not always lead to legal recognition.

The overall question surrounding the constitutive theory of state is a perceptual one: does a state exist if other states do not formally recognise it? It is hard to ignore even an unrecognised state that has control over its borders and infrastructure, and which

---

<sup>6</sup> Lauterpacht, 1947, pp38-40

<sup>7</sup> Robert D. Sloane, “The Changing Face of Recognition in International Law: A Case Study of Tibet”, *Emory International Law Review*, 16(107), 2002, pp109-110, p115

<sup>8</sup> *Ibid*, p110

possesses institutions of government that meet the criteria of a state under the declaratory theory. International organisations and governments of states have often been forced to interact with the governments of unrecognised states.<sup>9</sup> With this in mind the question of recognition also becomes an issue of semantics, since whether these entities are considered states by the international community or not, other countries still have to interact with them in a similar way to states (some even have their own diplomatic missions).<sup>10</sup> So on some level at least, these entities can be considered states. However, in terms of sovereign rights, as is explored further later in the chapter, states only exist through recognition.

### Territorial Integrity: An International Anti-Secession Norm?

It was seen in the previous chapter that despite exceptions, which were mainly due to politics and pragmatism, the concept of territorial integrity generally holds significant normative force within the international community. Here it will be posited that much of the rationale behind the various actors' reluctance to endorse secession is the fear of setting a precedent whereby secession, if continued unabated, would undermine the international norms of sovereignty and territorial integrity, potentially leading to a breakdown in the internationally-accepted system of states. This chapter conducts a deeper analysis of the logic behind this stance, investigating the rationale of the anti-secessionist stance supporting global stability and security and examining the whys and wherefores. It also evaluates a number of pro-secessionist counter-arguments, in order to

---

<sup>9</sup> Transdnistria MFA: "Meeting with Head of the OSCE Mission to Moldova Michael Scanlan" 28 January 2015, <<http://mfa-pmr.org/en/rTz>> accessed 5 February 2015

Transdnistria MFA: "Nina Shtanski met with the delegation of the Russian Embassy in the RM" 3 February 2015 on <http://mfa-pmr.org/en/fQP> accessed 5 February 2015

<sup>10</sup> Office of the London Representative of the Turkish Republic of Northern Cyprus <<http://www.trnclondon.com/defaulteng.asp?id=1&t=cat>> accessed 05 February 2015

test the strength of the logic behind the international community's anti-secessionist stance.

Firstly, the claim that allowing secession will lead to global anarchy needs to be examined. Allen Buchanan, a prolific author on the subject of secession, writes that "If large groups are allowed to secede, why not small groups...why not individuals?"<sup>11</sup> Such an argument paints secession as something of a 'Pandora's box', that once opened would undermine global order, security and stability as we know it. However, as Buchanan rightly goes on to say, this argument is based on the premise that the right to secede is an unlimited right, in other words an inherent right to secession held by all peoples. As Buchanan argues, the right to secede can only be a limited right. This undermines the argument about secession leading to anarchy, since "one doesn't have to allow everything because one allows something."<sup>12</sup> However, Buchanan does agree that a right to secede could be abused, and there is a danger of "unacceptable disruptions, dislocations of peoples and almost certainly horrendous loss of human life."<sup>13</sup> This would come with the redrawing of borders that could result in displaced peoples. With this in mind, he suggests that one must:

[S]et about the task of determining the scope and limits of the ideal in its implications for how one ought to act *and* ensuring that the ideal is embodied in institutions in such a way that its proper scope and limits will be duly observed.<sup>14</sup>

---

<sup>11</sup> Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*, (Boulder: Westview Press, 1991) p102

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

This theory offers a view on how secession *should* be dealt with, yet it also goes some way towards helping us understand how secession *is* dealt with. The previous chapter explained that the EC recognised the resulting states of the breakup of Yugoslavia on the condition that the new governments respected minority rights and renounced claims over other territory, which could be interpreted as an attempt to impose said ‘scope and limits’ on the secession. Despite this, the previous chapter also saw that when some believe that a secession falls within certain ‘scope and limits’, others will often disagree. Kosovo is a clear example of such an impasse.

The foregoing issue brings the thesis to two key concepts that tend to support the idea that secession undermines the stability of the global states system: recursive and sequential secession.

#### Recursive and Sequential Secession

It must be noted that concern over anarchy caused by setting a precedent that allows secession may be legitimate. There have been examples of secessions which have encouraged secession *within* the secessionist state. An example of this is the attempted secession of Abkhazia and South Ossetia from Georgia, which itself seceded from the USSR. Such secessions from a secessionist state are known as ‘*recursive secessions*’.<sup>15</sup> However, the Abkhaz have generally claimed that their secession was not a response to Georgia’s independence.<sup>16</sup> There are also examples of secession in one area encouraging secession elsewhere. For example, the successful secession of Montenegro and the

---

<sup>15</sup>Aleksandar Pavkovic and Peter Radan, *Creating New States: Theory and Practice of Secession* (Aldershot: Ashgate, 2007) p129

<sup>16</sup> Rick Fawn, “The Kosovo and Montenegro effect” *International Affairs* 84(2) Mar 2008 p274

possible secession of Kosovo have encouraged movements for autonomy, such as the Turkic Gagauz movement in Moldova and the Hungarian Minority in Slovakia.<sup>17</sup> However, these groups “have not grown into serious contenders”.<sup>18</sup> In addition, these claims could be placated by granting a degree of autonomy stopping short of granting full independence, such as the devolution model in the United Kingdom.

It must also be pointed out that the potential collapse of the state-system is not the only concern where recursive secession is concerned; many such secessions have also turned violent, for example South Ossetia.<sup>19</sup> There are thus ethical concerns that secession can lead to instability and insecurity.

The previous chapter discussed Yugoslavia as a case of multiple secessions, although it could be more accurately described as ‘sequential secession’ (secession from the same host state, as opposed to recursive secession which is secession from the secessionist state).<sup>20</sup>

History teaches that sequential secession can be caused by mutual support from different secessionist groups in the region. This happened during the breakup of the USSR, as various groups believed that supporting the independence of other secessionist movements would strengthen their own.<sup>21</sup> This leads hopeful secessionists to a paradox.

---

<sup>17</sup> Ibid, p270

<sup>18</sup> Ibid.

<sup>19</sup> *BBC*: South Ossetia profile <<http://www.bbc.co.uk/news/world-europe-18269210>> accessed 23 September 2014

<sup>20</sup> Pavkovic and Radan, 2007, p129

<sup>21</sup> Ibid, pp136-137

Since many actors within the international community seems largely reluctant to recognise secession, one may conclude that they would be even less likely to recognise a secessionist state that supports other secessions; on the other hand, the secessions from the Soviet Union were successful in becoming recognised, which might encourage secession movements to support other movements. Evidence for this comes from the mutual recognition of Abkhazia, South Ossetia and Transdnistria (themselves recursive secessionist states), none of which have been recognised by the wider international community.<sup>22</sup>

Actors within the international community are certainly aware of the dangers of recursive and sequential secession, and work to avoid it in situations where recognising the initial secession seems unavoidable. For example, regarding the former Yugoslavia, it was noted in the previous chapter that the recognition of the resulting states was based on federal borders. This was evidently a measure to prevent recursive secession, as illustrated by the fact that the European Commission:

[R]efused to examine the right of self-determination of ‘the Serbian populations of Croatia and of Bosnia-Herzegovina, as one of the constituent peoples of Yugoslavia’ but asserted (as a ‘well-established fact’) that ‘the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the States concerned agree otherwise.’<sup>23</sup>

---

<sup>22</sup> Frank Jacobs “Transdnistrian Time Slip” *New York Times*, 22 May 2012  
<<http://opinionator.blogs.nytimes.com/2012/05/22/transnistrian-time-slip/>> accessed 31 October 2012

<sup>23</sup> EC Declaration on Montenegro- Brussels 10 January 1992 in S Trifunovska (ed.) *Yugoslavia through Documents: From its Creation to its Dissolution* (Dordrecht: Nijhoff, 1995) p474

Aleksandar Pavkovic “Recursive Secessions in Former Yugoslavia: too Hard a Case for Theories of Secession?”, *Political Studies*, 48(3), 2000, p485

The last chapter also covered the fact that the EC made recognition conditional on the provision of minority rights, which can be seen to be a potential precaution against recursive secession.

Some academics argue that recognition of secession does not necessarily set a bad precedent. Englebert and Hummel have presented a possible explanation, particularly useful to this thesis as it is written in the context of Africa where both of the thesis's case studies are set. They write that on the face of it, many African states seem ripe for secessionism since they are:

[Y]outhful and very heterogeneous, they dispose of large and decentralised reserves of natural resources, which could sustain separatist groups, and have a poor record of providing for their citizens. They are also more culturally alien to their populations than most states in other regions of the world. Moreover, politics on the continent often amounts to zero-sum games, as states are captured by one ethnic group or coalition, which frequently exerts its domination over others, largely excluding them from state benefits if not persecuting them.<sup>24</sup>

Yet Englebert and Hummel talk of a 'secessionist deficit' in Africa, where states that seem ripe for secession are remaining intact.<sup>25</sup> They offer an explanation for this which refutes the idea that recognising a single secession will set a precedent that will encourage secession elsewhere. They argue that:

[L]ocal political elites, ethnic leaders and other communal contenders face compelling material incentives to avoid strategies of regional self-determination, and compete instead for access to the national and local institutions of the weak sovereign state, irrespective of the latter's history of violence towards them.<sup>26</sup>

---

<sup>24</sup> Pierre Englebert and Rebecca Hummel "Let's Stick Together: Understanding Africa's Secessionist Deficit", *African Affairs*, 104(416), 2005, p400

<sup>25</sup> *Ibid*, pp399-400

<sup>26</sup> *Ibid*. p400

They go on to write that this leads to a situation whereby the state is legally unified, and different groups maintain control over different parts of the territory.<sup>27</sup>

This view may appear to be borne out in some areas, and might explain why the autonomous area in Somalia known as Puntland has all the trappings of a state but has so far declined to declare independence. This thesis adds to this theory by analysing the exceptions to Englebert and Hummel's rule, looking at why Somaliland and South Sudan *have* chosen to secede, and examining the consequences of recognition (or lack thereof in the case of Somaliland) in the light of Englebert and Hummel's finding that recognising such a secession would not necessarily encourage other potential factions to secede as well.

Another argument based on secession undermining stability and security is that there is a risk that secession will lead to ongoing disputes over territory as, for example, secessionists may claim territory even if it is inhabited largely by citizens of the parent-state. They could do this by claiming that the area historically belonged to their people, but had been forcibly settled by the government of the parent-state. This is an issue in the case of Kurdish independence from Iraq, since many Kurds claim that the city and region of Kirkuk was historically Kurdish and that the Arab residents of the area were settled there by the Iraqi government.<sup>28</sup> This supports the argument that tampering with

---

<sup>27</sup> Ibid.

<sup>28</sup> Margaret Moore, "The ethics of secession and postinvasion Iraq," *Ethics & International Affairs*, 20(1), 2006, p58

the status quo (the international order of states and the inviolability of territorial integrity) can have a negative effect on stability and security.

### Secession and Social Contract Theory

Social contract theory has also been used to make the case against secession. It has been posited by Lee C. Buchheit that once a group makes the decision to join a society it is a “legitimate exercise of the right of self-determination”.<sup>29</sup> This means that once a group has acted to join a society it does not have any further right of self-determination – in other words, it cannot then secede and disrupt the existence of the society. It has been argued that this idea is simply unrealistic, and that groups do not have only ‘one shot’ at self-determination. As Buchheit asks:

Does the freely chosen decision by a tribal people at the beginning of recorded history to align themselves with a neighbouring empire really bind their twentieth century descendants to an association with the heirs, successors, or assigns of that ancient imperial power?<sup>30</sup>

This idea can be used to argue that groups which enter into a union willingly should be allowed to leave that union at any point. However, this could cause antagonism with the other state(s) in the union if they feel it would be detrimental to lose part of the union.

There are also issues to be discussed here regarding the ability of the sovereign to protect the security of its citizens. The social contract theory argues that citizens trade certain freedoms for the security of the sovereign state, and so forfeit the right to secession. There

---

<sup>29</sup> Lee C. Buchheit *Secession: The Legitimacy of Self-Determination* (New Haven: Yale University Press 1978) p21

<sup>30</sup> *Ibid.*

is thus some logic to the argument that if the sovereign is unable or unwilling to provide this security then the social contract is null and void. This was illustrated in the previous chapter by the support for the secession of Kosovo by the states that recognised it in the face of their security being breached by Serbia, and is a concept that will be examined in greater depth later in this chapter.

It does seem, according to some social contract theory, notably Buchanan and his interpretation of John Locke, that a state is only legitimate if it upholds its end of the social contract, in other words if it acts exclusively in the interests of its citizens.<sup>31</sup> It can therefore be concluded that if a state is not acting in the interests of its citizens, protecting their security and/or freedoms, then it is not legitimate and its right to territorial integrity is arguably somewhat diminished. Buchanan's interpretation should be seen as a Lockesque view rather than a Lockean view, since Locke's work dealt primarily with the legitimacy of *governments* rather than *states*. However, Buchanan transcribes Locke's ideas onto states, particularly with regards to Locke's idea of a right to revolution, i.e. citizens looking for a new sovereign if the current one is not upholding its side of the social contract. As will be seen later in this chapter, Buchanan has claimed that this can be interpreted as a right to secession.<sup>32</sup> What is important to take from this is the effect that the social contract has on a state's legitimacy i.e. that upholding the social contract adds legitimacy but failing to do so detracts, and in turn the effect that this has on a state's territorial integrity, i.e. The idea that a lack of a state's legitimacy could detract from its

---

<sup>31</sup> Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004) pp98-100

<sup>32</sup> Allen Buchanan "Theories of Secession" *Philosophy and Public Affairs*, 26(1), 1997, p37

territorial integrity, fitting in with the Responsibility to Protect noted in the previous chapter.

### Legitimacy

This brings the chapter to a key ethical concept for this thesis: Legitimacy. The previous chapter explained that secession has been recognised in a number of cases where it has been deemed that the parent-state's rule over the secessionists was illegitimate for one reason or another. So, what is it that determines whether a state is legitimate?

Max Weber wrote extensively on the subject, and agreed in general that a government should look after the interests of its citizens. He was of the opinion that to be legitimate a political leader must adhere to a 'moral standard' and the 'operative ideals' of society.<sup>33</sup> These limits on legitimacy echo the limits on territorial integrity seen in the previous chapter, yet the diminished legitimacy of a parent-state would not necessarily mean that a secession becomes legitimate. Whilst the illegitimacy of the parent-state's power can thus be used to justify secession, the resulting secessionist state also needs to be legitimate. David Beetham writes that illegitimate power is power gained by breaking constitutional rules. Secession would be such an acquisition since it rejects said constitutional rules in favour of a new state.<sup>34</sup> It would appear from the previous chapter that by and large the international community supports the idea that secessionist power is illegitimate other than in exceptional circumstances, the clearest apparent reason for this attitude being their reluctance to set a secessionist precedent. Cases in which a

---

<sup>33</sup> David Beetham *Max Weber and the Theory of Modern Politics* (London: George Allen & Unwin Ltd, 1974) p115

<sup>34</sup> David Beetham *The Legitimation of Power* (Basingstoke: Macmillan, 1991) p206

secession has been recognised have generally occurred when the legitimacy of the parent-state itself has been called into question. This returns us to the question of what makes the parent-state legitimate. Earlier arguments suggested that a government must conduct itself in the interests of its citizens to be legitimate, yet it is unclear whom is able to bestow this legitimacy. Beetham argues that it is the very act of recognition itself by the international system of states that bestows legitimacy upon a state.<sup>35</sup> Yet, as seen in the previous chapter, both recognition and territorial integrity are conditional on the legitimacy of a secession and the legitimacy of the parent-state respectively. In many cases the legitimacy of the parent-state has been undermined by the parent-state persecuting the people who ended up seceding, undermining the parent-state's legitimacy under the social contract argument. In certain cases, such as Eritrea and in the Balkans, this has led to the secession being recognised and therefore seen as legitimate. From this one can conclude that the argument that secession is an illegitimate acquisition of power is not absolute.

According to Weber, legitimacy is partly bestowed by belief in the legitimacy of the actors involved, both subordinate and dominant.<sup>36</sup> In the context of secession, this can be interpreted in a number of different ways. One can take from this that a state must be widely recognised to be legitimate, as Beetham argued.<sup>37</sup> Another way to interpret this claim is that if the citizens of a state no longer believe in a government's legitimacy, then said government loses its legitimacy. Theoretically, a secessionist state in this situation

---

<sup>35</sup> Ibid, p122

<sup>36</sup> Ibid, p6

<sup>37</sup> Ibid, p122

could gain legitimacy as a result of the loss of the parent-state's legitimacy. Arguably this is what happened in Yugoslavia.

Some of the reasoning for this can be attributed to the legitimacy of the parent-state being called into question due to their failure to uphold their end of the social contract or the 'moral standards' described earlier. This also brings us to a key concept within legitimacy and secession: consent. Consent to be ruled has been claimed by Beetham to be an important part of what makes a ruling government legitimate.<sup>38</sup> As a result, in situations such as the Balkans when the parent-state's sovereignty "has been achieved in an unjust way lacking the explicit, free and open consent of the ruled...independent statehood was regarded as reward for unjust rule".<sup>39</sup> Additionally, the state can undermine its own legitimacy by actively undermining the security of its citizens through persecution and denying their basic human rights, as noted when looking at social contract issues. Again, this was arguably the situation in Yugoslavia. The legitimacy of a secessionist state thus appears to be dependent upon the legitimacy of the parent-state. It is important to note that both a belief of the secessionists in the legitimacy of the breakaway entity *and* a deficit in the legitimacy of the parent-state is necessary for widespread recognition, as Lauterpacht notes, if the parent state is still widely viewed as legitimate, even if the secessionist entity holds the belief of its citizens, then such a secession could be seen as having 'revolutionary origin', which unless it is in the interests of the recognising actors to support, would generally be discouraged.<sup>40</sup> Lauterpacht notes that this is somewhat illogical when the states refusing recognition have had

---

<sup>38</sup> Ibid, p3

<sup>39</sup> Josette Baer, "Who, Why and How: Assessing the Legitimacy of Secession" *Swiss Political Science Review*, 6(3), 2000, p46

<sup>40</sup> Lauterpacht, 1947, pp104-106

revolutionary origins themselves (he uses the USA as an example), however, it is apparent that in this instance, states' self-interest takes precedence over principle.<sup>41</sup>

Nonetheless, the examples outlined in the previous chapter showed that in some cases the international community has chosen to recognise the greater legitimacy of the secessionist state over the parent-state when the parent-state's legitimacy is in question. The foregoing analysis shows that this is justified by political theories of state, which highlights the importance of legitimacy in issues of secession.

#### Secession as incompatible with liberal democracy

There is an argument suggesting secession undermines liberal democracy. This is based on the premise that a liberal democracy affords all citizens a voice and seeks to grant "equal political, civil and cultural rights to all of its citizens and thus endeavours to avoid or remove any form of discrimination, let alone oppression"<sup>42</sup> Any secession from such a state would result in objections from the government and citizens of the parent-state (and also most likely some from the secessionist state, since the secessionist state may well deny these citizens some of the rights they had as members of the parent-state). This is because it would affect the political and constitutional order in such a way that it would affect the interests of these citizens, most likely negatively.<sup>43</sup>

---

<sup>41</sup> Ibid.

<sup>42</sup> Aleksandar Pavkovic "Secession, Majority Rule and Equal Rights: A Few Questions", *Macquarie Law Journal*, (5)3, 2003, p73

<sup>43</sup> Ibid.

On a more basic level a general right to secede undermines democracy, since a minority which disagreed with a decision voted for by the majority of a state could then simply secede, undermining the whole concept of majority rule.<sup>44</sup> To add to this argument, one could say that minorities in a democracy have the right to self-determination through their vote. However, counter-arguments emerge when considering ethnic identity, as a people may still feel under-represented despite having a vote since they may feel that they need their own legislature. This has been a particular issue in multi-national states such as the UK, where it has been tackled via devolution. However, this has not stopped Scottish nationalists pushing for secession and full sovereignty. What the above analysis does show is that secession from a liberal democracy without the consent of the parent-state is usually seen as illegitimate by the majority of actors within the international community.

#### States' Self-interest

In the previous chapter the thesis noted that often states' self-interest comes in to play when it comes to their attitudes towards recognition of secession, for example, when a state won't recognise a secession due to fear of encouraging secessionist movements within their own territory. Bridget Coggins, putting forward a realist perspective, goes as far as to suggest that "normative legal principles" such as the legitimacy of the parent state and the legitimacy of the secessionist entity are of secondary concern to "powerful states' parochial political motives" when it comes to consideration of the recognition of secession.<sup>45</sup> Coggins states that the interests of states with regard to recognition is

---

<sup>44</sup> Buchanan, 1991, p98

<sup>45</sup> Bridget Coggins, *Power Politics and State Formation in the Twentieth Century: The Dynamics of Recognition* (New York: Cambridge University Press, 2014) p17

mediated by “a mutual interest in preserving the international order.”<sup>46</sup> This would suggest that the interests of states generally aligns with the need to preserve the international system of states, thus supporting a norm of territorial integrity.

James Ker-Lindsay suggests further reasons why it is in the interests of states to oppose secession as well as the perceived general need to uphold territorial integrity. One of these is the issue of internally displaced persons. As will be discussed later in the chapter, citizens identifying with the parent state can often be ‘caught’ in a secessionist entity when it secedes and often as a result become refugees.<sup>47</sup> Actors will want to avoid this for practical security reasons as well as the ethical issue of people being forced from their homes.

Reasons why a parent state may oppose secession may include the historical, cultural and/or religious significance of the secessionist territory, if there were, say, sites of historical, cultural and/or religious significance within the secessionist territory.<sup>48</sup> This represents an ethical consideration in cases of secession. Ker-Lindsay also gives practical reasons why states look to uphold territorial integrity, such as the need to prevent further territory loss through recursive and/or sequential secession.<sup>49</sup> Both Coggins’ and Ker-Lindsay’s research shows that self-interest plays an important part in creating an international norm of territorial integrity, both in the cases of the parent-state and the international actors who have the potential to confer recognition upon a

---

<sup>46</sup> Ibid, p57

<sup>47</sup> James Ker-Lindsay, *The Foreign Policy of Counter Secession: Preventing the Recognition of Contested States* (Oxford: Oxford University Press, 2012) pp62-64

<sup>48</sup> Ibid, pp64-67

<sup>49</sup> Ibid, p67

secessionist state. Indeed, the concerns of the parent-state may influence other states who fear encouraging their own secessionist movements.

However, the self-interest that is argued by Coggins to motivate the international norm of territorial integrity would sometimes appear to be in conflict with issues of legitimacy, she argues that statehood is subjective and is “guided by political considerations rather than objective governmental capacity”.<sup>50</sup> This suggests that even if a secessionist entity is more legitimate than its parent state then it may not necessarily become recognised. This means that the current practice of recognition is ethically questionable.

#### Self-Determination: Definitions, Importance and Issues

Despite the justifications for the anti-secessionist stance that many states apparently hold, the previous chapter saw that at times secession has become widely recognised and the secessionist state(s) admitted to the UN. Whilst it was concluded that these incidents were largely due to pragmatism, theoretical justifications will now be outlined and examined in order to address the ethics of secession. The previous chapter explained that the principle of self-determination has been applied somewhat selectively. In this section the broad definition of self-determination will be critically analysed to determine which definitions can be applied to which situations. However, it is important to begin by assessing why self-determination is seen by many to be such an important value so that its applicability can be appraised.

---

<sup>50</sup> Coggins, 2014, p17

## Why do Peoples Strive for Self-Determination?

Pavkovic and Radan have outlined a number of benefits that secessionist movements aim to obtain.<sup>51</sup> Acquiring sovereignty and the advantages it can grant is a primary goal of secession; once a state is sovereign and recognised, then the people of the new state are no longer a minority, but a nation in their own right, with the same standing and status in international law as other nation states.<sup>52</sup> With sovereignty a nation can then have exclusive responsibility for the policies that affect its population (commitments to international agreements and treaties and membership of supranational organisations such as the EU notwithstanding).<sup>53</sup> This is particularly important as a sovereign state is supposedly protected from incursion or interference from other states by international law.<sup>54</sup> In practice, a state can only enjoy these benefits of sovereignty through recognition, validating the constitutive theory of state.

The benefits of sovereignty could be particularly pertinent for a secessionist state if they have suffered injustice at the hands of the parent-state, since achieving sovereignty via secession could in theory make them safer from future persecution due to the apparent protected status of sovereignty under international law. Along with this the people of the new state would gain more political control over its government, since they would no longer be a minority population.<sup>55</sup> Whether or not sovereignty is an absolute concept remains very much debated, as citizens who disobey state laws for example undermine

---

<sup>51</sup> Pavkovic and Radan, 2007, p242

<sup>52</sup> Ibid.

<sup>53</sup> Ibid, p244

<sup>54</sup> Ibid, p10

<sup>55</sup> Ibid, p244

the authority of the sovereign.<sup>56</sup> Furthermore, we saw in the previous chapter and when analysing the relevance of the social contract earlier in this chapter that a sovereign can undermine itself by failing to protect the security of its citizens. However, absolute or not, sovereignty is still widely pursued.<sup>57</sup> This very fact means that it is a commonly accepted concept, and sovereign status is recognised and respected, at least ostensibly. This analysis of sovereignty shows that statehood, in theory and holding to a certain consensus within the international community, means that a state is responsible for its own laws and administration. It cannot be forced into being influenced by other states without the cooperation of the sovereign government.

There would also be various economic benefits to the new state:

The new secessionist authorities introduce new currencies and new monetary and fiscal policies, raise foreign loans and attract foreign investment; they may also change the conditions under which natural resources on the territory are exploited and traded.<sup>58</sup>

It is hoped that these changes would increase employment and income in the region.

Importantly to this thesis, if the secessionist people have been involved in conflict with the parent-state, secession is then often expected to bring about a resolution of grievances held by the secessionists toward the parent-state.<sup>59</sup> This can happen through the gaining of sovereignty noted above, since one of the purposes of Westphalian sovereignty is to

---

<sup>56</sup> John Hoffman, *Sovereignty* (Buckingham: Open University Press, 1998) p16

<sup>57</sup> *Ibid*, p1

<sup>58</sup> *Ibid*.

<sup>59</sup> *Ibid*, p243

bestow a status on a state whereby its borders are generally inviolable. Additionally, recognition as a legitimate sovereign state allows a state to participate in “the processes by which international law is made”, and enables it to enter into political, military and economic treaties, agreements and alliances that are often not available to unrecognised states.<sup>60</sup>

### What Defines a ‘People’?

A major issue when analysing the right to the self-determination of peoples is the issue of what exactly constitutes ‘a people’ in this context.

A 1989 UNESCO meeting defined a ‘people’ as:

A group of individual human beings who enjoy some or all of the following common features: (a) common historical tradition, (b) racial or ethnic identity, (c) cultural homogeneity, (d) linguistic unity, (e) religious and ideological affinity, (d) territorial connection and (e) common economic life.<sup>61</sup>

The report also states that “The group must have institutions or other means of expressing its characteristics and will for identity”.<sup>62</sup>

This definition is flawed, since at least the first five criteria can apply to separate states. For example, Germany and Austria share the first five criteria, arguably the sixth due to their historical union (although this can be questioned due to the legitimacy issues of said

---

<sup>60</sup> Buchanan, 2004, p265

<sup>61</sup> UNESCO Meeting of Experts on Further Study of the Concept of the Rights of Peoples- Final Report and Recommendations 22 February 1990 p8

<<http://unesdoc.unesco.org/images/0008/000851/085152eo.pdf>> accessed 16 October 2013

<sup>62</sup> Ibid.

union) as well as the seventh, as both are members of the European Union as well as the European Economic Area and use the Euro as currency. It is only the caveat that each possesses institutions for expressing their own national identities which makes them separate peoples under the UNESCO rulings. This flaw in the UNESCO definition would imply that the definition of a people is flexible and as such can be manipulated. For example, an unrecognised *de facto* state could claim any of these criteria, and even if some of them are contestable, their claim may still be as strong as some recognised states. This shows firstly that a ‘people’ and a state are not synonymous, and secondly that secessionist states are held to a higher standard than existing states.

However, in the latter half of the twentieth century a ‘people’ has often been defined as the population of a nation state or a colonial entity. This goes some way to explaining the UN’s reluctance to recognise secession despite promoting self-determination, since the principle of territorial integrity, another value extolled by the UN, would be “severely tested if the word ‘people’ included groups defined according to their ethnic or cultural origins, as such groups would have been entitled to seek independent statehood...irrespective of existing colonial boundaries.”<sup>63</sup> However, as Pavkovic and Radan write, this is not a universally accepted view; there are still those who suggest that people of a similar ethnic or cultural origin, or even those of a federal unit of a state, can constitute a ‘people’.<sup>64</sup>

---

<sup>63</sup> Pavkovic and Radan, 2007, p233

<sup>64</sup> Ibid, p234

Certainly, it would seem that separate ‘peoples’ can exist within a single state (although not necessarily without issue). Often (but not always) they will have their own institutions and/or laws via federalism and/or devolution. Examples include the UK, Spain and Canada. Indeed, in the latter case the Canadian Supreme Court ruled that “restricting the term ‘people’ to the ‘population of existing states would render the granting of a right to self-determination largely duplicative”<sup>65</sup> in as much that if all peoples were associated with a territory there would be no conflict between self-determination and territorial integrity.<sup>66</sup>

It is logical that it will be less likely for peoples in a multi-national state to wish to secede if the advantages of remaining in the union outweigh the costs.<sup>67</sup> This is not always clear however; the high level of activity of both campaigns in the referendum on Scottish independence, and the closeness of said referendum, is testament to this.<sup>68</sup> What is important to note here is that when it is unclear whether the benefits of a union outweigh the costs then the dispute will perpetuate, and if the costs outweigh the benefits then secessionist feelings will rise and a breakup of the country becomes far more likely. Examples of where this has happened include Montenegro’s split from Serbia and South Sudan’s secession from Sudan. The case of South Sudan is of particular interest, since Khartoum could do little to persuade the South of the benefits of remaining united

---

<sup>65</sup> *Reference re Secession of Quebec*, 2 S.C.R 217 (Can 1998). In Peter Roethke “The Right to Secede Under International Law: The Case of Somaliland”, *Journal of International Service*, Fall 2011, p41

<sup>66</sup> *Ibid.*

<sup>67</sup> Pierre Trudeau as quoted in Michael Burgess “Territorial and Non-Territorial Identities: Multinational Federalism in Multinational Federalism” Centre for Federal Studies, Rutherford College, University of Kent, Conference paper: “Multinationalism in Perspective: A Viable Model”, University of Quebec, 25<sup>th</sup>-27<sup>th</sup> September 2009, p2

<sup>68</sup> *The Guardian* “Scottish Independence Referendum: Final Results in Full” 18 September 2014 <<http://www.theguardian.com/politics/ng-interactive/2014/sep/18/-sp-scottish-independence-referendum-results-in-full>> accessed 2 February 2015

following the repeated retraction of promised powers to the South. Years of civil war between the South and the Khartoum government also undermined any incentive to remain united, due to the lack of trust created.<sup>69</sup> This shows that if a union is to prevail, then the central government must be both willing and able to provide incentives and deliver them with integrity. Whether costs and benefits can ever be objectively determined is disputed. There will always be an element of speculation, meaning that the agents involved (the government of the parent-state and the provisional government of the secessionists) can manipulate information in order to gain support. However, in situations where the secessionists have had their security and rights undermined by the parent-state, the benefits of secession will be more apparent.

#### Issues with Secession based on Ethnicity

A major problem with the ethnic definition of a 'people' is that granting self-determination in the form of independence based on ethnic lines could lead to the creation of ethno-centric states, raising concerns over security and stability. Past attempts to create ethnically homogeneous states have led to atrocities as one group has attempted to remove other ethnicities from the territory. These have included not just forced relocations, but also terrorising methods such as murder, rape and starvation to 'encourage' people to leave. This process is known as ethnic cleansing, and is rightly considered unacceptable by most of the international community.<sup>70</sup> As Preece notes:

The cleansing of Croats from Serbian-occupied Krajina, the cleansing of Azerbaijanis from Nagorno-Karabakh, and the cleansing of Russians from

---

<sup>69</sup> BBC: South Sudan Profile <<http://www.bbc.co.uk/news/world-africa-14069082>> accessed 2 February 2015

<sup>70</sup> Herbert C. Kelman, "Negotiating National Identity and Self-Determination in Ethnic Conflicts: The Choice Between Pluralism and Ethnic Cleansing", *Negotiation Journal*, 13(4), 1997, p327

Chechnya are just a few post-Cold War examples of ethnic cleansing's role in the quest for national self-determination.<sup>71</sup>

This would undermine the legitimacy of the secessionists since, even if the parent-state had not been upholding the social contract, neither would the secessionists. In other words, “[S]ecession cannot be argued for by claiming for a remedy for suffered discrimination while committing discrimination at the same time”.<sup>72</sup>

The above issues can come into play when a secession occurs and an ethnic minority, whether of the ethnicity of the parent-state or of a different ethnicity to the majority of the secessionist state, is ‘caught’ within the borders of the secessionist state. This was observable in the breakup of Yugoslavia.<sup>73</sup> However, A. H. Birch has argued that secession can be justified despite this issue, as “It would not seem appropriate to ignore an existing wrong because of the possibility that it might lead to another wrong”.<sup>74</sup> This is linked to the remedial secession theory, which will be examined later. Pavkovic counters this argument by stating that Birch “Offers no argument overriding actual as opposed to possible harm caused by secessions.”<sup>75</sup> The ‘actual’ harm that can be caused in this situation can include ethnic cleansing and recursive secession, as seen.

Another problem with creating ethno-centric states is that it undermines the pluralist theory of state. This supports the idea of secession undermining liberal democracy posited earlier. In a pluralistic society whilst there is a majority rule, minorities can still

---

<sup>71</sup> Jennifer Jackson Preece, “Ethnic Cleansing as an Instrument of Nation-State Creation: Changing State Practices and Evolving Legal Norms” *Human Rights Quarterly*, 20(4), 1998 p820

<sup>72</sup> Baer, 2000, p62

<sup>73</sup> Pavkovic, 2000, p494

<sup>74</sup> A. H. Birch “Another Liberal Theory of Secession” *Political Studies*, 32, 1984, p602 in Ibid.

<sup>75</sup> Ibid.

advance their interests through negotiations. In this instance it is possible to put forward a pluralist argument against both the secessionists and the parent-state. The parent-state cannot condemn the secession if it has not explored the possibility of negotiating a compromise with the secessionists; likewise, the secession is not legitimate unless the secessionists have attempted to negotiate with the parent-state to maintain their interests. If negotiations fail, the secession may be legitimised if the parent-state has been unreasonable in their demands; likewise, the secession could be deemed illegitimate if the secessionists are perceived to have been unreasonable in their demands. However, here we encounter a problem regarding just what constitutes being unreasonable, and normatively speaking a clear ruling from an institution such as the ICJ or similar would help to define this. However, as seen in Chapter 1, rulings on such issues by the ICJ have been relatively insubstantial and not legally binding.

The previous chapter saw that when dealing with the recognition of the states resulting from the breakup of Yugoslavia, the EC created the condition that the new state must “include provisions for minority rights and renounce any claims, even rhetorical, against other states” to achieve recognition.<sup>76</sup> Having provisions for minority rights in a set of criteria for a legal secession could help address the problem of the threat of anarchy. This is because including provisions for the rights of a minority within a secessionist state means there could be fewer opportunities for a recursive secession to occur, since a minority within a secessionist state could feel less need to secede if they feel their rights are provided for. Alternatively, this might not prevent recursive secession, since a minority within a secessionist state may still seek independence even if their rights are not violated if they feel they are entitled to their own national identity. However, this

---

<sup>76</sup> Fawn, 2008, p275

depends on the justifications given for the initial secession. If the initial secession was recognised because the group in question had been subjugated by the parent-state and the recursive secession was simply a quest for national identity, then it is likely that the recursive secession would encounter more difficulty in seeking recognition than the initial secession.

Providing minority rights as a condition of secession also helps prevent ethnic cleansing. For example, if a state were to secede then states could compel the secessionist state to write into their law and/or constitution as a condition for recognition that ethnic minorities, or those of different nationalities, have the right to live in the country peacefully with the same rights as other citizens. As seen in the previous chapter, the EC did this with respect to the breakup of Yugoslavia. Herbert C. Kelman has stated that even if a state is created in order to establish self-determination, it must still not “*be, claim to be, or strive to be an ethnically pure state*”.<sup>77</sup> This claim can be linked with the idea of pluralistic states examined earlier, since for a state to legitimately secede “The needs of one group—even the majority—cannot be met in ways that undermine or threaten the well-being and safety of other groups.”<sup>78</sup> In order to create pluralistic states along these lines, it appears that it is necessary to separate ethnic identity from citizen identity.<sup>79</sup>

The preceding literature and analysis shows that the dangers of ethnic secession and associated recursive and sequential secession are real and potentially severe. Nonetheless some measures can be taken to limit any damage, such as commitment to negotiations

---

<sup>77</sup> Kelman, 1997, p334

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

with a particular emphasis on minority rights in order to ensure the legitimacy of a secessionist state.

#### Self-determination without Secession.

Self-determination and secession are not synonymous; secession is simply “the most dramatic form assertions of self-determination can take.”<sup>80</sup> Indeed, given the complications of secession and the anti-secessionist stance of many actors within the international community, it might be prudent for a people exercising the right to self-determination to stop short of declaring full independence. This could help relations between said people and the parent-state that would otherwise be damaged by secession and the parent-state’s objection to said secession. Self-determination without secession can also be seen as a way to reconcile the conflicting principles of self-determination and territorial integrity. Mikulas Fabry writes that self-determination short of secession has been argued to help avoid some of the issues of secession based on ethnicity that the chapter has just seen, as well as limiting the problem of setting a secessionist precedent:

Western states in effect argued that groups living in a democratic society whose human and minority rights were respected had no reason to strive for change of international borders. They appeared to have come to believe that given the right constellation of democracy and a variety of rights, diverse people could coexist, or learn to coexist, within any jurisdiction. The solution to the problem of external self-determination in the post-colonial and non-colonial context lay in extensive internal self-determination.<sup>81</sup>

---

<sup>80</sup> Buchanan, 2004, p332

<sup>81</sup> Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States Since 1776* (Oxford: Oxford University Press, 2010) p206

Even when new states are recognised, self-determination and representation for other groups is seen as important, as the insistence on minority rights in the recognition of the states breaking away from Yugoslavia showed, as observed in the previous chapter.<sup>82</sup>

James Anaya talks of two types of self-determination: ‘Constitutive self-determination’, whereby a people decide on their future status, opting for or rejecting secession; and ‘Ongoing self-determination’, whereby a group exercises a degree of political control over its own people and/or territory, although not necessarily though full independence.<sup>83</sup>

The 2014 referendum on Scottish independence is an illustration of both forms of self-determination, as it was an example of a people exercising constitutive self-determination in order to reject secession on the grounds that it would be granted a greater degree of self-government, and therefore exercising ongoing self-determination.<sup>84</sup>

The extent of self-determination and self-government is difficult to quantify given the number of forms such an arrangement could take. With this in mind, Buchanan notes that: “[I]t is extraordinarily unhelpful to talk about “the” right to self-determination (or autonomy). Yet existing international law contains dangerously ambiguous references to “the right of self-determination of peoples.””<sup>85</sup> The undefined concept of self-determination and the resulting ambiguity can be dangerous, since it may lead to impasse and conflict where a group believes that they have a right to full independence when by another argument they have the right to a degree of autonomy or representation. This is

---

<sup>82</sup> Ibid.

<sup>83</sup> James S. Anaya, *Indigenous Peoples in International Law* (New York: Oxford University Press, 1996) p81 in Ibid. pp332-333

<sup>84</sup> Scott Macnab, “Scottish Independence: Most Scots Back ‘Devo Max’” *The Scotsman* 19 February 2014 <<http://www.scotsman.com/news/politics/top-stories/scottish-independence-most-scots-back-devo-max-1-3310342>> accessed 23 September 2014

<sup>85</sup> Buchanan, 2004, p333

a major part of the reason why many cases of secession remain unresolved. The many different forms which self-determination has taken throughout the world in the past suggests there is a degree of method to the madness when it comes to the ambiguous nature of international law on the matter. Leaving the law ambiguous allows the potential recognising actors to adopt a degree of pragmatism in their approach, as it allows all options to be explored before resorting to recognising the independence of a secessionist state. It also allows for each case to be approached on an individual basis. This is beneficial to the international community's approach since, whilst cases of secession may bear similarities to each other, no two cases will be exactly the same. Each instance will have a unique set of needs and will have to be approached in a unique manner. Keeping the law ambiguous allows the international community to tailor their approach to the specific situation, which more specific and rigid laws on the issue would prevent.

Non-secessionist self-determination, such as devolution and/or federalism, has been subject to a number of criticisms. As Buchanan points out, whilst it is often used by a parent-state in order to hold a country together, a highly-centralised state would likely object since granting autonomy without independence might actually fuel secessionist feeling in the region.<sup>86</sup> If there are strong and distinctive nationalist feelings in said region, then there is a certain amount of logic to saying that given the ability to govern themselves within a state, said region might then be encouraged to strive for international recognition since they have already shown that they can govern themselves, and therefore the next logical step would be sovereignty. This logic is somewhat speculative, since examples such as Quebec and Scotland have remained within a union on the basis of

---

<sup>86</sup> Allen Buchanan "Secession and State Breakdown", in Deen K. Chatterjee and Don E. Scheid (eds), *Ethics and Foreign Intervention* (Cambridge: Cambridge University Press, 2003) pp193-4

retaining or even extending regional autonomy. However, there are those such as the Scottish National Party who have, as the above argument suggests, seen devolution as a step towards independence.<sup>87</sup> Nina Caspersen adds to this argument, suggesting that unrecognised *de facto* states may be reluctant to accept any form of autonomy in which they are still answerable to the parent-state since they have already achieved *de facto* statehood: “[W]hy agree to a form of autonomy – which could later be abolished – when you presently enjoy *de facto* independence?”<sup>88</sup> Such an attitude was somewhat evident in the obstinate position taken by Kosovo in negotiations as seen in the previous chapter. However, it is important to note that unrecognised states do not possess formal sovereignty, and so it would only make sense to take such a position if recognition was a genuine possibility.

It is crucial to be aware that self-determination without secession would not bestow full sovereignty upon a people either, which is of particular importance to secessionist movements that have suffered injustice at the hands of the parent-state. This is because full sovereignty could protect them from future discrimination in a way that devolution or federalism could not, particularly since it is highly likely that trust in the parent-state would be seriously eroded in such a situation.

---

<sup>87</sup> BBC: “Scotland's deputy first minister says Scottish independence is unstoppable” 05 October 2014 <<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-29498077>> accessed 14 October 2014

<sup>88</sup> Nina Caspersen, *Unrecognised States: The Struggle for Sovereignty in the International System* (Cambridge: Polity Press, 2012) p127

## Theories of Secession

The previous analysis goes some way towards explaining the moral and legal issues surrounding approaches to secession. This chapter must now examine the theories on how and why secession occurs, in order to fully explain the ethical and legal issues surrounding secession which have implications for how secession is approached. This will help to explain the stances of actors within the international community while also identifying any flaws in their stance.

### Democratic secessionism

Democratic secessionism is the theory that best explains a number of the secessions outlined in the previous chapter, Eritrea in particular. Under this theory there is a general right to secede as long as a majority in the seceding territory vote for it.<sup>89</sup> This suggests that it can be used to challenge the inviolability of territorial integrity. Democratic secessionists also argue that prospective secessionists should have “a social group that has a common habitat, consists of numerous families... capable of self-perpetuation through time as a distinct entity.”<sup>90</sup> There can then be further secessions within the seceding territory, with the majority in smaller territories voting for it. The idea behind this is that more people would be living in “mutually desired political associations”.<sup>91</sup> Democratic secessionism is of great benefit to the seceding people, since they would have a common culture, language, values and practices that they would want to perpetuate to future generations. Recognition as a sovereign state would help to ensure this, as it would give the people the power to make decisions based on their own culture, whereas if they

---

<sup>89</sup> Alan Patten, “Democratic Secession from a Multinational State”, *Ethics*, 112(3), 2002, p558

<sup>90</sup> Pavkovic 2003, p78

<sup>91</sup> Ibid.

were a minority in a bigger state then numerous decisions affecting said people would be made by a majority from another group. Self-government through devolution and/or federalism could also help address this issue.<sup>92</sup>

Democratic secession is important in terms of the legitimacy of a secession, since a democratically mandated secession implies the consent of those in the territory to be governed by the new secessionist government, consent being a key tenet of legitimacy.<sup>93</sup> Bearing this in mind, it can be argued that a secession gains legitimacy if put to a democratic vote. However, there are questions surrounding this claim. For instance, the conduct of secessionist referenda can sometimes have questionable legitimacy. For example, decisions regarding who can take part in such a referendum can have a great impact on the outcome. To illustrate, in the referendum on the independence of FYR Macedonia, the right to vote was extended to all Macedonians regardless of place of birth and including diaspora, which led to a boycott by the Albanians.<sup>94</sup> In contrast, all UK, EU and Commonwealth citizens resident in Scotland could participate in the referendum on Scottish independence, but not diaspora.<sup>95</sup> Concerns were raised over the conduct of the Macedonian referendum due to the possible disenfranchisement of minorities. Whilst this did not happen in the case of FYR Macedonia, the dangers surrounding the issue will be analysed in this section.<sup>96</sup> It is also apparent that if a significant group within the secessionist state is disenfranchised in any way during an independence referendum, then any new state which results from said referendum can be claimed to be illegitimate on

---

<sup>92</sup> Patten, 2002, p568

<sup>93</sup> Beetham, 1991, p18

<sup>94</sup> Baer, 2000, p64

<sup>95</sup> The Scottish Government: "Who can vote in the referendum?"

<<https://www.scotreferendum.com/questions/who-can-vote-in-the-referendum/>> accessed 28 May 2015

<sup>96</sup> Baer, 2000, p64

the basis that legitimacy is conferred (at least partially) by consent. If a significant group is disenfranchised in the referendum, then they cannot be said to have given their consent.

Democratic secession poses two additional dangers: the threat of anarchy, which we have already examined, and the threat to equality. The threat to equality is due to the problem that some people live in a 'common habitat', i.e. the seceding group are a majority in a territory while others are more dispersed over an area and thus will usually be a minority, meaning the democratic right to secede is unequal.<sup>97</sup> This can in turn lead to issues such as recursive and/or sequential secession. There are also potential problems over the reliability of such referenda, and these procedures have to be rigorously scrutinised in order to be sure that the majority did indeed vote. Indeed, it can be argued that the size of the winning majority is also important given the consequences of such a significant constitutional change.<sup>98</sup> Democratic secession does to an extent act as a counter argument to the claim that secession undermines the pluralist theory of state. If pluralism dictates that the needs and wishes of minorities are respected and met, then if secession wins a vote it can be seen to be a need of the minority in question, and the parent-state must honour it.

However, this idea would apparently ignore the majority of the parent-state, who would also be greatly affected. For example, the parent-state would be affected economically if there were natural resources that fell into the territory of the secessionist state. It would also affect the interests of the majority on a constitutional and political level, which was

---

<sup>97</sup> Patten, 2002, p568

<sup>98</sup> In the referendum on the independence of Montenegro, EU mediators insisted that a 55% majority was necessary for secession (Lee Hudson Telisk, 'Montenegro's Referendum on Independence' Council on Foreign Relations 2006, <<http://www.cfr.org/montenegro/montenegros-referendum-independence/p10725#p3>> accessed 16 September 2016)

discussed earlier with regards to the liberal democratic argument against secession. Earlier an argument was also made that measures can be taken within a pluralist state, such as devolution of powers and regional autonomy, which can eliminate the need for the minority to secede by placating their needs without breaking up the state. Montenegro is an example of the former, while Scotland is an example of the latter.<sup>99</sup>

There is an argument that democratic secession is not a right as such, and simply because a population votes for secession does not mean that independence and recognition must be granted. This is not least due to the inherent dangers of secession that have already been examined, particularly the dangers of secession along ethnic lines giving rise to an argument that democratic secession alone takes the right of secession too far. According to this argument a democratic secession should only be recognised if the people in question have been denied any form of autonomy, self-rule or internal-recognition by the parent-state, which is known as the ‘failure-of-recognition’ condition.<sup>100</sup> This goes some way towards explaining why some secessionist states that vote for independence are not recognised, whilst others are. This tends to weaken the challenge that democratic secession poses to the norm of territorial integrity.

It can be concluded that whilst democratic secession can help a secessionist state’s claim to legitimacy and recognition, by itself it is not enough to bestow legitimacy and recognition on a secessionist state.

---

<sup>99</sup>BBC: Montenegro Country Profile <<http://www.bbc.co.uk/news/world-europe-17667132>> accessed 23 September 2014

Scott Macnab, *The Scotsman*, 19 February 2014

<sup>100</sup>Patten, 2002, p566

## Unilateral secession

A unilateral secession is a secession that occurs without the consent of the parent-state, and usually without the support of the international community at large. It is not generally condoned by the international community, mainly due to the objections already encountered: a) it threatens the breakdown of the state system, and b) it undermines pluralism and liberal democracy. As Pavkovic states: “How is one to justify, within a liberal theory, the termination of the competence of political bodies which purported to protect the liberty and rights of the citizens living on that territory?”<sup>101</sup>

Buchanan argues that whilst international law holds some provision for unilateral secession in cases of colonisation, military occupation or annexation, it is not explicitly forbidden in other circumstances.<sup>102</sup> The ICJ ruling on Kosovo examined earlier is testament to this. However, there is clear evidence that unilateral secession is frowned upon by the international community, as states which have unilaterally seceded such as Transdnistria, the TRNC, Chechnya and Nagorno-Karabakh remain unrecognised by the UN. Kosovo can be seen as an exception to this apparent rule, since it has gained widespread recognition (although not from a number of countries or the UN) despite unilaterally seceding without the consent of Belgrade.

Whilst the international community generally frowns upon unilateral secession, there are those who advocate a right to unilateral secession. This argument rests on the idea that

---

<sup>101</sup> Pavkovic 2003, p75

<sup>102</sup> Buchanan, 2004, p338

secession is often violent, so by creating a unilateral right to secede the need for violent secession is eliminated.<sup>103</sup> This of course relies on the parent-state respecting said right. Another major argument against a unilateral right to secede, as has already been seen, is that it would open up the potential for recursive and sequential secession, leading to the breakdown of the state system and global anarchy. It can be argued that this could be avoided by drawing borders ‘appropriately’.<sup>104</sup> However, the dangers of ethno-centric states discussed earlier in the chapter could act as a warning against drawing borders in this way. An unlimited unilateral right to secede would not just undermine the norm of territorial integrity but completely change the paradigm, and so is rarely if ever advocated. Allowing unilateral secession in cases where it can be justified by wrongdoing of the parent-state, as the chapter will examine next, is a slightly different matter. However, a general and unlimited primary right of unilateral secession would lead to the breakdown of the state system as we know it, and is generally considered illegitimate by the international community.

However, there are those who argue for looser constraints on when secession is acceptable, including a right for unilateral secession (albeit not a completely unlimited one). Hans-Hermann Hoppe is a major proponent of this argument. Hoppe’s major argument is that states in which various ethnicities have been incorporated have problems such as “tension, hatred, and conflict”, one reason for this being that “any mistake can be blamed on a foreign group or culture”.<sup>105</sup> In addition to this, the dominant

---

<sup>103</sup> Jason Sorens, “For a Right of Unilateral Secession: Part One” 5 November 2013 *Pileus* <<http://pileusblog.wordpress.com/2013/11/05/for-a-right-of-unilateral-secession-part-one/>> accessed 16 October 2014

<sup>104</sup> Jason Sorens, “For a Right of Unilateral Secession: Part Two” 14 November 2013 *Pileus* on <<https://pileusblog.wordpress.com/2013/11/14/for-a-right-of-unilateral-secession-part-two/>> accessed 16 October 2014

<sup>105</sup> Hans-Hermann Hoppe, “Nationalism and Secession” *Chronicles*, November 1993, p25

ethnicity/culture can claim all the successes of the state in question as their own, no matter which group was actually responsible for them. With this in mind, it is argued that there is little reason for the cultures to learn from each other.<sup>106</sup> Hoppe argues that secession promotes the advancement of culture, since if a secessionist people wish to further their society “It must imitate, assimilate, and, if possible, improve upon the skills, traits, practices and rules characteristic of more advanced societies and avoid those characteristic of less advanced societies”.<sup>107</sup> He further argues that in an integrated society there is a “downward levelling of cultures”, whereas secession “stimulates a cooperative process of cultural selection and advancement.”<sup>108</sup> One criticism of this approach is that people can hold more than one identity; for example, one person may be Welsh and another Scottish, but both can also be British. These people can therefore unite in celebrating the successes of the state, and share the blame for its failures. It must be acknowledged that there are many citizens of the United Kingdom that consider themselves primarily or even solely to be of the nationality of their constituent nation. However, it would also appear that many consider themselves equally or primarily British, or at least accept a degree of British identity.<sup>109</sup>

#### The Remedial Right to Secede

This theory of secession is particularly pertinent to this thesis, as it can be easily adapted into an argument for a change in the way secession from failed states is handled which

---

<sup>106</sup> Ibid.

<sup>107</sup> Hans-Hermann Hoppe, “Small is Beautiful and Efficient: The Case for Secession”, *Telos* 107 Spring 1996, p99

<sup>108</sup> Ibid.

<sup>109</sup> Mark Easton “How British is Britain” *BBC* 30 September 2013, <<http://www.bbc.co.uk/news/uk-24302914>> accessed 6 February 2015

will be seen in the next chapter. It is also, as will be seen, an oft cited justification for breaking with the international norm of territorial integrity.

The ‘remedial right’ to secede is loosely based on John Locke’s right to revolution; the idea that if a group has their rights abused by the sovereign, then they have a right to establish their own state in order to avoid persecution.<sup>110</sup> This links to points made about legitimacy and social contract theory made earlier in this chapter, whereby in order for a state to be legitimate it must uphold a certain ‘moral standard’. The logic behind this theory is that if the sovereign is not providing security for its citizens then the social contract has been breached; the sovereign is no longer legitimate, and the citizens have the right to look for a new sovereign by revolution or secession. This relates to the earlier point about the legitimacy of a secessionist state being dependent on the legitimacy of the parent-state, and the idea that if the parent-state is not protecting the security of its citizens then the social contract is no longer binding. This idea has been alluded to when discussing the secessions of Southern Sudan and the various Balkan states that seceded from Yugoslavia.<sup>111</sup> This also supports the earlier points about legitimacy: if the parent-state is not upholding its end of the social contract and/or if the people withdraw their consent to be governed, then it can be argued that the government of the parent-state is illegitimate. However, various other secessionist groups have argued that they were being persecuted by their parent-state and have not enjoyed the same support from the

---

<sup>110</sup> Buchanan, 1997, p37

<sup>111</sup> Jure Vidmar, “Remedial Secession in International Law: Theory and (Lack of) Practice”, *St Anthony’s International Review*, 6(1), May 2010, p37

wider international community. An example of this is the Turkish Republic of Northern Cyprus.<sup>112</sup>

Part of this apparent double standard was explained by Buchanan when he stated that remedial secession is a “last-resort response to serious injustices”, and that states should be supported in their efforts to preserve their territorial integrity so long as they do a credible job of protecting basic human rights”.<sup>113</sup> This ties in with the failure-of-recognition clause. He goes on to say that “the international order should encourage alternatives to secession”.<sup>114</sup> Buchanan develops this argument for alternatives to remedial secession by positing that the remedial right to secede undermines the potential for humanitarian intervention in areas where peoples are being persecuted, since “an international legal right to secede as a remedy of last resort against oppression might deter states from engaging in the massive violations of rights that call for intervention”.<sup>115</sup> He also reinforces this stance by suggesting that were humanitarian intervention readily available to help persecuted peoples, secession need not be necessary.<sup>116</sup> However, this does leave remedial secession as a possibility should humanitarian intervention fail. In such an event, secession could be seen as a pragmatic way to tackle state breakdown. Using remedial secession as a last resort narrows the scope for when secession is considered to be acceptable, rather than allowing a wider right to self-determination via independence. This makes for a convincing argument that keeping remedial secession

---

<sup>112</sup> The declaration of independence of the TRNC could arguably be said to be a case of the Turkish Cypriots exercising a remedial right to secede. The Turkish intervention of 1974 was ostensibly for the purpose of protecting the Turkish Cypriots from persecution.

<sup>113</sup> Buchanan 2004, p331

<sup>114</sup> Ibid.

<sup>115</sup> Chatterjee and Scheid (eds), 2003, p191

<sup>116</sup> Ibid, pp190-1

as a last resort can help to avoid some of the potential problems associated with a wider right to secede, such as recursive and sequential secession.

Buchanan states that *Remedial Right Only* theorists may be more liberal or restrictive depending on how bad they believe the injustices perpetuated against the group have to be to warrant secession, and that the main crux of the theory is that there is no *general* right to secede.<sup>117</sup> Choosing which definition of injustice to use is an issue here, as the concept is somewhat subjective; indeed, secessionist entities have argued that they have suffered injustice from the parent-state and yet remain unrecognised, one example being Chechnya, referring to Russia's actions towards them.<sup>118</sup> This shows that the remedial right to secede is not absolute. Other factors are also often taken into account by the international community when recognising secession, and from a realist perspective the example of Chechnya also shows that the international power and influence of the parent-state can come into play.

A potential issue is that the problem of people being 'caught' within the territory of the secessionist state is exacerbated in cases of remedial secession if these people belong to the ethnicity of the parent-state which had been carrying out human rights abuses towards the people of the secessionist state. There is significant potential for reprisal attacks against the people of the parent-state caught in the secessionist state. Evidence of such danger can be seen in the case of Kosovo, in which Serbian residents of the province suffered reprisal attacks from the Kosovo Liberation Army once they had taken control

---

<sup>117</sup> Buchanan, 1997, p37

<sup>118</sup> Steven Eke "Russia 'committed Chechnya abuse'" *BBC*, 24 February 2005  
<<http://news.bbc.co.uk/1/hi/world/europe/4295249.stm>> accessed 19 April 2016

of the region.<sup>119</sup> The legitimacy of remedial secession is dependent on the conduct of the secessionists, as noted in the discussion of the dangers of secession based on ethnicity. Granting recognition only on the condition that the new state respects minority rights, as examined earlier, could be a possible safeguard against discrimination by the secessionists, although it is by no means a guarantee.

Buchanan suggests that remedial secession could work as a concept if it was institutionalised so as to put limits on the right to secede in terms of when it would be applicable.<sup>120</sup> Buchanan argues that this would go some way towards limiting the danger of peoples resorting to secession too readily.<sup>121</sup> If a state were to attempt secession following an injustice from the parent-state, and then the regime of the parent-state collapsed or was overthrown and/or replaced, then the secessionists may not be granted recognition on the grounds that there could be a possibility of reconciliation with the parent-state. However, if the regime of the parent-state remains intact and perpetuates the injustice, then recognition could be given to the secessionists.<sup>122</sup> However, Buchanan's argument is speculative; even if an institution was created that could adjudicate such cases, it would still encounter difficulty in legislating upon them. States are under no legal obligation to recognise new states, so even if such an institution were established in, say, the UN, it would possess a merely advisory role unless there was a drastic change in the way the UN works.

---

<sup>119</sup> Paul Cornish "The Military Dimension of Security Sector Governance in Complex Power-Sharing Agreements" in Marc Weller, Barbara Metzger, Niall Johnson (eds) *Settling Self-Determination Disputes; Complex Power-sharing in Theory and Practice* (Leiden: Brill, 2008) p584

<sup>120</sup> Buchanan, 2004, p359

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

In practice allusions have been made to remedial secession by the recognising actors when justifying the recognition of certain secessions, such as Bangladesh. The Bangladeshi secessionists accused Pakistan of the genocide of the Bengalis in East Pakistan, an accusation which was also echoed by the Indian government and media. This could therefore have led to Bangladesh's recognition based on the remedial right to secede. However, it has been written that "media accusations of genocide gained international sympathy but not international recognition of the independence of the secessionist state."<sup>123</sup> It would be over nine months after the accusation of genocide that India would recognise Bangladesh. There is evidence that Indian intervention in Bangladesh helped secure its recognition, since:

[F]irst it enabled the Bengali government in exile to assume control over the territory it claimed and, second, it helped the Bengali government to seek recognition for the independence of Bangladesh from other states.<sup>124</sup>

In addition to India's widespread lobbying of other states, this is one reason why Bangladesh, a secessionist country, achieved UN recognition. From this it appears that a secessionist movement with a strong patron state can achieve recognition. However, this has not always been the case. Russia has supported and recognised the secessionist movements of South Ossetia and Abkhazia from Georgia, and has intervened militarily. Despite this, the only countries other than Russia to recognise the secessionist states are Nicaragua, Nauru and Venezuela.<sup>125</sup> It could be that it was India's intervention *combined*

---

<sup>123</sup> Pavkovic and Radan, 2007, p108

<sup>124</sup> Ibid.

<sup>125</sup> "Nicaragua to establish relations with South Ossetia, Abkhazia" *Georgian Daily*, 12 April 2010

<[http://georgiandaily.com/index.php?option=com\\_content&task=view&id=18173&Itemid=65](http://georgiandaily.com/index.php?option=com_content&task=view&id=18173&Itemid=65)> accessed 30 November 2010

with international sympathy over claims of genocide that could constitute a remedial right to secede which led to the widespread recognition of Bangladesh. Certainly, the allusion to remedial secession in the cases of Kosovo, Bangladesh and Eritrea is evidence that it can be used as a justification for breaking the international norm of territorial integrity.

### Earned Sovereignty

The concept of ‘earned sovereignty’ takes elements of unilateral secession and the remedial right to secede, and goes some way towards reconciling the declaratory and constitutive theories of the state. It has also been used as an explanation for the uniqueness of the Kosovo case that we saw in the previous chapter. The idea of earned sovereignty recognises the need of a people to break away from an oppressive parent-state, yet before advocating recognition for said people requires that the breakaway entity satisfy additional caveats. The secessionists must show a commitment to democracy, human rights and the promotion of security in the region.<sup>126</sup> In order for a prospective state to meet the above requirements, it must spend a period of time “undergoing a transitional period of mediated international administration, characterized by elements of sovereignty which are externally designed and internally earned.”<sup>127</sup> After this, the state will either achieve independence and sovereignty then receive international recognition, or it will undergo ‘rehabilitated autonomy’ within the parent-state.<sup>128</sup> However, independence negotiations during the mediated international administration period can

---

<sup>126</sup> Grace Bolton and Gezim Visoka “Recognizing Kosovo’s Independence: Remedial Secession or Earned Sovereignty” Occasional Paper 10/11, St Anthony’s College- Oxford University, October 2010, p6

<sup>127</sup> Ibid, p1

<sup>128</sup> Ibid.

be undermined by the parties involved. It has been argued that this was the case in Kosovo when Pristina was seen to refuse any settlement short of full independence.<sup>129</sup>

The concept of earned sovereignty goes some way towards reconciling the declaratory and constitutive theories of secession, since it recognises the existence of a state in the absence of formal recognition. Nevertheless, the state will not achieve sovereign rights without formal recognition. This links to the points earlier regarding the importance of sovereignty. One way to look at sovereignty is that it creates two classes of state: those with sovereign rights under international law, and those without. However, the concept of earned sovereignty does not ignore the *existence* of states without sovereignty.

Earned sovereignty has implications for the legitimacy of a secessionist state. If the secession was remedial due to a lack of legitimacy on the part of the parent-state, then earned sovereignty will give the new state a chance to prove its legitimacy by giving the international community a chance to observe its governance before the new state becomes sovereign.

In theory, earned sovereignty has the potential to legitimise unilateral secession, which was arguably the case with the partial recognition of Kosovo. However, whilst Kosovo's secession was essentially unilateral, it received support from many states. This was ostensibly due to "human rights abuses under Milosevic; a decade of international

---

<sup>129</sup> James Ker-Lindsay "Preventing the Emergence of Self-Determination as a Norm of Secession: An Assessment of the Kosovo 'Unique Case' Argument", *Europe-Asia Studies* 65(5) July 2013, p846

administration; Kosovo's statehood capacity; the exhaustion of future status negotiations; and Kosovo's commitment to respect minority rights and accept 'supervised independence'"<sup>130</sup> Kosovo's secession was thus in keeping with the concept of remedial secession, with earned sovereignty acting as a further safeguard against recursive secession and in order to ensure that the new state was stable.

Whilst Kosovo can be held up as an example of 'earned sovereignty', the same cannot be said of all secessions, and so earned sovereignty cannot be said to be the standard approach of the international community. Eritrea illustrates this point. As seen earlier, according to the theory of earned sovereignty a secessionist entity must, amongst other things, show a commitment to democracy. Eritrea has been a single-party state since achieving independence in 1993.<sup>131</sup> It should be noted that the government is said to be transitional, and therefore it is possible that a democracy may yet emerge.<sup>132</sup> However, evidence for this is speculative at best. This would show earned sovereignty to be something of a double standard, and whilst it has been alluded to in some situations (for example Kosovo), the fact that it was not applied in other situations (such as Eritrea) would tend to undermine the applicability of the concept of earned sovereignty in practice.

A further double standard involving earned sovereignty is that it would appear to hold secessionist states to a higher standard than existing recognised states, many of which

---

<sup>130</sup> Bolton and Visoka, 2010, p2

<sup>131</sup> CIA World Factbook: Eritrea, <<https://www.cia.gov/library/publications/the-world-factbook/geos/er.html>> accessed 2 November 2014

<sup>132</sup> Ibid.

violate human rights, as seen when discussing remedial secession. Despite this, said states remain recognised as sovereign (sovereignty violations such as humanitarian intervention notwithstanding, although even this has been inconsistent). This shows that the principles involved when recognising secession do not necessarily adhere to the general norm of what constitutes statehood within the international community.

## Chapter Conclusion

This chapter looked at the rationales that might help explain the complex attitudes towards secession that exist within the international community and the ethical and practical issues involved. The general anti-secessionist feeling amongst states has been attributed to the fear of secession setting a dangerous precedent which could threaten the state-orientated system itself. Allowing one secession could encourage secessions elsewhere, seriously compromising the principle of territorial integrity which could lead to the collapse of states and global anarchy.

However, secession has been allowed and widely recognised in some cases, and this chapter has begun to show why these cases were allowed. Much of this has been based around consent, as it has been noted that even democratic secessions have often not resulted in independence if the parent-state has not recognised the referendum. Where the consent of the parent-state has not been forthcoming, recognition has sometimes been achieved through the remedial right to secede. Certain cases of remedial secession appear to have stabilised the region, such as the secession of Bangladesh. The secession of a group which has been suffering injustices at the hands of the parent-state can help the

group gain more security, as it may have more protection under international law as a sovereign state. Additionally, external actors can influence whether a particular secession becomes recognised. India's role in the secession of Bangladesh shows that this is particularly influential when combined with cases of remedial secession. As seen in this chapter, sovereignty and hence recognition are important factors when considering exactly what it means to be a state.

Many of the arguments against secession make assumptions about the competence and legitimacy of the parent-state. Arguments against secession based on social contract theory suggest that there is no right to secession, since the citizens of that state have surrendered the right of self-determination in return for the security the state provides. However, in many cases states cannot or do not provide security, and in some cases actively compromise the security of their citizens. It is particularly important to keep this in mind in the case of multi-national states since, as noted earlier, in order to preserve a union its central government must convince all its peoples that the benefits of the union outweigh the costs. This also links to the concept of remedial secession, a concept that can help to explain many instances of recognition of secession.

While remedial secession is generally invoked in cases of active injustice on the part of the parent state, it can also arguably be applied in cases where the central government is unable to provide security for the people within the territory it claims. This also supports the failure-of-recognition clause, since if a government cannot or will not provide security for a people, then it is likely that said people will not enjoy proper representation. This is an idea that will be explored in the next chapter, since governments of so-called

failed states lack a monopoly of the use of physical force over its territory, and so lack the ability to effectively provide security for its citizens. This arguably renders it illegitimate, the illegitimacy often being compounded by the tyrannical nature of a government and a lack of belief in the legitimacy of the government by the citizens. This thesis endeavours to ascertain whether secession from a failed state does indeed differ from secession from a stable state, and whether such cases are treated differently in their approach.

## Chapter 3- Secession and State Failure.

This chapter moves the thesis on to examine the second principle concept of the thesis: state failure. The chapter examines the relationship between state failure and secession, and determines that they are related. The chapter notes that state failure can often encourage secession (without necessarily leading to recognition, as will be seen). However, the chapter also finds that secessionist movements can also contribute to state fragility and failure. The chapter's main argument draws on the discussion of legitimacy in Chapters 1 and 2, where it was argued that this is one aspect of the current approach to recognition. Although legitimacy plays an inconsistent and limited role in recognition at present, the case will be made for a more reflective approach to legitimacy when it comes to secession from failed states.

The chapter will begin to prove the above points by firstly establishing exactly what a failed state is. It does this by analysing the issue in terms of state legitimacy using arguments from social contract theory and the ideas of Max Weber. An empirical approach is then studied by examining the *Foreign Policy/Fund for Peace Failed States Index*. The criteria of the index will be assessed as to their meanings and effectiveness as indicators of state failure.

The chapter then goes on to look at the aspects of state failure that can contribute to secession, namely those involving ethnic, tribal or national division. Having noted in the previous chapters the sceptical view of secession held by many actors within the international community, it is necessary to analyse the potential dangers of secession

from a failed state, particularly with reference to how it could impede stability. Issues of sovereignty and the territorial integrity of a failed state are analysed using aspects of social contract theory and the remedial right to secede in the light of the inability of failed states to deliver security to their citizens. Whilst the final chapter will examine the potential benefits of secession from a failed state and how the arguments against secession hold up in this context in detail, the foundations of this analysis are laid in this chapter.

### What is a 'Failed State'?

This thesis focusses on two ways to assess state failure: the relatively normative definitions based on state legitimacy and control, with a particular focus on the ideas of Max Weber, and the more empirical *Foreign Policy*/Fund for Peace: Fragile States Index. The relationship between the two views on state failure is also analysed.

### Legitimacy and Control

The pioneering social scientist Max Weber argued that a state is an entity that has a successful monopoly on the legitimate use of force, and therefore a failed state, by implication on this definition, is one that lacks this monopoly over legitimate power. According to Weber's definition there are two main ways in which a state can 'fail'. Firstly, the use of state force somehow becomes illegitimate, say through persecution, genocide or suppressing freedoms.<sup>1</sup> Secondly, the state loses said monopoly, say to rebel

---

<sup>1</sup> *The Economist* "Failed States: Fixing a Broken World" 29 January 2009, <<http://www.economist.com/node/13035718>> accessed, 25 February 2015

groups, terrorists or, importantly to this thesis, secessionists.<sup>2</sup> The relevance of the latter definition of state failure to the question over states' and organisation's approach towards secession in the context of failed states seems clear. However, it makes the question tautological; surely if the state loses the monopoly on the legitimate use of force to secessionists it is 'failed' by definition. Indeed, William J. Olson talks of extending the definition of a failed state to any state experiencing "internal problems that threaten their continued coherence or significant internal challenges to their political order", which could include secession.<sup>3</sup>

The operative word in Weber's definition is *legitimate*; when does the use of force by secessionists become *legitimate*? One answer to this is if the use of force by the state itself becomes illegitimate in the ways outlined in the first definition (persecution, genocide, suppressing freedoms and so on), which would legitimise the use of force by the secessionists. This links to the remedial right to secession discussed in the previous chapter. There is also an important question over whether the state's use of force is legitimate if the state is incapable of using that force to provide security to the whole country. This links back to points made in the previous chapter about the duty of the state to uphold its side of the social contract; if it does not (by abusing its power) or cannot, then the state's sovereignty is morally called into question and the arguments supporting territorial integrity over self-determination lose validity.

---

<sup>2</sup> Jonathan Di John, "Conceptualising the Causes and Consequences of Failed States: A Critical Review of the Literature", Crisis States Research Centre, London School of Economics Working Paper 25, January 2008, p4

<sup>3</sup> William J. Olson, "The New World Disorder: Governability and Development." in Max G. Manwaring, (ed) *Gray Area Phenomena: Confronting the New World Disorder*, (Boulder: Westview Press 1993) Quoted in Donald W Potter "State Responsibility, Sovereignty, and Failed States" University of Tasmania, Refereed paper presented to the Australasian Political Studies Association Conference University of Adelaide 29 September-1 October 2004 p3 <[https://www.adelaide.edu.au/apsa/docs\\_papers/Others/potter.pdf](https://www.adelaide.edu.au/apsa/docs_papers/Others/potter.pdf)> accessed 18 May 2016

However, using analysis from the previous chapter, it can be seen that moral legitimacy is somewhat different from legal and political legitimacy. As David Beetham suggested, it is the act of recognition that bestows legitimacy on a state.<sup>4</sup> It certainly appears that states are recognised despite failing to provide security for their citizens Somalia and North Korea being examples. It has also been acknowledged that a loss of legitimacy on the part of the parent-state has led to certain secessions becoming recognised, as in the case of Yugoslavia. This shows that political and legal issues of legitimacy can differ from moral issues. The final chapter of the thesis examines ways in which legal and political ideas about legitimacy might be brought more into line with moral legitimacy.

#### The Fragile States Index

In conjunction with the Fund for Peace, every year *Foreign Policy* publish an index of states ranking their stability, known as the 'Fragile States Index' (formerly the 'Failed States Index') based on 12 factors.<sup>5</sup> These include:

1. *Demographic Pressures*, or issues such as food scarcity, population growth, birth and death rates, and so on;
2. *Refugees and Internally Displaced Persons*, problems regarding population movement fleeing from war zones and/or persecution, and so on;
3. *Group Grievance*, groups struggling for power or against oppression and/or seeking vengeance, and so on;
4. *Human Flight*, with an emphasis on refugees and the migration of educated individuals;

---

<sup>4</sup> David Beetham *The Legitimation of Power* (Basingstoke: Macmillan, 1991) p206

<sup>5</sup> The 'Failed States Index' became the 'Fragile States Index' in 2014 since it was believed by the Fund for Peace that the original wording "became a distraction away from the point of the Index, which is to encourage discussions that support an increase in human security and improved livelihoods." (Fund for Peace, "Renaming the Failed States Index", 28 May 2014, <<http://library.fundforpeace.org/blog-20140528-fsirenamed>> accessed 27 April 2014). This thesis retains the use of the word 'failed' in order to draw attention to the fact that the thesis is primarily discussing states whose governments have limited to no control over their territory.

5. *Uneven Economic Development*, economic disparity between groups, including but not limited to ethnic groups, religious groups and/or regional groups;
  6. *Poverty and Economic Decline*;
  7. *State Legitimacy*, or lack thereof, characterized by corruption and issues with government performance and/or democratic process;
  8. provision of *Public Services*, such as education, sanitation and healthcare;
  9. the protecting and upholding of *Human Rights and the Rule of Law*;
- the effectiveness of *Security Apparatus* in controlling internal conflict and non-state armed groups;
10. the conflict and competition between *Factionalized Elites*, i.e. local and national leaders;
  11. *External Intervention*, including both foreign assistance and imposed sanctions and invasion.<sup>6</sup>

#### Critique

The Fragile States Index has been subject to criticism for the criteria used and how they are measured, as well as an apparent Western bias in its perspective.<sup>7</sup> A major criticism is that the scores on each criterion are given equal weighting, since some factors will have more of an impact than others. They can therefore misrepresent exactly how ‘failed’ a state is in terms of how much control the government has over its territory.<sup>8</sup> In addition, the criteria do not necessarily represent how much power and control a state has over its territory. This makes it harder to judge the level of state failure under the Weberian definition of a failed state (a state that lacks the monopoly on the legitimate use of force).

---

<sup>6</sup>‘Fragile States Index’ *Foreign Policy* 2014, <<http://foreignpolicy.com/fragile-states-2014/>> accessed, 24 February 2015

<sup>7</sup> Lionel Beehner and Joseph Young “The Failure of the Failed States Index”, *World Policy Journal* 17 July 2012 <<http://www.worldpolicy.org/blog/2012/07/17/failure-failed-states-index>> accessed 24 February 2015

<sup>8</sup> *Ibid.*

For example, North Korea has often ranked highly on the index, yet one can hardly say that such a totalitarian regime does not have control over its territory.<sup>9</sup>

Edward Newman looks at further criticism over the concept of failed states, highlighting the argument that it can be seen as “an ethnocentric and hegemonic political agenda aimed at de-legitimizing states that fail to conform to the worldview of dominant states.”<sup>10</sup> By this what is meant is that state failure can be used as a pretext for intervention, or to otherwise ‘reform’ a developing state, which can in turn be used to serve more powerful states’ interests.<sup>11</sup> This thesis does acknowledge that recognition of secession from failed states can be influenced by a state’s self-interest, however, what is important to establish here is whether or not state failure can be objectively measured, so that the implications for sovereignty can be analysed later in the chapter. Newman argues that it is extremely difficult to objectively measure state failure, however, he does acknowledge (as this thesis does later in this critique) that there is a degree of consensus across indices aimed at measuring state failure.<sup>12</sup> He also notes that the fact that there are a number of scholars and think-tanks studying the factors that constitute state failure is indicative of the importance placed on the phenomenon, however it also points to the ‘securitization’ of state failure, which again shows how a Western-centric paradigm of what constitutes state failure may be apparent and thus able to be used in the interests of Western powers.<sup>13</sup>

---

<sup>9</sup> Ibid.

<sup>10</sup> Edward Newman “Failed States and International Order: Constructing a Post-Westphalian World” *Contemporary Security Policy*, 30(3), 2009, p425

<sup>11</sup> Ibid.

<sup>12</sup> Ibid, pp429, 439

<sup>13</sup> Ibid, pp425-6

Whether or not the Fragile States Index has a western bias, certain aspects of it can still be used to measure how much control a government has over its territory and thus its capacity for delivering political goods such as security and representation and to assess their ability to control and prevent secessionist movements, focussing on the criteria which have the most influence on a state's control over its territory. As will be revealed in the next section, where their importance will become apparent, these include *Demographic Pressures*, *Vengeance-Seeking Group Grievance* and *Uneven Economic Development*. Additionally, the criteria of *Human Rights and the Rule of Law* is also important in this context. The legitimacy of a state unable to uphold this standard would be questionable, as demonstrated by the social contract arguments in the previous chapter, and therefore susceptible to secessionist claims (recognised or not). This in turn shows the importance of the *Security Apparatus* and *State Legitimacy* criteria. Economic issues of course exacerbate the situation, since state resources may be stretched, undermining their control on the territory; additionally, fewer resources can lead to greater competition over their control.

However, *Poverty and Economic Decline* does not in itself mitigate a state's control over its territory to the extent that its legitimacy is questioned. This analysis brings us to the issue of why states with such limited power over their territories (and states who use force in illegitimate ways) are still widely recognised UN members. Of course, in some instances they have not been recognised, as seen with the FRY in Chapter 1. Nonetheless countries such as Somalia, which do not have control over their territory, and North Korea, where the state uses its power in illegitimate ways, retain recognition. It is apparent from the analysis of the previous two chapters that many actors within the international community support territorial integrity and the international system of

states. It is therefore logical that these actors would favour an oppressive or ineffective state over no state at all. This shows a pragmatic prioritisation of order over justice, and indicates that legitimacy is of secondary importance when it comes to recognition.

The issue whereby some states that have significant control over their territory being considered to be failed states, such as North Korea, can be explained by Weber's writings about a successful state having the monopoly of *legitimate* power. It can be argued that power is illegitimate if not used in a way that is in the interests of the citizens of a state, and so the most tangible way in which a state can use force legitimately is by using it to uphold the security of its citizens. If a state does not uphold the security of its citizens, or indeed actively uses force to undermine their security, then the use of government force is illegitimate, and the state can be said to have failed. This is an idea supported by scholars such as Donald Potter and Robert Rotberg, who write that a state can fail when it is unwilling or unable to deliver basic political goods, security among them.<sup>14</sup> This idea supports the arguments already seen about the state having to uphold its side of the social contract to be (at least morally) legitimate. On a normative level, this helps to set out the concept of what state failure means. It must be noted that states that lack legitimacy in this way are still recognised because, as Potter writes, there are two practical aspects of sovereignty that exist side by side: external and internal sovereignty. External sovereignty refers to the recognition of a state by other states, while internal sovereignty refers to the state upholding its responsibilities to its citizens.<sup>15</sup> Stephen D. Krasner and Thomas Risse compound this claim by writing that despite having weak

---

<sup>14</sup> Potter, 2004, p2

Robert I. Rotberg (ed) *When States Fail: Causes and Consequences* (Princeton: Princeton University Press, 2004) p1

<sup>15</sup> Potter, 2004, pp11-12

domestic authority structures, failed states retain ‘Westphalian sovereignty’, i.e. international recognition, due to the fact that governance is not necessarily interfered with by outside actors. They go on to write that what these states lack is “full domestic sovereignty”.<sup>16</sup> This points to the idea that whilst sovereignty can be undermined through intervention or secession if the state lacks legitimacy, loss of sovereignty does not equate to loss of statehood.

The chapter now focusses on how a number of the criteria from the *Foreign Policy* index show how a failed state lacks control and legitimacy in a way that makes it ripe for secession. Despite the apparent flaws and inconsistencies, it cannot be denied that many of the consistently high-ranking states do fit the Weberian definition of a failed state. This is because they do not have the monopoly on the use of force (legitimate or otherwise), in that they lack control over their whole territory.<sup>17</sup> For example Afghanistan, frequently in the top 10 of the index, is constantly battling with insurgents. Sudan was often in the top 3 of the index whilst engaged in civil war with the Southern secessionists, who eventually succeeded in seceding. Meanwhile Somalia, which frequently topped the index, is in conflict with insurgents and has a secessionist movement within it in the form of Somaliland, which has *de facto* control over its territory. Thus, by applying the *Foreign Policy*/FFP set of indicators to such states, they can be used to highlight important factors of state failure that have an effect on secession. The aforementioned difficulty in objectively measuring state failure can be somewhat

---

<sup>16</sup> Stephen D. Krasner and Thomas Risse “External Actors, State-Building, and Service Provision in Areas of Limited Statehood: Introduction” *Governance* 27(4), 2014, p550

<sup>17</sup> Louise Andersen “International Engagement in Failed States: Choices and Trade Offs” Danish Institute for International Studies, Working Paper 20, 2005, p10

mitigated by focussing on criteria within the index that can foster division and potentially secession, as this chapter does.

This suggests that the index is still a useful tool to quantify state failure despite the criticism it has faced, as long as the issues noted earlier are taken into account. A revision of the index with more weighting to factors that restrict a government's control would make the index more useful, but in the absence of that, more attention can be paid to these criteria. This assessment is further corroborated by a number of other indices that measure state fragility and instability, with the same countries ranking highly in fragility and instability in a number of different indices. Take for example Sudan (and South Sudan) and Somalia, the two main case studies examined in this thesis, both of which have ranked highly across a number of indices measuring fragility, instability and conflict. These indices include: the 2015 Global Peace Index by the Institute for Economics and Peace, which respectively ranked Somalia and Sudan the sixth and seventh least peaceful countries while South Sudan was fourth.<sup>18</sup> These countries had previously ranked higher, as Sudan and Somalia were both in the top three of the 2012 Global Peace Index.<sup>19</sup> However, the recent instability in the Middle East means they have been superseded by countries such as Syria and Iraq.<sup>20</sup> This index looks at three main factors: ongoing domestic and internal conflict, societal safety and security, and militarisation.<sup>21</sup> All of these are relevant to the concept of state failure as discussed in

---

<sup>18</sup> Institute for Economics and Peace, Global Peace Index 2015 p9, <[http://economicsandpeace.org/wp-content/uploads/2015/06/Global-Peace-Index-Report-2015\\_0.pdf](http://economicsandpeace.org/wp-content/uploads/2015/06/Global-Peace-Index-Report-2015_0.pdf)> accessed 11 May 2016

<sup>19</sup> Institute for Economics and Peace, Global Peace Index 2012 p9 <<http://economicsandpeace.org/wp-content/uploads/2015/06/2012-Global-Peace-Index-Report.pdf>> accessed 20 September 2016

<sup>20</sup>Institute for Economics and Peace, Global Peace Index 2015 p15 Global Observatory: Catalogue of Indices, 19 September 2012 <<http://theglobalobservatory.org/2012/09/indices/#conflict>> accessed 29 June 2015

<sup>21</sup> Ibid, p101

this thesis, the first two in particular since they will both affect the effectiveness of a government. Domestic conflict shows the lack of government monopoly on the use of force, as does a lack of safety and security amongst citizens.

It should be noted that when quantifying the data on these factors, there are issues that are less relevant to the concept of state failure as defined by this thesis, such as external conflict and relations with neighbouring states. However, issues such as number of deaths from internal conflict as well the frequency, duration and intensity of internal conflicts can be affected by a lack of government monopoly on legitimate power, as can the number of internally displaced people, the impact of terrorism, crime levels, political instability and the number of violent demonstrations, all of which are considered by the index.

The 2010 George Mason University's State Fragility Index ranked Somalia and Sudan the first and second most fragile states respectively.<sup>22</sup> This index is particularly relevant to this thesis since its methodology is based on assessing effectiveness and legitimacy.<sup>23</sup> The fact that there are similar states across multiple indices demonstrates that whilst the concept of the failed state is indeed contested, there is something of a consensus over their nature: a failed state has limited control over its territory, and/or asserts the control it does have in an illegitimate fashion.

---

<sup>22</sup> Global Observatory: Catalogue of Indices, 19 September 2012

<sup>23</sup> *Ibid.*

Other indices of state failure include the World Bank Group's Harmonized List of Fragile Situations and the Center for Systemic Peace's Polity project. The former rates countries by 16 criteria grouped in four categories: Economic management, structural policies, policies for social inclusion and equity, and public-sector management and institutions.<sup>24</sup> As these criteria are less directly linked to the amount of control a state has over its territory than the *Foreign Policy*/FFP index (indeed these criteria are dependent on the state having an underlying control over its territory), the thesis will favour *Foreign Policy*/FFP over the World Bank indicators. The thesis will not engage with the Polity project as it explicitly states that:

It does not include consideration of groups and territories that are actively removed from that authority (i.e., separatists or "fragments"; these are considered separate, though not independent, polities) or segments of the population that are not yet effectively politicized in relation to central state politics.<sup>25</sup>

This severely limits the utility of the index as one of the main aims of the chapter is to assess the relationship between state failure and secession.

### To what extent do ethnic, national and tribal divisions cause/agitate state failure?

Ethnic division is a common cause of secession, and has been behind a number of secessions such as South Sudan, the TRNC and to an extent Kosovo. Where ethnic divisions have not been present, similar (although not identical) problems such as

---

<sup>24</sup> World Bank: Country Policy and Institutional Assessment <<https://data.worldbank.org/data-catalog/CPIA>> accessed 21 August 2017

World Bank: "Information Note: The World Bank Group's Harmonized List of Fragile Situations" <<http://pubdocs.worldbank.org/en/586581437416356109/FCS-List-FY16-Information-Note.pdf>> accessed 21 August 2017

<sup>25</sup> Center for Systemic Peace: The Polity Project, "About Polity" <<http://www.systemicpeace.org/polityproject.html>> accessed 21 August 2017

tribalism, clan division and/or nationalism have often been an issue instead, Yugoslavia being a good example of the last. Additionally, such divisions have been seen to contribute to state failure; as Rotberg states, “There is no failed state...without disharmonies between communities”.<sup>26</sup>

There are a number of criteria within the *Foreign Policy* fragile states index that can (though not always, and not always directly) relate to ethnic, national or tribal division. As previously argued, these criteria need to receive specific attention for the purposes of this thesis. For example, the category of Demographic Pressures indicators include “Pressures deriving from group settlement patterns that affect the freedom to participate in common forms of human and physical activity”, and “Pressures deriving from group settlement patterns and physical settings, including border disputes, ownership or occupancy of land”.<sup>27</sup> Both of these could refer to ethnic division, be it groups striving for greater autonomy or simply oppressed groups seeking greater equality and security. This has been evident in states ranked highly on this index such as Sudan/South Sudan, as will be seen in more detail in Chapter 5.

Similarly, there are a number of indicators of state failure that could be attributed to ethnic division under the category of Vengeance-Seeking Group Grievance. Indeed, one of the indicators given is that of “[g]roups aggrieved because they are denied autonomy, self-determination or political independence.”<sup>28</sup> Generally this would be interpreted as

---

<sup>26</sup> By ‘communities’ Rotberg implied this to mean ethnic, religious or linguistic communities. (Rotberg, 2004, p5)

<sup>27</sup> Fund for Peace: “Indicators”, <<http://www.fundforpeace.org/global/?q=indicators>> accessed 22 June 2011

<sup>28</sup> Ibid.

referring to ethnic groups; however, it could also simply refer to groups with a different identity to that of the parent-state, i.e. a different political identity. This was arguably the case with the secession of the Confederate States of America and of Taiwan.<sup>29</sup> There are also less explicit references to ethnic division and possible secession within this category. For example, the “[i]nstitutionalised political exclusion” mentioned as an indicator of state failure might lead to a case of remedial secession as seen in the previous chapter, especially as there is a high chance of such a situation fitting the Failure of Recognition clause.<sup>30</sup> Another symptom of state failure that could lead to a remedial secession might be the “[r]ise of communal nationalism based on real or perceived group inequalities”, included in the ‘Uneven Economic Development’ category.<sup>31</sup> This is again reflected in Sudan/South Sudan, for the same reasons cited above. The reason Sudan/South Sudan has had these issues can be partly attributed to their colonial legacy, an issue which was touched on in the previous chapters and which is examined in further detail in the case study chapters. Suffice it to say here, however, that Sudan’s borders were arbitrarily drawn by colonial powers with little regard to the demographics of the region (bringing us back to the ‘demographic pressures’ that bring about state failure). This has been the case for a number of states that rank highly on the Failed States Index, particularly African countries such as Somalia, the Democratic Republic of Congo, Sudan and South Sudan.<sup>32</sup> As was seen in the analysis of decolonisation in Chapter 1, the retention of arbitrary colonial borders led to breakaway groups within them, and as a result of this, Mikulas Fabry has concluded: “[T]he retention of historical and colonial boundaries,

---

<sup>29</sup> This could, however, lead to problems over undermining a pluralistic society. See Chapter 2.

<sup>30</sup> Fund for Peace: “Indicators” <<http://www.fundforpeace.org/global/?q=indicators>> accessed 22 June 2011

<sup>31</sup> Ibid.

<sup>32</sup> G. Pascal Zachary, “Africa Needs a New Map” *Foreign Policy* 26 April 2010 <<http://foreignpolicy.com/2010/04/26/africa-needs-a-new-map/>> accessed 30 June 2015

Fund for Peace: Fragile States Index 2015 on <<http://fsi.fundforpeace.org/rankings-2015>> accessed 24 November 2016

which fails to take account of the actual political loyalties on the ground, can lead to failed states or continuing civil conflicts”.<sup>33</sup>

Whilst ethnic divisions are not the sole cause of state failure, they are clearly often an important factor. Indeed, once a state has collapsed or is in the process of collapsing, ethnic divisions certainly agitate the problem. David Carment writes that:

[T]he leaders of these new African, Asian and East European states were faced with three compounding problems which enhanced their perception of insecurity. The borders they had to defend were arbitrary; their societies were usually diverse in composition; and few leaders had experience in building inclusive civic and democratic cultures. In essence, the security threats of these states were and are as much internal as external.<sup>34</sup>

This reasoning acknowledges that ethnic divisions contribute to state failure but does not see them as the root cause, rather as a step in a chain of events between colonisation, independence and then state failure. According to this reasoning colonisation is the root cause, as the arbitrary borders drawn up by the colonising powers would often disregard the ethnic makeup of the areas involved. Groups would thus become minorities within a colony, and then within a state following independence. This made these groups vulnerable to discrimination and being scapegoated, particularly given the other issues mentioned above faced by these countries. Many of these countries had their ethnic divisions exacerbated by colonial powers whilst under colonial rule. Colonial powers would often use ‘divide and rule’ tactics in order to maintain a dominant power and prevent the colonised population from uniting against them. This had the potential to cause lasting resentment between the groups following independence, as some groups

---

<sup>33</sup> Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States Since 1776* (Oxford: Oxford University Press, 2010) p204

<sup>34</sup> David Carment, “Assessing state failure: implications for theory and policy” *Third World Quarterly*, 24(3), 2003, p411

were discriminated against for ‘collaborating’ with the former colonisers. An example of this is Cyprus, where the British colonisers empowered the Turkish Cypriots who later suffered a degree of retribution at the hands of the Greek Cypriots following independence. It must be noted here that whilst Cyprus is not generally considered to be a failed state, it has fallen under the ‘borderline’ category on the failed states index.<sup>35</sup>

A more important example to this thesis is Sudan, where the Arab north was empowered by the British and Egyptian colonists.<sup>36</sup> This fuelled resentment and animosity in the south, with the Arabs continuing to dominate following independence.<sup>37</sup> This issue is looked at in more depth in the case study of Sudan/South Sudan. Meanwhile, it is important to note that the actions of the colonisers together with the arbitrarily-drawn borders have clearly exacerbated ethnic divisions within some former colonial states, which has pushed them towards failure and made them ripe for secession. This can in turn be explained by a lack of legitimacy of governments that are dominated by one (ethnic) group, since other groups in that state would not necessarily be represented in the government. As will be seen in Chapter 5, cases such as Sudan will have had their security undermined by the government, which in turn undermines the legitimacy of the government.

Adding to this idea, it has been hypothesised that colonisation imposed the European idea of statehood on regions “that had never previously been controlled by any form of state

---

<sup>35</sup> “The Failed States Index 2011” *Foreign Policy*, [http://www.foreignpolicy.com/articles/2011/06/17/2011\\_failed\\_states\\_index\\_interactive\\_map\\_and\\_rankings](http://www.foreignpolicy.com/articles/2011/06/17/2011_failed_states_index_interactive_map_and_rankings) accessed 28 June 2011

<sup>36</sup> Francis M. Deng “Sudan at the Crossroads” MIT Center for International Studies, *Audit of the Conventional Wisdom*, 07-05 (March 2007) p2

<sup>37</sup> *Ibid.*

at all”.<sup>38</sup> In many cases the arbitrary colonial borders were upheld by the leaders of the post-colonial states, seemingly upholding sovereignty and territorial integrity “because they had so few other cards to play.”<sup>39</sup> It is observable with Sudan that this increased ethnic tensions within post-colonial states, as the successors of the colonial governments were often of a particular ethnic group and were often seen by other groups as being unrepresentative of them. This situation was exacerbated in former colonial states in which the power was held by a minority prior to decolonisation. The overall relevance of this analysis to the thesis is that ethnic divisions, exacerbated by the colonial legacy, have been a catalyst for secession in some cases. Furthermore, legitimacy issues over governments that have perpetrated ethnic violence, or even simply denied the same rights and privileges to a certain group that the dominant group enjoy, are important ethical and practical issues that need to be taken into account when considering recognition of secession.

Pierre Englebert and Rebecca Hummel have criticised the idea that the retention of colonial borders has fuelled ethnic division and secessionist movements. They suggest that in Africa, where a number of failed states are situated, national identity is built on “the shared experience of ‘common colonial subjugation’”, an idea previously noted in Chapter 1.<sup>40</sup> Crawford Young suggests that this means that there is “no real confrontation between territorial nationalism and political ethnicity.”<sup>41</sup> However, there is much evidence of ethnic divisions in many former colonial states:

---

<sup>38</sup> Christopher Clapham “The Global-Local Politics of State Decay” in Robert I. Rotberg (ed) *When States Fail: Causes and Consequences* (Princeton: Princeton University Press, 2004) p79

<sup>39</sup> Christopher Clapham “Degrees of Statehood” *Review of International Studies*, 24(2), 1998, p145

<sup>40</sup> Pierre Englebert and Rebecca Hummel “Let’s Stick Together: Understanding Africa’s Secessionist Deficit”, *African Affairs* 104(416) 2005 p410

<sup>41</sup> Crawford Young, 'Nationalism and ethnicity in Africa', *Review of Asian and Pacific Studies*

In the DR Congo for example, where nationalism is rampant, Katangans have fought Kasaians, Lundas have opposed Lubas, Hemas and Lendus are killing each other, each region has 'autochthonous' populations discriminating against newcomers, and the whole country seems unified in its hatred of its Banyarwanda minorities.<sup>42</sup>

However, despite this discrimination and conflict, Englebert and Hummel note that few groups resort to secession in countries where this occurs.<sup>43</sup> The state often remains legally unified due to material incentives, leading them to compete for control over the institutions of any weak states and also the regional institutions.<sup>44</sup> This can lead to different groups controlling different areas within a legally unified state.<sup>45</sup> This implies that whilst ethnic divisions can be inherent to state failure, they do not always lead to secession due to their effects on the monopoly and legitimacy of the government's use of force. However, whilst some failed states have not encountered strong secessionist movements others have, as this thesis acknowledges. The next section of the chapter studies ways in which state failure can encourage secession.

The preceding arguments show that whilst there can be multiple reasons for state failure under the definitions of state failure laid out by *Foreign Policy*/The Fund for Peace, many of them are caused by, agitated by, or linked to ethnic tensions. It can also be seen how the weak states left after decolonisation have been susceptible to ethnic tensions, as groups fought for dominance in an area that had not experienced Westphalian statehood before colonisation, which combined with the weakness of the state was a recipe for state

---

23, 2002, in *Ibid.*

<sup>42</sup> Englebert and Hummel, 2005, p410

<sup>43</sup> *Ibid.*, p400

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

failure. The foregoing analysis shows that there have certainly been occasions where ethnic tensions have been a contributing or major factor in the failure of a state, if not the most important factor. It is therefore evident that more attention should be given to factors relating to ethnic tensions in state failure.

### To what extent does state failure encourage secession?

Whilst ethnic divisions within a failed state do not always result in secession there have been cases where they have, such as Somaliland and South Sudan, and a failed state divided along ethnic, religious and/or linguistic lines would appear to be fertile ground for secessionist movements. Arguably, it is the disunity of the state that characterises it as being a failure, since the government no longer has a monopoly on power. State disunity can be a catalyst for secession and the breakup of the state, which has been covered in previous chapters via the breakup of Yugoslavia along nationalistic lines. South Sudan will be used to demonstrate secession along ethnic lines in Chapter 5, while Somaliland will demonstrate secession along clan lines (although a degree of pragmatism is involved in all three of these secessions). This catalytic effect can be twofold; firstly, the division causes the state to fail, a concept already engaged with. The state failure itself can then sometimes encourage breakaway movements, usually based on said division. The second idea is based on the idea that the central government's weakness could be seen as an opportunity for groups to stake their claim for independence. The secession of the Somaliland Republic is a good example of this, as is the breakup of Yugoslavia. While division between communities was not necessarily a direct cause of state failure in these cases, it can nonetheless be seen as a contributing factor. The collapse of the parent-state then granted the aggrieved communities the opportunity for secession, due to the inability of the central government to prevent it.

Alternatively, if the central government is weak a rebel group might push to take over the country rather than secede from it. However, this thesis examines situations in which peoples have striven for their own homeland, such as the Croats or Slovenes did in the Balkans, or have decided to secede for pragmatic reasons, such as to avoid the chaos and anarchy that had befallen the rest of the country, which was arguably the case with Somaliland.

Nina Caspersen writes that “Unrecognized states are often born out of state collapse or extreme state weakness and represent areas of state failure in the sense that the central state has lost control over the territory.”<sup>46</sup> This fits in with the idea that a secessionist group might take advantage of a weak parent-state, but it also indicates that secession can prolong state failure in so much that as long as the secessionist entity controls the territory in question then the parent state will not have the monopoly on the legitimate use of force, this leads to something of a tautology as noted earlier in the chapter. However, Caspersen portrays it in terms of ‘pockets of authority’ emerging in countries where central power is limited.<sup>47</sup> To this extent it would appear that state failure encourages secession as people look to alternative sources of authority and security in situations where the central government are supplying neither.

In the previous chapters, a theme emerged whereby peoples who had been victims of civil war, oppressed, persecuted and/or denied representation in government have striven for secession, independence and recognition. Examples include Kosovo, Eritrea, South

---

<sup>46</sup> Nina Caspersen, *Unrecognised States: The Struggle for Sovereignty in the International System* (Cambridge: Polity Press, 2012) p7

<sup>47</sup> *Ibid.*

Sudan and, to an extent, Somaliland. Chapter 2 then explained such situations in terms of the remedial right to secede as a justification for recognition before looking at the benefits of sovereignty. These include, for example, protection under international law from incursion by foreign forces, as well as the potential for a resolution of grievances with the parent-state, as was the case in Bangladesh and the Balkans. Civil war, oppression and the resulting grievances are prevalent in failed states almost by their very nature, and all of the top ten states on the 2015 Fragile States Index have experienced some form of internal conflict in the last 10 years.<sup>48</sup>

Even when the central government is not actively oppressing a certain group, they are still usually involved in conflict and unable to protect the security of their citizens, undermining their legitimacy. In this instance a secessionist government may be seen by its people as more capable of providing security for them, making it more legitimate than the central government from the viewpoint of its supporters. This was the case in South Sudan and Somaliland, as the thesis will go on to see. Whilst this view is subjective, the ‘balance of legitimacy’, as it were, seems to be an important ethical and practical issue when actors are considering whether to recognise a secession. It was seen in the first chapter that the legitimacy of the parent-state has usually been called into question in cases where a secession has been recognised. One can argue from this that the lack of legitimacy of the government of a failed state will not only motivate secessionists but facilitate them. If the secessionist state is more legitimate than the parent-state in the eyes of their people, then the secessionist state will gain popular support. This in turn could strengthen their case for recognition, particularly if said support appears to make the

---

<sup>48</sup> Fund for Peace: Fragile States Index 2015 <<http://fsi.fundforpeace.org/>> accessed 21 July 2015

secession inevitable and could be managed in order to curtail conflict. Caspersen brings the issue of democracy into the question, noting that secessionists from failed states will often attempt to “demonstrate their own democratic credentials whilst “also claiming to be more democratic than their parent states” in what has been called ‘competitive democratization’.<sup>49</sup> This adds another dimension when looking at the balance of legitimacy; if a secessionist entity is indeed more democratic than its parent state then it would likely hold more belief in its legitimacy from its citizens since it would be more representative. This would in turn increase the legitimacy of its claim over that of the parent state. This idea will be of particular importance and interest in the case study on Somalia and Somaliland in the next chapter.

The previous chapter looked at the dangers of a different ethnic group to the one that makes up the majority of the secessionist state, such as that of the parent-state, getting caught in the territory of a secessionist state. This has been argued that this was less of an issue in a failed state affected by civil war, since secessionist conflicts can cause ethnic ‘un-mixing’ as “people flee the lands in which they were minorities” and so could facilitate a secession in that situation.<sup>50</sup> Those who make this argument, such as John Mearsheimer, reason that the dangers of people being caught in hostile territory following a secession in this environment is reduced, and thus the argument against secession here is weakened. Further it is argued that these areas will be ethnically homogeneous, reducing the possibility of post-partition conflict.<sup>51</sup> With this in mind, secession to stabilise the conflict side of state failure may appear attractive; however, in practice this

---

<sup>49</sup> Caspersen, 2012, p71

<sup>50</sup> Jaroslav Tir, “Dividing Countries to Promote Peace: Prospects for Long-Term Success of Partitions” *Journal of Peace Research*, 42(5), 2005, p549

<sup>51</sup> Ibid.

theory may not be so black and white. Even if the ethnic groups do separate, some may be 'left behind', or unable to flee for whatever reason. The fact that these people would be in smaller groups (due to the movement of ethnic groups) might make them far more vulnerable and more at risk of harm. In addition, the fact that the countries would be more ethnically homogeneous following partition could well make them more hostile towards each other, as there would be less opposition to policies against the state they split with, which could have a destabilising impact on the region. The potential recognising states would have to analyse as to which would be the most preferable situation, civil war or hostility between neighbouring states. There is an argument that the latter would be preferable as it might be easier to mediate between states than groups within a state, especially if one group is governmental or supported by the government and the other is not. Part of the reason for this is that the latter groups are often regarded as terrorist organisations, with which governments are often reluctant to conduct negotiations.<sup>52</sup> Even if they are not terrorist groups *per se*, if a third party were to engage with such groups then it might antagonise an otherwise friendly parent-state.<sup>53</sup> This shows a practical issue that must be taken into account when considering recognition of secession from a failed state.

On the other hand, further conflict would be extremely likely and difficult to resolve if those who have been displaced and/or forced to relocate go on to fight for lost territory.<sup>54</sup>

---

<sup>52</sup> Payton L. Knopf "Enhancing U.S. Diplomatic Engagement with Nonstate Armed Groups" CPA Working Paper, Council on Foreign Relations, October 2011, p2, <<http://www.cfr.org/diplomacy-and-statecraft/enhancing-us-diplomatic-engagement-nonstate-armed-groups/p26162>> accessed 21 September 2016

<sup>53</sup> *Ibid.*

<sup>54</sup> Tir, 2005, p549

This could be through guerrilla insurgency or a more organised conflict. A partition through peaceful referendum might work to counter this problem.<sup>55</sup> While such a referendum would be difficult to implement in a failed state due to the lack of government control, it has been achieved in the case of South Sudan, and so this would not necessarily discourage secessionist movements within a failed state.

State failure often occurs, or is at least exacerbated, when an oppressive regime falls or is significantly weakened through, say, abdication, civil war/revolution, foreign intervention or a coup.<sup>56</sup> Examples include Somalia following the fall of Siad Barre, Ethiopia following the fall of Haile Selassie, Yugoslavia following the fall of the Communist regime, and Afghanistan following the fall of the Taliban. Whilst it is not a universal cause of state failure, and whilst the situation in Afghanistan did not result in secession, a demonstrable link can be drawn between the fall of a regime, state failure and secession, as illustrated by Somalia and Ethiopia. An explanation for these links is that if a regime victimised a particular group during their time in power, then that group might seek reparations following its fall. If the state descends into anarchy and failure following the fall of such a regime due to the resulting power vacuum, then a previously-oppressed group might take the chance to declare independence. This could primarily be as a security measure against future oppression through the benefits of sovereignty, but it could also be seen as a form of reparation for past oppression.

However, such secessions may not be recognised by other countries or the UN, and so the declaration of independence as a security measure becomes redundant without

---

<sup>55</sup> Ibid.

<sup>56</sup> Mary Kaldor "Putting Failed States Back Together: Where to Start" *Interdépendances et Aide Publique au Développement*, Ministère des Affaires étrangères 2005-2006 p198

sovereign status. The question here is whether states and organisations take the environment of a failed state that is ripe for secession into account. How readily do they work to recognise such secessionist states? These questions are central to this thesis and will be explored throughout. However, here it is important to note that it appears that secession in the context of a failed state is indeed different to secession from a stable state due to the lack of legitimacy of the parent-state, which in turn may undermine its sovereignty. This lack of sovereignty of a failed state was described by former UN Secretary General Boutros Boutros-Ghali, who stated with reference to Somalia that:

A state that loses its government...loses its place as a member of the international community...The charter of the United Nations provides for the admission to the international community of a country which gains the attributes of sovereignty...It does not, however, provide for any mechanisms through which the international community can respond when a sovereign State loses one of the attributes of statehood.<sup>57</sup>

It must be noted that this statement did not lead to Somalia losing recognition, or to Somaliland becoming recognised. However, it does show the potential emergence of a new norm in which the sovereignty of failed states is compromised. This erosion of sovereignty implies a lack of legitimacy on the part of the government of the failed state, which could conceivably lead to secessionist states claiming to be a more legitimate government over the territory it claims and/or controls, as happened in Somalia.

A degree of conflict is extremely common when secession is involved, and the majority of examples of secession that we have looked at so far have involved conflict. As previously noted internal conflict can be an indication of state failure in itself, making

---

<sup>57</sup> Gerard Kreijen, *State Failure, Sovereignty and Effectiveness: Legal Lessons from the Decolonization of SubSaharan Africa* (Leiden: Brill Academic Publishers, 2004) p331

the relationship between secession and state failure somewhat tautological as noted earlier in the chapter. It must of course be noted that not all cases of state failure involve secession, and not all secessions involve conflict (for example, the breakup of Czechoslovakia or the secession of Montenegro). However, this analysis has shown that when the two phenomena do occur together, they have a significant effect on each other as the lack of legitimacy of the parent-state fuels the secession and the potential inability of the parent-state to govern facilitating it. As Robert I. Rotberg stated, “A nation-state also fails when it loses legitimacy...Its nominal borders become irrelevant. Groups within the nominal borders seek autonomous control within one or more parts of the national territory.”<sup>58</sup> He later cites Somaliland as an example of this.<sup>59</sup> Evidence of this was seen in the first chapter with the FRY; the government lacked legitimacy and control over what was its territory, and as such was unable to prevent the plethora of secessions that occurred.

As things stand, it would appear from the previous two chapters that the principle of territorial integrity holds greater normative power amongst members of the international community than does the right to self-determination via secession, and when secession is recognised, it is done so on an individual case-by-case basis on the merits of each claim. Nonetheless it was noted in the first chapter that a degree of pragmatism is often involved when it comes to the recognition of secessions borne out of conflict, such as Eritrea and in the Balkans. As a result, one could argue that the same pragmatism is needed when considering secession from a failed state, yet such pragmatism was absent in the case of the secession of Somaliland, as will be seen in the case study chapter.

---

<sup>58</sup> Robert I. Rotberg “Failed States, Collapsed States, Weak States: Causes and Indicators” in Robert I. Rotberg (ed) *State Failure and State Weakness in a Time of Terror* (Cambridge, Mass: Brookings Institution Press, 2003) p9

<sup>59</sup> *Ibid*, p10

## Could secession make it harder for a failed state to stabilise?

It can be argued that breaking up a failed state might actually make it harder to stabilise. Secession has not always ended conflict; for example, conflict between India and Pakistan has arisen a number of times since Pakistan's independence. Allowing an area to secede could lead to a continuation of conflict, which might become a stalemate as both countries would be sovereign. This would mean that they both had equal rights under international law, and disputes could be difficult to settle as a result. This argument can be undermined however. There have been a number of disputes in northern Somalia, many involving the secessionist state of Somaliland, several of these over border disputes with neighbouring Puntland. However, these borders are not recognised, making a solution even harder to negotiate since Somaliland technically has no sovereign rights yet still has an army to be reckoned with.<sup>60</sup>

Robert O. Keohane states that secession can be used to stabilise ethnic conflict “[i]f the areas in which such people were demarcated are spatially sufficiently distinct”.<sup>61</sup> He uses Bosnia and Kosovo as examples of how this is problematic when ethnicities are interspersed.<sup>62</sup> He notes that:

---

<sup>60</sup> “Advice to Secessionist Somaliland: The importance of preserving peace and stability in Northern Somalia” <<http://www.allvoices.com/contributed-news/7410635/content/67202271-lasanod-residents-demonstrate-against-secessionist-somaliland>> accessed 13 September 2011

<sup>61</sup> Robert O. Keohane “Political Authority After Intervention: Gradations in Sovereignty” in J.L. Holzgrefe and Robert O. Keohane (eds) *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2003) p279

<sup>62</sup> Ibid.

After secession has taken place, full sovereignty creates the potential for international war. Once sovereignty has been handed over, the majority faction will have little incentive to compromise with minorities to ensure that the rights and privileges that may fragment the state and weaken the central government. States whose ethnic majorities are compatriots of minorities within the new state are likely to become its enemies.<sup>63</sup>

However, as noted in the previous two chapters, provision of minority rights can be made a condition for recognition, somewhat mitigating this problem.

Linking back to the previous chapter's argument that allowing secession could lead to global anarchy, one could further argue that allowing a failed state to break up would lead to many recursive secessions, especially since failed states have no strong powers that could keep the country together. One could also argue here that allowing a failed state to break up would not help stabilise the region, and moreover could lead to perpetual anarchy in the area that would then be even more difficult to stabilise. As a result, the best approach to stabilising a failed state may be to strengthen a central government.

The recursive secession that occurred in many of the post-soviet states demonstrates how this could be problematic. For example, Georgia experienced the secession of Abkhazia and South Ossetia; Moldova experienced the secession of Transdnistria; and Azerbaijan experienced the secession of the Nagorno-Karabakh Republic (NKR).

---

<sup>63</sup> Ibid, p286

In order to mitigate this risk, states and organisations could take secession on a case-by-case basis. In some instances secession could be allowed, i.e. when the remedial-right to secede is there and when the secessionist entity appears stable and legitimate in terms of having a popularly supported government, while in others secession would not be supported where the risk of setting a bad precedent outweighs the benefits to the secessionist group.<sup>64</sup> However, this does not entirely solve the problem as some unrecognised *de facto* states exist without recognition and upset the stability of the state in which they are situated.

Unrecognised *de facto* states have the ability to upset the stability even of relatively strong states. In addition, they can often lead to diplomatic unrest and disputes, especially if the unrecognised state is supported by a powerful patron or supported in other ways by other states. Examples of diplomatic unrest caused by such entities include problems between China and various nations that support or trade with Taiwan, or the souring of relations between NATO and Russia over Russia's support and recognition of Abkhazia and South Ossetia within Georgia.<sup>65</sup> A possible way to avoid these issues could be to grant a people and/or a region self-determination by giving them a degree of autonomy while stopping short of granting full independence, a concept that was engaged with in the previous chapter. This approach was implemented with a degree of success in the settlement that ended the Bosnia-Herzegovina conflict: the Dayton Peace Accords

---

<sup>64</sup> Simone Florio, "The Fragmentation of Geopolitical Space: What Secessionist Movements Mean to the Present-Day System", University of Grenada, 2011  
<[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1760484](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1760484)> accessed 14 September 2011

<sup>65</sup> NATO: "NATO's Relations With Russia"  
<[http://www.nato.int/cps/en/natohq/topics\\_50090.htm](http://www.nato.int/cps/en/natohq/topics_50090.htm)> accessed 24 July 2015

BBC: "Gambia Severs Diplomatic Ties With Taiwan" 15 November 2013  
<<http://www.bbc.co.uk/news/world-africa-24951115>> accessed 24 July 2015

of 1995. This agreement created a self-governing autonomous entity known as the Republika Srpska within Bosnia-Herzegovina as a solution to the conflict caused by the recursive secession of the Bosnian Serbs. In this case, Bosnian Serbs had seceded following the secession of Bosnia from Yugoslavia, stating a desire to be part of Serbia. In so much as armed conflict has been severely reduced, the solution could be said to have been a success. However, the ethnic divisions are still there, having arguably even become institutionalised, showing both a practical and ethical issue that arises in such cases, nonetheless, institutionalising ethnic division has shown to have been condoned as a pragmatic tool of conflict resolution in this case.<sup>66</sup>

These issues have led many actors to become reluctant to recognise secessionist movements, even from a failed state. The previous two chapters established that the default attitude of many states and organisations towards secession is to support territorial integrity. Indeed, Somaliland remains unrecognised. However, as has also been established, there are exceptions to this default attitude. For example, South Sudan is especially relevant to this thesis due to the fact that it is a recognised secession from a failed state. As the thesis progresses, further light will be shed as to why South Sudan was recognised while Somaliland remains unrecognised, with a view to further assessing the international community's approach towards secession from failed states. In conclusion, while secession from a failed state is different to secession from a stable state, many of the same concerns remain.

---

<sup>66</sup> Alberto Nardelli, Denis Dzidic and Elvira Jukic "Bosnia and Herzegovina: The World's Most Complicated System of Government" *The Guardian* 8 October 2014  
<<http://www.theguardian.com/news/datablog/2014/oct/08/bosnia-herzegovina-elections-the-worlds-most-complicated-system-of-government>> accessed 24 July 2015

Kori Schake "The Dayton Peace Accords: Success or Failure?", *Studies in Contemporary History and Security Policy*, Vol 3, pp281-284

## To what extent is a failed state sovereign, and what are the implications for territorial integrity in a failed state?

Much of the analysis in the previous section has been about concerns over undermining the principle of territorial integrity. However, it is argued here that territorial integrity may not need to be respected in the same way when it comes to secession from a failed state. The chapter has touched on this idea already, examining how the governments of failed states lack legitimacy. It will now analyse this idea further, in order to ascertain whether a failed state is legitimate and/or sovereign, and determine the implications for territorial integrity.

Both this and the previous chapter examined the argument that in order for a state to be legitimate it must uphold its side of the social contract, i.e. providing security for its citizens. If it fails to do this, either through inability or by actively using force to persecute and undermine the security of its citizens, then it loses said legitimacy. In much social contract literature the state is known as the sovereign.<sup>67</sup> One could therefore argue that a state that loses its legitimacy in this way also loses its sovereignty. This is not the case in some social contract theory, particularly that of Thomas Hobbes who talks about the complete submission of the citizen to the sovereign. However, it does fit in with John Locke's right to revolution, and also to an extent with Jean Jacques Rousseau's idea of the people's sovereignty.<sup>68</sup> Indeed, the notion that a state has certain responsibilities is one that appears to be supported by the international community, at least ostensibly, as

---

<sup>67</sup> Manzoor Elahi "Social Contract Theory by Hobbes, Locke and Rousseau"  
<[http://www.academia.edu/3138759/Social\\_Contract\\_Theory\\_by\\_Hobbes\\_Locke\\_and\\_Rousseau](http://www.academia.edu/3138759/Social_Contract_Theory_by_Hobbes_Locke_and_Rousseau)> accessed 11 August 2015

<sup>68</sup> Ibid.

illustrated by conventions and charters such as the Universal Declaration of Human Rights.<sup>69</sup> The idea that irresponsible governance can lead to the forfeiture of sovereignty fits in with the theory of the remedial right to secede.

As seen in the previous chapter, Weber argues that much of the legitimacy of a state is bestowed by the belief in its legitimacy by its citizens.<sup>70</sup> It can thus be argued that the government of a failed state lacks this form of legitimacy, as it is being undermined by ineffectiveness, abuse of power or by failing to represent certain groups. Wolf Mannens extends this concept, writing of effective state authority that:

‘Effective’ means literally: causing or capable of causing a desired or decisive result. In relation to the term ‘State authority’, however, a certain ‘effectiveness’ already forms part of the authority of the State, in the sense that the formal recognition of the rule of authority as such already implies an effectiveness.<sup>71</sup>

Mannens argues that a state it must be sovereign to exercise its authority. However, since he takes the goal of state authority to mean “the enduring progression of peace, order, and stability”, he therefore posits that the state must initiate this progression or at least be capable of initiating it.<sup>72</sup> If a state lacks the monopoly on the legitimate use of force, as a failed state does, then it would not therefore be capable of initiating the “progression of peace, order and stability” and would therefore not be sovereign. However, Mannens identifies an issue with this conclusion, in that “a temporary disruption of the

---

<sup>69</sup> Potter, 2005, p5

<sup>70</sup> Beetham, 1991, p6

<sup>71</sup> Wolf Mannens “Shared Sovereignty? Minority Claims and the Effectiveness of State Authority”

in Gerard Krijen (ed) *State, Sovereignty, and International Governance* (Oxford: Oxford University Press, 2004) p153

<sup>72</sup> Ibid, p154

effectiveness, due to internal turmoil, civil war, or hostile military occupation, does not rescind the State's authority."<sup>73</sup> The key word here however is 'temporary'; if the ineffectiveness of a state is prolonged or perpetual, or a solution to restore the effectiveness of the state seems extremely unlikely, then it can be argued that the sovereignty of the state needs to be reviewed. If secessionist entities emerge that appear more capable of advancing peace, order and stability than the parent-state, then pragmatically it makes sense to recognise them and grant them sovereignty since according to the logic above they are *de facto* sovereign anyway. This ties in with the idea of the inevitability of the collapse and breakup of a state, as seen with Yugoslavia.

Donald W. Potter developed this idea further, writing that "to attain sovereignty a state must demonstrate internal supremacy...That is a sovereign state must be able to show political supremacy in its own territory over all other political authorities."<sup>74</sup> This would suggest that if there is a secessionist movement that has managed to exercise authority over its territory to the extent that it is a *de facto* state, then the parent-state can be deemed to have lost its political supremacy and therefore forfeited its sovereignty. This fits in with the idea of a tautology of secession and state failure, as seen earlier in the chapter. It would also have implications under the declaratory theory of state since, as discussed in the previous chapter, James Crawford argues that what is important is who has *de facto* control over the territory in question.<sup>75</sup> This idea is particularly important to this thesis, since in a failed state the central government rarely has firm control over its territory. As such, any secessionist movement within the borders of said failed state is likely to have

---

<sup>73</sup> Ibid.

<sup>74</sup> Potter, 2005, p9

<sup>75</sup> James Crawford, "The Criteria for Statehood in International Law" *British Year Book of International Law* 48(1), 1976-77, p113

more control over the territory it claims than the central government. Additionally, since the declaratory theory of state argues that a state must have a government to be a state, this raises further questions about the legitimacy of failed states and their right to oppose secession. As seen in the previous two chapters, opposition to secession often enjoys support from the international community, since it is established that the right to secession is more the exception than the rule.

However, it appears that a number of *de facto* unrecognised states exist, without the sovereignty of their parent-states being in question. Examples include the secession of Transdnistria from Moldova, Taiwan from China and the TRNC from Cyprus. This undermines the idea of secession and state failure being tautological, in other words that secession implies state failure due to the parent state losing the monopoly on the legitimate use of force. Secession can only really be indicative of state failure if said secession is violent, if the parent state has denied the secessionist's representation, and the parent state is ineffective in ending the conflict. Another crucial issue to note here is that Moldova, China and Cyprus do still have political supremacy over the majority of their territory, save for the secessionist areas. Perhaps even more importantly, at no point was either secessionist state a separate entity prior to secession. This means the secessions were unilateral and in clear violation of territorial integrity, and as such they are not recognised by the international community. Had they been part of a union with federal or pre-union borders, then upon breakup the parent-state could arguably forfeit its sovereignty and possibly cease to exist. This was the case with Yugoslavia.

Mannens writes that both internal and external recognition of the rule of authority (belief in legitimacy) are needed for a state to be legitimate and effective.<sup>76</sup> Such a concept would be tantamount to international recognition of the sovereignty of the state in question, thus implying that were this belief and recognition to be absent then the state in question would not be sovereign, which supports the constitutive theory of state. However, an impasse is reached in situations where the legitimacy and sovereignty of the government is recognised regardless of its effectiveness by external actors, i.e. the international community, but is not recognised by internal actors, i.e. groups with grievance, unrepresented minorities and/or secessionists.

Such an impasse is present in Somalia, where the legitimacy and authority of the Federal Government of Somalia is recognised by the international community. This is despite serious questions over its effectiveness, and the fact that many in the country do not recognise its authority, such as warlords, the Al Shabaab Islamist group, and the secessionist state of Somaliland. This impasse can be partially explained by the importance of the self-interest of states and international organisations when it comes to the recognition of secessions borne out of the collapse of a parent-state. Members of NATO, the EU, EC and the OSCE had an interest in recognising the states resulting from the collapse and breakup of Yugoslavia, their interest being in establishing peace and stabilising the region in order to uphold stability and security in Europe. Whilst there are wider security issues surrounding state failure in Somalia, such as piracy and terrorism, these issues are not directly linked to the secession of Somaliland.<sup>77</sup> With this analysis

---

<sup>76</sup> Ibid.

<sup>77</sup> Jonathan Saul and Camilla Reed "Shabaab-Somali Pirate Links Growing: UN adviser" *Reuters* 20 October 2011 <<http://www.reuters.com/article/2011/10/20/ozatp-somalia-shabaab-pirates-idAFJ0E79J0G620111020>> accessed 6 August 15

in mind, it appears as if the self-interest of states and the primacy of territorial integrity supersedes the lack of legitimacy of a failed parent-state when it comes to recognising a secession from a failed state.

However, this conclusion is incompatible with the idea of sovereignty being dependent on responsibility, and one could argue that this concept is indeed upheld amongst actors within the international community. The concept of humanitarian intervention illustrates this, as it essentially means violating a state's sovereignty if that state is violating the human rights of its citizens. It has been cited as legitimate by a range of international actors, including international organisations such as NATO and heads of state such as the former UK Prime Minister Tony Blair.<sup>78</sup> Former UN Secretary General Kofi Annan also stated that sovereignty is dependent on responsible governance when he said that "sovereignty implies responsibility not just power".<sup>79</sup>

This apparent contradiction in attitude towards the sovereignty of failed states can be explained, as humanitarian intervention can theoretically leave the state intact. Therefore, whilst it is a violation of sovereignty, it respects territorial integrity and thus the international system of states. Meanwhile secession from a failed state would undermine the territorial integrity and states system. However, this idea does not appear to hold water since intervention has in the past resulted in secession, the Balkans being a prime example of this. It has also been the case that "activities and resolutions by the United Nations (made up of State actors) point to a trend of a right on the part of the

---

<sup>78</sup>*The Economist* "The UN and Humanitarian Intervention: To Protect Sovereignty or to Protect Lives" 15 May 2008 <<http://www.economist.com/node/11376531>> accessed 13 August 2015

<sup>79</sup> Potter, 2005, p12

international community to violate sovereignty in order to protect human rights”.<sup>80</sup> It can thus be concluded that whilst the territorial integrity of failed states is often supported in certain cases despite their apparent lack of sovereignty, this approach appears somewhat flawed since the attitudes towards sovereignty are often contradictory.

Keohane makes the case that when it comes to sovereignty “states are not all equal.”<sup>81</sup> He argues that sovereignty needs to be based on a state’s capacity, and that constraints on a fragile state’s autonomy may prevent it from becoming a failed state.<sup>82</sup> He states that: “The classic unitary conception of sovereignty is the doctrine that sovereign states exercise both internal supremacy over all other authorities within a given territory, and external independence of outside authorities.”<sup>83</sup> He writes that whilst these may be sovereign rights, they do not necessarily correspond with the reality of a state’s internal supremacy.<sup>84</sup> He therefore suggests that: “‘Sovereignty’ is a variable, not a constant. Humanitarian intervention certainly limits external sovereignty...but it may be a necessary condition for restoring domestic sovereignty.”<sup>85</sup> This implies that in failed states, whilst they have the right to sovereignty, it is subject to compromise. Indeed, he goes as far as to say that failed states pose a threat to liberal democracies due to refugee flows and their potential for harbouring terrorists, implying that breaches of sovereignty may be necessary in a failed state if insecurity cannot be contained.<sup>86</sup>

---

<sup>80</sup> K. Mills, ‘Reconstructing Sovereignty: A Human Rights Perspective’ 15(1) 1997 *NQHR* p285 quoted in Mannens, 2004, p 156

<sup>81</sup> Keohane, 2003, p277

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*, p282

<sup>84</sup> *Ibid.*, pp282-3

<sup>85</sup> *Ibid.*, p286

<sup>86</sup> *Ibid.*, pp293-8

Potter uses the work of Rotberg to go further with this idea, suggesting that it is not just active violations of citizen's rights that undermine a state's sovereignty, but the inability of a state to provide its citizens with certain 'political goods'.<sup>87</sup> Important political goods include security and effective political administration, such as the participation of citizens in the state, as well as healthcare and education, physical infrastructure and a functioning economic and fiscal system.<sup>88</sup> Many failed states are unable to provide these political goods, whether willingly or otherwise, due to a lack of effective control over their territory. One can therefore use Potter and Rotberg's logic to suggest that failed states have reduced sovereignty.

#### The Responsibility to Protect

The preceding analysis points to a growing acceptance of the state's 'Responsibility to Protect'; in other words, a state's borders are inviolable only if it protects its citizens. Indeed, the UN Office of the Special Advisor on the Prevention of Genocide has stated that "Sovereignty no longer exclusively protects States from foreign interference; it is a charge of responsibility that holds States accountable for the welfare of their people."<sup>89</sup> Indeed, Chapter 1 saw that the UN sees territorial integrity as dependent on the state conducting itself "in accordance with the principles of equal rights and self-determination of peoples".<sup>90</sup> Whilst in this context the responsibility to protect is used as a rationale for humanitarian intervention rather than remedial secession, Ralph Janik hypothesised that humanitarian intervention may lead to intervention in support of secessionist groups if

---

<sup>87</sup> Potter, 2005, p11

<sup>88</sup> Ibid, p4

<sup>89</sup> UN Office of the Special Advisor on the Prevention of Genocide: 'Responsibility to Protect' <<http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>> accessed 17 May 2016

<sup>90</sup> "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" United Nations General Assembly Resolution 2625 (XXV). Twenty-fifth session 24 October 1970 <<http://www.un-documents.net/a25r2625.htm>> accessed 19 November 2014

said secessionists are facing persecution, invoking the remedial right to secede and suggesting that such support could in fact encourage secessionist movements.<sup>91</sup> The idea that the responsibility to protect could encourage secessionist movements is supported by Alan J. Kuperman, who suggests that: “[G]enocide and ethnic cleansing often represent state retaliation against a sub-state group for rebellion, or armed secession”.<sup>92</sup> Should this be the case then states may intervene on the side of secessionists under the responsibility to protect, thus potentially increasing support for the secession that could conceivably lead to recognition, Bosnia-Herzegovina is an example of this.<sup>93</sup>

There has indeed been intervention in failed states since the Cold War, in weak states divided by civil war.<sup>94</sup> This would suggest that sovereignty is eroded in such states.<sup>95</sup> Indeed, when it came to intervention in Somalia, Alex J. Bellamy noted that since the country had no government “there was therefore no question of acting against the recognized authorities because there were none.”<sup>96</sup> This implies that states with no functioning government have limited sovereignty as they are eligible for intervention under the auspices of the responsibility to protect.

---

<sup>91</sup>Ralph Janik, “The Responsibility to Protect as an Impetus for Secessionist Movements: On the Necessity to Re-Think Territorial Integrity” in Matthias Kettemann (ed), *Grenzen im Völkerrecht* (Vienna: Jan Sramek Verlag, 2013) pp57-58

<sup>92</sup> Alan J. Kuperman “Rethinking the Responsibility to Protect” *The Whitehead Journal of Diplomacy and International Relations* 10(1), Winter/Spring 2009, p22

<sup>93</sup> Janik, 2013, pp57-60

<sup>94</sup> Michael Ignatieff, “State Failure and Nation-Building” in J.L. Holzgrefe and Robert O. Keohane (eds) *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2004) pp305-306

<sup>95</sup> Ibid. p307

<sup>96</sup> Alex J. Bellamy, *The Responsibility to Protect: A Defense* (Oxford: Oxford University Press, 2015) p95

Aidan Hehir argues that sovereignty needs to be preserved since the Responsibility to Protect in its current form creates a double standard whereby ‘advanced’ states have stronger sovereignty than less advanced states and this leaves weaker states vulnerable to unilateral intervention, which he argues “would constitute an unacceptable reversion to the pre-Charter era and surely usher in a new era of subjugation.”<sup>97</sup> In cases such as Kosovo intervention based on the Responsibility to Protect has led to secession and recognition of said secession by many of the intervening countries. Under Hehir’s argument above, intervening (and subsequently recognising) powers, under the current doctrine of the Responsibility to Protect, would be able to intervene and recognise such secessionist states based on their own interest. This is because both the primacy of sovereignty and the Responsibility to Protect can be invoked subjectively. Hehir, states that he is not against intervention and compromise of sovereignty in cases where it is genuinely needed, but he argues that with the UN Security Council currently authorising such breeches of sovereignty, the Permanent members are able to veto or authorise such action based on their own interest.<sup>98</sup> This thesis notes that this self-interest is indeed apparent when it comes to recognition of secession from failed and oppressive states, as evidenced by the fact that South Sudan has become recognised whereas Somaliland has not, and therefore calls for a more objective, pragmatic approach based on the ‘balance of legitimacy’ between the parent state and the secessionist entity.

As noted, intervention has led to the recognition of secession, and from this analysis it appears as though the lack of internal sovereignty of a failed state can be a catalyst for

---

<sup>97</sup> Aidan Hehir, *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention* (Basingstoke: Palgrave Macmillan, 2012) p244

<sup>98</sup> Ibid, p239, 244

both intervention and secession. The idea of intervention in failed states giving rise to recognition of secession somewhat supports the idea of earned sovereignty discussed in the previous chapter. For example, in states divided by civil war, ostensibly failed states, intervention has sometimes meant the creation of a protectorate similar to the “transitional period of mediated international administration” that is characteristic of earned sovereignty.<sup>99</sup> In the case of East Timor, this led to the recognition of the secessionist state by the UN.<sup>100</sup> This demonstrates that a lack of sovereignty within a failed state can lead to intervention, and in some cases (although not all), secession.

Going further with the idea that sovereignty is dependent on responsibility and provision of rights, it was noted in the previous two chapters that the new states in the Balkans following the breakup of the FRY were only recognised on the condition that they upheld minority rights. Bellamy goes as far as to state that since, in the case of the breakup of Yugoslavia, the protection of human rights and minority rights were a requirement for recognition, then “[i]n a very direct sense, recognition was related to the successor states’ ability and willingness to discharge their sovereign responsibilities.”<sup>101</sup> This again ties in with the idea that sovereignty is conditional on the Responsibility to Protect. Stephen D. Krasner posits that minority rights are an important aspect of a state’s sovereignty due to their prominence in treaties and agreements throughout history.<sup>102</sup> However, this has often been through imposition rather than being self-enforced. Krasner posits that this is

---

<sup>99</sup> Grace Bolton and Gezim Visoka “Recognizing Kosovo’s Independence: Remedial Secession, or Earned Sovereignty” Occasional Paper 10/11, St Anthony’s College- Oxford University October 2010, p1

<sup>100</sup> Ignatieff, 2004, p308

<sup>101</sup> Alex J. Bellamy “Kosovo and the Advent of Sovereignty as Responsibility” *Journal of Intervention and Statebuilding* 3(2) p166

<sup>102</sup> Stephen D. Krasner *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999) pp103-4

because ethnic tensions may concern more powerful states as the instability they cause in weaker states could threaten the security of larger states.<sup>103</sup> Again, this shows the importance of states' self-interest. However, the fact that recognition has been conditional upon upholding minority rights shows a practical limit to sovereignty if not an ethical one (although the two may not be mutually exclusive, in this case the ethical practice of upholding minority rights appears to also have practical benefits). Failed states, as has been seen and will be seen further in the case studies, are often unwilling and/or unable to provide minority rights (in some cases actively persecuting minorities), and thus another limit to the sovereignty of failed states is observed here.

This analysis of the idea that sovereignty is dependent upon responsibility shows that whilst territorial integrity and Westphalian sovereignty are still considered the norm, the consensus is changing. Sovereignty is no longer inviolable and sacrosanct in international law if it has been deemed that governments have been abusing human rights. Instead, the view that sovereignty is reliant on a state upholding its side of the social contract seems to be prevailing. It can thus be argued that sovereignty is weakened in failed states where the government is unwilling or unable to uphold its side of the social contract, and in certain cases the remedial right to secede could be applied.

### Chapter Conclusion.

This chapter has established that a failed state can be defined as a state that has lost the monopoly on the legitimate use of force, either by losing the monopoly or the legitimacy. Losing the monopoly can occur when other forces in the country wield power and force,

---

<sup>103</sup> Stephen D. Krasner "The Hole in the Whole: Shared Sovereignty and International Law" *Michigan Journal of International Law* 25(4), 2004, p1080

such as vengeance-seeking groups, militias, warlords, secessionists and/or revolutionaries. Meanwhile states can lose the legitimacy if they abuse their power, for example by persecuting citizens in general or a particular group. Both of these situations can make a failed state ripe for secession. The former can be characterised by ethnic divisions within a country, while the latter can exacerbate said divisions. As seen in the previous two chapters, there is a case for the remedial right to secede in situations where states lose legitimacy, which has been an observable phenomenon in cases where the international community has recognised secession. This right can also be interpreted to apply in cases where states lose the monopoly on force if the central government is not protecting the security of the citizens within its (claimed) borders, an idea which this thesis explores further.

If the legitimacy of these states is compromised then arguably so too is their sovereignty, on the basis that the social contract works both ways. The idea that sovereignty is compromised in this way is illustrated by the various interventions that have taken place in these states. Such limits to sovereignty can be translated as limits to territorial integrity, as illustrated by humanitarian intervention and the remedial secessions that have sometimes followed it, as in the cases of Yugoslavia and Bangladesh. It is important to note, however, that neither intervention nor secession necessarily preclude the statehood of the parent-state.

With this in mind, the argument can be made that it makes pragmatic sense to recognise a secession from a failed state if it can provide better security for its citizens than the parent-state can, supporting the concepts of remedial secession and earned sovereignty.

However, secessionist states have not always been stable, and have not always provided security for their citizens. Each situation therefore needs in-depth analysis and strong safeguards against further oppression and/or collapse before recognition is granted.

As far as the precedent of recognising secession from failed states is concerned, in some cases, such as that of Somalia, the attitude of many states has been that the principle of territorial integrity prevails. In other situations, such as that of Sudan, the idea of remedial secession has been supported. The next two chapters will focus on case studies, and will examine the reasons and logic behind these contrasting attitudes while analysing their suitability for the situation.

## Chapter 4- Case Study: Somalia

The previous chapters established that there is something of an anti-secessionist consensus amongst key actors within the international community, except in certain cases of remedial secession. This places ethical limits on the right to territorial integrity. In theory, at least, some limits to territorial integrity, such as remedial secession and a lack of legitimacy on the part of the parent state, can apply to failed states. This chapter now turns to see how such attitudes have affected actual cases of secession from failed states in both ethical and practical terms. While the next chapter looks at a secession from a failed state that has become recognised, here the thesis looks at a situation where a generally anti-secessionist stance has been maintained: the secession of Somaliland from Somalia.

It would not be an exaggeration to refer to Somalia as the archetypal failed state. It has been without an effective government, at least in terms of providing security for its citizens, since the fall of Siad Barre in 1991.<sup>1</sup> It topped the *Foreign Policy/Fund for Peace* failed/fragile states index from 2008-13, and was ranked second in 2014-15.<sup>2</sup> In the north of the country there is a secessionist entity known as Somaliland, which has been shown to have its own functioning democratic government.<sup>3</sup> This chapter assesses current attitudes towards the sovereignty of Somalia and the secession of Somaliland,

---

<sup>1</sup> CIA World Factbook: Somalia <<https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>> accessed 24 October 2011

<sup>2</sup> Fund for Peace: Failed States Index 2008 <<http://fsi.fundforpeace.org/rankings-2008-sortable>> accessed 15 September 2015

<sup>3</sup> CIA World Factbook: Somalia

and the ethical and practical issues surrounding them, going on to examine Somaliland's case for recognition in ethical and practical terms.

In order to fully assess, explain and analyse attitudes towards this *de facto* secession, it will be necessary to assess the nature of the state failure in Somalia. Doing this will highlight the context of the state failure, so that Somalia's sovereignty can be assessed. It will also demonstrate the context of Somaliland's secession, so that its case for recognition can be assessed in terms of remedial secession. It will also examine how this case relates to Somalia's sovereignty and territorial integrity, since Chapters 1 and 2 highlighted that remedial secession and a loss of legitimacy of the parent-state are key factors where secession has been recognised and showed precedent for remedial secession. This assessment of the sovereignty of Somalia and whether Somaliland has a case for remedial secession is continued after the nature of Somali state failure has been established, and examines how the clan system in Somalia affects issues of national unity and self-determination. The chapter then goes on to determine whether the Somali government is legitimate. This goes some way towards showing ethical and practical differences between a secession from a failed state and a secession from a stable state.

After the legitimacy of the Somali government is discussed, the present attitudes towards the situation in Somalia will be assessed along with the current initiatives aimed at stabilising the country. This brings the chapter towards discussing an alternate view: the idea that the relative stability of Somaliland compared to the rest of the country warrants its secession. This involves using arguments based on sovereignty, legitimacy and remedial secession in the same way as they were applied in the previous chapter. It is of

the utmost importance to the thesis to then look at reasons explaining why Somaliland remains unrecognised despite the strong case for recognition. This section highlights a generally anti-secessionist stance within the international community, showing that in this instance there is little difference in the approach of the international community towards this secession from a failed state and a secession from a stable state. Later in the thesis the ethical and practical concerns surrounding this lack of change in stance will be examined.

### What is the nature of state failure in Somalia?

In order to put state failure in Somalia into context, it is important to establish the factors which have contributed to the collapse of Somalia's integrity as a state. Somalia has been in a condition of anarchy and/or civil war since the fall of dictator Siad Barre in 1991. As will be seen in the next section, much of the opposition Barre faced was clan based. Whilst opposition to Barre briefly united the clans, "Chronic failure to consolidate the society by any ruler through effective power-sharing mechanisms among clans became clear soon after creation of the provisional government."<sup>4</sup> However, division between clans was not solely to blame; there was division within clans as well, with competing warlords vying for power.<sup>5</sup>

However, it is possible that some factors which led to Somalia's state collapse can be identified earlier in its history, pre-Barre. The fact that Somalia and Somaliland were two separate entities that unified in the post-colonial era had far-reaching consequences

---

<sup>4</sup> Robert Nalbandov, *Foreign Interventions in Ethnic Conflicts* (Surrey: Ashgate Publishing, 2009), p109

<sup>5</sup> Daniel Compagnon "Political Decay in Somalia: From Personal Rule to Warlordism" *Refuge*, 12(5), November-December 1992, pp9-10, p12

for the stability of the state, not least due to the manner in which the union was created. The settlement was somewhat rushed, and its legitimacy was questionable in that Somaliland initially voted against the union.<sup>6</sup> In addition to this, Somaliland and Somalia signed different acts of union, the legal formalities never being completed, and the Somaliland Act required the signature of the Somali representatives, which it never received.<sup>7</sup> Furthermore, the representation of the two peoples was disproportionate following the union. The government and armed forces were dominated by southern Somalis, the posts of Prime Minister and President were held by southerners, and the south also dominated the economy.<sup>8</sup> This is important to note since it demonstrates that Somalia and Somaliland were separate colonial entities.

The Somali Youth League (SYL) was the dominant party in the late 1960s, and won the 1969 election using the police force and funds from the national treasury.<sup>9</sup> Initially, parties in the election had campaigned along lines of clan loyalty, although many people subsequently joined the SYL after their victory regardless of clan, in order to be better placed to secure funds.<sup>10</sup> This is significant to the state failure of Somalia, as it signified the beginnings of single-party rule in Somalia over the different clans. However, clans were still used as powerful “vehicles of identification and collective action”.<sup>11</sup> This is a

---

<sup>6</sup> Ismail I. Ahmed and Reginald Herbold Green, *The Heritage of War and State Collapse in Somalia and Somaliland: Local-Level Effects, External Interventions and Reconstruction*, *Third World Quarterly* 20(1) 1999, p116

<sup>7</sup> Unrepresented Peoples and Nations Organisation: “Somaliland: Case for Recognition” 27 February 2009 <<http://unpo.org/article/9293>> accessed 22 September 2016

<sup>8</sup> Peter Haldén, “Somalia: Failed State or Nascent States-System?” FOI Somalia Papers: Report 1, Swedish Defence Research Agency 2008 p 22

<sup>9</sup> *Ibid.*, p23

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

reason why conflict between clan loyalties and the centralised Somali state ensued. This demonstrated that single party rule would be unstable given the strength of clan loyalties.

Less than a year after the SYL was elected a coup brought Siad Barre to power, with one of his main objectives being to counter clannism.<sup>12</sup> Barre's Supreme Revolutionary Council (SRC) adopted a policy of 'scientific socialism' (aligning the country with the Soviet Union) and set out on a scheme of modernisation across Somalia. This process of modernisation deeply affected the idea of nationality within the country, since it included an education system with a script for the national language, an economy that used traditional subsistence/merchant methods, and brought them onto a national scale.<sup>13</sup> However, despite the fact that Barre's initial objective had been to undermine clannism and whilst the regime promoted 'Pan-Somalism', the clan system still ended up having a major impact on how the country was run, as the regime:

[R]est[ed] on the support of the Marehan, Dhulbahante and Ogaden clans (belonging to the Darod clan-family). The regime manipulated and strengthened clan rivalries in order to undercut the possibility of opposition. Thereby, the clan structure was strengthened by the one-party dictatorship.<sup>14</sup>

This 'divide and rule' approach meant that in the event that central power collapsed, grievances would divide the country. This is indeed what happened, and is not unique to Somalia. Similar circumstances split the former Yugoslavia after the fall of Tito and the communist regime, which eventually led to the breakup of the country.

---

<sup>12</sup> Belachew Gebrewold *Anatomy of Violence: Understanding the Systems of Conflict and Violence in Africa* (Abingdon: Routledge, 2016) p132

<sup>13</sup> Haldén, 2008, pp23-24

<sup>14</sup> *Ibid*, p24

The wars Barre brought Somalia into were by no means insignificant to Somalia's eventual state failure. In an effort to bring a sense of unity to the Somali clans and keep rivalries from interfering with his regime, Barre took to a scheme of irredentism and attempted to create a common Somali enemy in Ethiopia. The reasoning behind this was that many Somalis of the Darod clan (a major clan) lived in the Ogaden region of Ethiopia. First backing insurgents within Ethiopia and then invading once Ethiopia was in chaos, Barre was initially successful. However, as Ethiopia received military aid from Cuba and the USSR, Somalia was soon on the back foot.<sup>15</sup>

This was a factor in the failure of Somalia for a number of reasons. Firstly, it put the final nail in the coffin of Soviet and Cuban military support for Somalia and the friendship and cooperation treaty between Somalia and the USSR.<sup>16</sup> Secondly, in the wake of the disastrous outcome of the war with Ethiopia, a group of army officers attempted a failed coup on Barre. As these officers were of the Majerteen clan, Barre's response was to persecute said clan through killings and the destruction of wells and livestock. These reprisals bred hostility from oppressed clans, and thus the Somali Salvation Democratic Front (SSDF) was born.<sup>17</sup> Further opposition to Barre arose in the north around the same time, in the area that was formerly British Somaliland. The Somali National Movement (SNM), which was based on the local Isaaq clan, began to oppose Barre in that area. This was mainly because members of the Darod clan, who had settled there after fleeing from Ogaden during the war, had been supported and armed by Barre,

---

<sup>15</sup> Halden, 2008, pp24-25

<sup>16</sup> Zaki Laidi *The Superpowers and Africa: The Constraints of a Rivalry, 1960-1990* (Chicago: University of Chicago Press, 1990) p130

<sup>17</sup> Halden, 2008, pp24-25

given preferential treatment with regards to access to social services and often used the aforementioned arms against the Isaaqs.<sup>18</sup> This fact will prove essential to the analysis of the later secession of Somaliland, as it demonstrates how this secession is affected by the clan system.

By the late 1980s, Somalia had descended into civil war with the SSDF and SNM as predominant actors against the regime. In 1988 Somalia and Ethiopia signed an accord in order to spend more resources on combating their domestic enemies (Ethiopia was locked in a conflict with the secessionist Eritrea).<sup>19</sup> This meant that Barre could step up military operations in the north, particularly against the SNM. During this time Somaliland and Hargeisa in particular suffered devastating air raids:

[T]he extraordinary situation in which Barre's aircraft would take off from Hargeysa [sic] airport, bomb and strafe the city, load up again at the airport and carry on. They continued until there were 50,000 dead in Hargeysa and hundreds of thousands dead in the rest of Somaliland...the rest of the population fled. That was the most extreme attempt at genocide against the dominant Isaq [sic] clan.<sup>20</sup>

This demonstrates the increasing victimisation of the Isaaq clan, and it is clear that they were no longer safe under the Mogadishu government.

This persecution contributed to the eventual state failure of Somalia as it created another group that a) wanted to remove Barre, contributing to the subsequent power vacuum; and b) wanted to strengthen themselves in order to defend against future persecution, thus

---

<sup>18</sup> Ibid.

<sup>19</sup> Ibid, p26

<sup>20</sup> Tony Worthington, Commons Debates, Hansard Vol 417, 4 February 2004, Column 273WH <<http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040204/halltext/40204h03.htm>> accessed 19 April 2012

fostering belligerence. As mentioned, Somalia had lost its aid from the communist bloc and had turned to the West for aid during the 1980s. The end of the Cold War brought an end to this aid.<sup>21</sup> This meant that the Barre regime had fewer resources with which to combat the increasing opposition and rebellion it faced.

Barre was eventually ousted by a number of factions, including the SNM, which would go on to declare Somaliland an independent republic. Other groups included the United Somali Congress (USC), based around the Hawiye clan, which operated in the north along with the SNM, whilst in the south the Somali Patriotic Movement (SPM) was the predominant anti-Barre movement.<sup>22</sup> Other clans also had their factions, notably the Rahanwyan with the Somali Democratic Movement (SDM) and the Gadabursi with the Somali Democratic Alliance (SDA).<sup>23</sup> Whilst these factions were temporarily united for the sake of removing Barre and his regime, this unity was not to last long.<sup>24</sup>

Interestingly, it was not only the inability to form a society between the clans that led to the inability to create an effective government, but also intra-clan conflict: “The warlords were pursuing the policy of all against all with unclear political agendas and vague political representation.”<sup>25</sup> This sowed the seeds for the perpetual anarchy that was to endure for the next two decades, since there was a deficit of unity even within clans.

---

<sup>21</sup> Halden, 2008, p26

<sup>22</sup> Nalbandov, 2009, p109

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

The principal conflict following the deposition of Barre arose between two members of the Hawiye clan (albeit from different sub-clans). These were Ali Mahdi Mahammad, who had risen to power following the exit of Barre, and former General Mahammad Farah Aideed, who opposed his rule and created his own faction within the USC.<sup>26</sup>

A brief note should be made here of the interventions that followed the outbreak of this conflict, as they are not insignificant however, the note shall be kept brief since it is of limited relevance to what this thesis aims to achieve. There were three notable interventions made by the UN, primarily led by the USA: UNOSOM I, UNITAF and UNOSOM II. These interventions were initially intended to provide food and medical supplies to Somali civilians, but became a manhunt for Aideed after hostility from the militias, and eventually a quasi-attempt at nation building. This intervention ended after the US pulled out following the deaths of eighteen US Army Rangers in Mogadishu on 3 October 1993.<sup>27</sup>

There have since been fifteen attempts to install a functioning government in Somalia,<sup>28</sup> the most significant being the Transitional National Government (TNG) and the Transitional Federal Government (TFG), these have since been followed by the Federal Government of Somalia (FGS). Whilst these have been the governments recognised by the UN, their control over the country has been extremely limited.<sup>29</sup>

---

<sup>26</sup> Ibid, p 110

<sup>27</sup> Ibid, pp110-128

<sup>28</sup> *Al Jazeera* "Somalia's political restart" 22 August 2012

<<http://www.aljazeera.com/programmes/insidestory/2012/08/201282115497642471.html>>  
accessed 21 January 2013

<sup>29</sup> J. Peter Pham, "Somalia: Where a State Isn't a State" *The Fletcher Forum of World Affairs* 35(2) Summer 2011 p137

Somalia can be seen as a failed state under the Weberian definition, in other words a state that does not have the monopoly of the legitimate use of force. This is because the government is competing for power with warlords and secessionists, as well as Islamic militants in the form of Al-Shabaab, an affiliate of Al-Qaeda that has exerted control over areas of the country and whose predecessor, the Council of Islamic Courts (CIC), had at one time controlled much of Mogadishu.<sup>30</sup> A number of the criteria in the *Foreign Policy/FFP* Fragile States Index are also reflected in the state failure of Somalia. Those most relevant to this thesis are *Group Grievance* as illustrated by inter-clan conflict, most notably from the Somaliland-based Isaaq clan which suffered particularly badly under Barre. Also relevant is the fact that the post-Barre power vacuum left the country without an effective government or *Security Apparatus*, and therefore unable to uphold *Human Rights and the Rule of Law*. While other factors on the index definitely apply to Somalia, the above three (in italics) are of the most importance to this thesis. If a state is failing to provide security or uphold human rights and the rule of law, then people can become motivated to look for an organisation that will, such as a secessionist state. Groups with grievances can likewise look to have their rights and security upheld by a secessionist group through the remedial right to secede.

---

Mary Harper "How do you solve a problem like Somalia" *BBC* 11<sup>th</sup> May 2017  
<<http://www.bbc.co.uk/news/world-africa-39855735>> accessed 21<sup>st</sup> July 2017

<sup>30</sup> Compagnon, 1992, pp9-10, p12

American Enterprise Institute: "Al Shabaab Leadership Profiles". *Critical Threats*  
<<http://www.criticalthreats.org/somalia/al-shabaab-leadership>> accessed 29/09/15

Pham, 2011, p138

Conflict between the clans would appear to be the predominant reason for Somalia's inability to form a government that could unite the country. While the USC tried to form a government which would represent the main clans, with a president from the Hawiye and a Prime Minister from the Isaaq, the other clans felt marginalised and so the government could not take hold.<sup>31</sup> This represents a problem for any government that hopes to take effective control of Somalia. It would seem that such a government would have to at least appear to be representative of all clans, which would be no mean feat. The TFG and the FGS after it were attempts to do just this, but as US diplomat David Shinn has said, "there were groups that felt they didn't get their fair share".<sup>32</sup> The next section analyses issues surrounding the clan system and the Somali government.

#### What effect does the clan system have on national unity?

The clan is probably the most important facet of Somali social identity, and Somalis are just as likely to be as loyal to their clan as the state, if not more so. Indeed, a Somali:

[G]ives political allegiance first to his/her immediate family, then to his immediate lineage, then to the clan of his lineage, then to a clan-family that embraces several clans, including his own, and ultimately to the nation that itself consists of a confederacy of clans.<sup>33</sup>

In support of this, *xeer*, the traditional law of the Somali clans, has been described as a type of formal political contract.<sup>34</sup> Anthropologist I.M. Lewis has suggested a possible reason behind such loyalty: "[T]he vital importance of this grouping, in an environment

---

<sup>31</sup> Ibid.

<sup>32</sup> Stephanie Hanson and Eben Kaplan "Somalia's Transitional Government" *Council on Foreign Relations* 12 May 2008 <<http://www.cfr.org/somalia/somalias-transitional-government/p12475#p2>> accessed 23 September 2015

<sup>33</sup> D.D. Laitin and S.S. Samatar *Somalia: Nation in Search of a State* (Boulder: Westview Press, 1987) pp30-31

<sup>34</sup> Pham, 2011, p135

in which the pressure of population on sparse environmental resources are acute, and where fighting over access to water and pasture is common, can hardly be over emphasized”.<sup>35</sup> Because of such constraints, “the individual ultimately depends [on the clan-family] for the security of his person and property.”<sup>36</sup> In order for any Somali central government to have effective control, it must convince its citizens that it would be able to deliver security equal to or better than that the clan could provide. For a land with limited resources and wealth, this could be a difficult task.

It is important to note that while Somalia is generally ethnically homogeneous, Somalis are divided by the plurality of the clans. This shows that ethnic homogeneity is not sufficient to keep a country united.<sup>37</sup> This has ethical and practical implications for the right to self-determination, since this right is often exercised along ethnic and national lines, as seen in the previous chapters. To invoke the right to self-determination along clan lines, in other words breaking up an ethnically homogeneous country, would set a dangerous precedent as the limits on the right to secede would be pushed. In the case of Somaliland, however, the fact that it was a separate colonial entity prior to the union can be used to argue that it is secession along national lines, given the AU support for colonial borders as national borders as seen in the first chapter.

Whilst the Isaaq are the most prevalent clan in Somaliland, they are far from the only one. Indeed, the Somaliland House of Representatives was set up with an allocated

---

<sup>35</sup> I.M. Lewis, *Making and Breaking States in Africa: The Somali Experience* (Trenton, New Jersey: Red Sea Press, 2010), pp8-9 as quoted in *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> Afyare Abdi Elmi, *Understanding the Somalia Conflagration: Identity, Political Islam and Peacebuilding* (Oxford: Pambazuka Press, 2010) p35

number of seats for each clan depending on their size.<sup>38</sup> This system has since evolved into a multi-party system for a number of reasons, which include allowing women and minorities to participate. Women are unable to participate in clan issues on the grounds that married women lived with their husband's clan whilst remaining part of their original clan, and were therefore excluded from clan-based politics due to their presumed split loyalties.<sup>39</sup> This would lend further credence to the view that Somaliland is not a clan-centric state and is not seceding along clan lines. There is also the argument that Somaliland is seceding on grounds of *national* self-determination. The way in which the Hargeisa government moved from clan-based to party-based politics is in contrast to the government in Mogadishu, as will now be seen.

The present chapter has seen how inter-clan conflict played a significant part in the collapse of Somalia and its descent into state failure. So what are the implications of the clan system for the unity of Somalia, and thus the ethical and practical issues surrounding the approaches to Somali unity? Clan loyalties have been posited as a factor contributing to Somali state-failure, to the point that Robert Nalbandov attributed the conflict to:

[A] mixture of tensions of oxymoronic identity dualities deeply rooted in the history of the country: common ethnicity versus powerful clan-based cleavages; self-determination of identity groups versus their strong urge for integrity of statehood; history of colonial and post-colonial multiple interests versus present international indifference.<sup>40</sup>

Nalbandov does not clarify exactly what is meant by 'international indifference', but it seems likely that he believes the situation in the years leading up to and at the beginning

---

<sup>38</sup> Marleen Renders, *Consider Somaliland: State-Building with Traditional Leaders and Institutions* African Social Studies Series Vol 26 (Leiden: Brill Academic Publishers, 2012) p102

<sup>39</sup> *Ibid*, pp157-8

<sup>40</sup> Nalbandov, 2009, p106

of the civil war was neglected by other states and many international organisations. The subsequent interventions show the international community gradually began to take more interest, although their attempts to stabilise the country were undermined by inter-clan rivalries. The UN had been attempting to restore the political systems implemented by Barre, which:

[W]orked at cross purposes with its reconciliation efforts, often fueling [sic] conflict instead of reducing it... Different clans were often able to coexist in relative peace in a single location. However, if asked to form a local government structure with a fixed number of seats, they often fell into heated disputes, sometimes ending in casualties, and dramatically worsening local security”<sup>41</sup>

These disputes appear to have been created by ‘spoilers’, militia who begin new conflicts along clan lines when a peace process is started in order to “show organizers they matter”.<sup>42</sup>

Nonetheless, the international community has pushed forward in supporting such a government, since it would appear that a government in which power is shared amongst the clans is vital if Somalia is going to be stabilised as a unified country:

Somalis’ memories of twenty-plus years of military dictatorship mean that it is not statelessness that bothers them, but state power perceived to be in the hands of a rival clan. They remember that unchecked state power can be used to enrich or marginalise clans.<sup>43</sup>

---

<sup>41</sup> Ken Menkhaus, “International Peacebuilding and the Dynamics of Local and National Reconciliation in Somalia” in W. Clarke and J. Herbst (eds) *Learning from Somalia: The Lessons of Armed Humanitarian Intervention* (Boulder: Westview Press, 1997) p59 quoted in Nalbandov, 2009, p119

<sup>42</sup> Elmi, 2010, p37

<sup>43</sup> Liban Ahmad “Somalis Debate the Ideal Political System for Clans” *African Arguments* 2 March 2015 <<http://africanarguments.org/2015/03/10/somalis-debate-the-ideal-political-system-for-clans-liban-ahmad/>> accessed 30 September 2015

So far most international actors have promoted a unified solution to state failure in Somalia; this is in part illustrated by the lack of recognition of Somaliland.<sup>44</sup> It is the FGS and the TFG before it that have been the recognised governments of the whole of Somalia, and they, along with the Transitional Federal Parliament, have been supported by the UN Security Council as the “internationally recognised authorities to restore peace, stability and governance to Somalia”.<sup>45</sup> It is thus important to note the design of the TFG and the way it was constructed so as to represent all of the clans, and so uphold a sense of the right to self-determination. The method used to achieve this was known as the ‘4.5 formula’. This plan allows the four major clans to share the majority of power (the clans being the Darod, Dir, Hawiye and the Digil/Rahanweyen, the ‘4’) and the ‘0.5’ was an allowance for other parties to make provision for the minority groups to participate.<sup>46</sup> The future of a united Somalia depends greatly on the ability of the clans to cooperate.

What is significant about the formation of the TFG, and crucial to this thesis, is that the Isaaq clan (the predominant clan in Somaliland) declined to participate.<sup>47</sup> This shows that barriers to a united solution to the problem of Somali state failure still exist. The TFG cannot be said to have represented all of the clans it claimed jurisdiction and sovereignty over, and therefore it cannot claim to uphold the right of self-determination

---

<sup>44</sup> *The Economist* “Somaliland ‘Can’t get no recognition” 09 January 2014

<<http://www.economist.com/blogs/baobab/2014/01/somaliland>> accessed 23 January 2015

<sup>45</sup> UN: “Security Council Expresses Support for Somalia’s Transitional Government Ahead of Talks” UN News Centre, 13 July 2006

<<http://www.un.org/apps/news/story.asp?NewsID=19199#.VgMPGd9Viko>> accessed 23 September 2015

<sup>46</sup> Pham, 2011, p137

<sup>47</sup> *Ibid.*

for the Isaaq clan. Since it was the choice of the Isaaq not to participate in the TFG, then the TFG could blame them for the impasse since they would ostensibly be given a degree of self-determination within the TFG. This means that the Isaaq refusal to participate cannot be used as an argument for the recognition of Somaliland. However, it does little to resolve the impasse, and unifying Somalia and Somaliland will be difficult whilst the Isaaq refuse to participate.

Assessing the nature of the clan system in Somalia is vital when analysing the legitimacy of any central government implemented. Somalis are generally more attached to their clan than they are to a geographic area, meaning a federal government based on regions will not be felt to be as representative as a system based on clans. This is further complicated by the fact that clans are further divided into sub-clans, and so it is likely to be the case that Somalis of various sub-clans will feel as though they are not represented in a government.<sup>48</sup> That said, geography is not irrelevant as clans make claim to ownership of traditional homelands, and traditionally only that clan has made decisions regarding that land.<sup>49</sup> This could cause conflict should a central federal government take a decision regarding a clan's land based on the decisions of more than one clan. There would then be the possibility of ill-feeling among the clan who sees that land as traditionally theirs, and the potential for conflict.<sup>50</sup>

The issue of traditional land ownership has also been a problem when the issue of clan movement to other parts of the country has arisen. Indeed, this has been a serious problem

---

<sup>48</sup> Elmi, 2010, pp37-38

<sup>49</sup> Ibid, p38

<sup>50</sup> Ibid.

due to the fact that much of this clan movement involves armed militia who have committed atrocities against civilians.<sup>51</sup> If a central government presiding over all of Somalia is to be recognised and supported, as appears to be the current practice, then a solution to inter-clan conflict must be found. While it need not be perfect, it must be sufficient to create a sustainable system that will not simply perpetuate the anarchy that exists in Somalia. Importantly to this thesis, Somaliland does appear to be managing to control inter-clan conflict to an extent. However, it must be noted that Somaliland is less diverse in terms of the major clan groups than Somalia, with Somaliland being dominated by the Isaaq and Darood clans.<sup>52</sup> Nonetheless, the peace process in Somaliland has enabled the clans to live relatively peacefully together. It has done this by:

[S]hunning the Western model of a centralized nation-state by blending traditional clan-based authority with the beginnings of a limited modern democracy. In doing so the clan realities of Somali society were embraced rather than denied or ignored.<sup>53</sup>

Nevertheless, it appears that while Somaliland's approach to forming a government has been relatively successful in comparison to the attempts to set up a central Mogadishu government since the fall of Barre, it has not been emulated by the TFG or the FGS, and it has been these governments that have been recognised and not the secessionist Hargeisa government in Somaliland.

---

<sup>51</sup> Ibid.

<sup>52</sup> *Fragile States* "Somalia's Complex Clan Dynamics" 10 January 2012  
<<http://www.fragilestates.org/2012/01/10/somalias-complex-clan-dynamics/>> accessed 1 October 2015

<sup>53</sup> Tristan McConnell and Narayan Mahon "The Invisible Country", *The Virginia Quarterly Review*, 86(1) Winter 2010 pp139-155 also on  
<<http://www.vqronline.org/articles/2010/winter/mcconnell-invisible-country/>> accessed 26 February 2013

The next sections of this chapter now look at the legitimacy of the internationally-recognised TFG and FGS, going on to look at the legitimacy of Somaliland. This example will help to establish how secession from failed states is approached, since it will show something of a precedent of support for the parent-state over a secessionist movement. However, this approach will be critically analysed given the apparent disparity in the success of the secessionist and parent-state in terms of creating a stable and effective government. This anti-secessionist attitude is contrasted in the next chapter with an example of an occasion when the international community has supported secession from a failed state. The thesis then goes on to explore the reasoning behind these differing attitudes, and provides an overall picture of the ethical and practical issues associated with the current practice surrounding recognition of secession from failed states.

#### How 'Legitimate' was the Transitional Federal Government?

This section assesses the legitimacy of the internationally-supported TFG in order to understand why it was internationally supported, and whether these international actors were right to give their support. This is useful because analysing the rationales for said approach will allow the thesis to develop an understanding of the international community's wider approach towards secession and the ethical and practical issues involved with said approach.

The chapter examines here the Weberian idea that legitimacy is conferred upon a government by its citizens and their belief in its legitimacy. Although the TFG claimed to be representative and inclusive of Somali society, as seen earlier in the chapter, the reality appears to be somewhat different. There was a view that many Somalis had grown

disillusioned with the TFG, and more seriously, there have been claims by Amnesty International and Human Rights Watch that many Somalis actually saw it as detrimental to their security.<sup>54</sup> There have been reports of TFG forces raping, murdering and looting Somali citizens, the last item attributed to the fact that these forces were often not paid by the TFG and are therefore forced to rely on looting for survival, further undermining the legitimacy of the TFG.<sup>55</sup> These reports also point to the TFG being illegitimate, on the basis that they were actively undermining the security of their citizens and therefore not upholding their side of the social contract, a concept which was discussed in the previous two chapters.

Furthermore, it would seem that the TFG was in fact *unable* to provide security for its citizens. The fact that it did not seem to pay its armed forces illustrates this, as does the fact that it has been reliant on military support from the African Union, the European Union, the UN and the USA.<sup>56</sup> This international support further undermined the legitimacy of the TFG, since it is a government created outside of Somalia that had not needed to prove its ability to provide services to the Somali people or uphold security, and indeed has demonstrated an inability to do this.<sup>57</sup> In contrast other sources of power, including most notably for this thesis, Somaliland, have shown themselves to be legitimate based on the popular consent of the people within their territory. This has been

---

<sup>54</sup> Hanson and Kaplan, 2008, <<http://www.cfr.org/somalia/somalias-transitional-government/p12475#p6>> accessed 6 October 2015

<sup>55</sup> Ibid.

<sup>56</sup> "Somalia's Transition: What Role for SubNational Entities? Chatham House Meeting Report January 2012, p5 <<https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0112report.pdf>> accessed 6 October 2015

Deon Geldenhuys, *Contested States in World Politics* (London: Palgrave Macmillan, 2009) p138

<sup>57</sup> Chatham House, 2012, p11

demonstrated through democratic elections and their ability to rely on their own resources to provide services and security.<sup>58</sup>

It would thus seem that there was a general lack of confidence in the TFG amongst Somalis, which would undermine its legitimacy based on the Weber's idea that legitimacy is bestowed by a belief in legitimacy. This lack of confidence was demonstrated by the fact that rival sources of power to the TFG seem to have had significant support, and Somaliland is not the only example of this. Sources of power in Somalia other than the TFG and Somaliland include Puntland, a region that does not appear to have any designs on secession, but none the less possesses an effective local government able to provide law enforcement services, tax revenue collection and outside representation.<sup>59</sup> Puntland was ostensibly supported by the TFG at first; however, it has created a functioning system of government without significant support or assistance from the TFG.<sup>60</sup> The fact that it has achieved this would suggest a lack of legitimacy on the part of the TFG, since it again shows that the TFG was unable to provide security for its citizens who are forced to rely on autonomous regional actors for their safety. Furthermore, in 2011 the region appeared to distance itself from the TFG. Whilst still not displaying any signs of a desire for independence, the Puntland government issued a statement claiming that:

[T]he Transitional Federal Government (TFG) “does not represent Puntland in international forums” and that the United Nations Political Office for Somalia should “reconsider its position and support for the TFG at the expense of other Somali stakeholders.”<sup>61</sup>

---

<sup>58</sup> Ibid.

<sup>59</sup> Ibid, p6

<sup>60</sup> Ibid, pp6, 8

<sup>61</sup> Alex Thurston “Puntland, the TFG, and the Continuing Fragmentation of Somalia” Sahel Blog 24 January 2011 <<https://sahelblog.wordpress.com/2011/01/24/puntland-the-tfg-and-the-continuing-fragmentation-of-somalia/>> accessed 7 October 2015

Such a statement has significant consequences for the legitimacy of the TFG and its support from the international community. This issue is further intensified by the fact that the Puntland Government subsequently banned TFG officials from entering its territory, citing hesitancy on the part of the TFG to commit to federalism in violation of the TFG charter, further undermining the legitimacy of the TFG.<sup>62</sup> If former supporters of the TFG were abandoning it then this further damages the idea that the TFG was representative of the Somali people, and calls into question the wisdom of international support for the TFG.

Additionally, another source of power rivalling the TFG was the militant Islamic group Al-Shabaab, who at one time were close to isolating TFG control to parts of Mogadishu.<sup>63</sup> Whilst it has since been forced out of Mogadishu and many other towns and cities, the group still controls vast areas of rural land and is still capable of carrying out attacks in Mogadishu, and has counter-attacked and retaken areas from AU troops.<sup>64</sup> The group gained support from many Somalis for their efforts in implementing security, although this has been on the wane since 2011 when it rejected Western aid to alleviate famine and drought.<sup>65</sup> Nonetheless, the fact that Al-Shabaab retains a degree of support and still commands a large territory again serves to undermine the legitimacy of the TFG by

---

<sup>62</sup> Ibid.

<sup>63</sup> *BBC*: "Who are Somalia's al-Shabab?" 3 April 2015 <<http://www.bbc.co.uk/news/world-africa-15336689>> accessed on 1 October 2015

<sup>64</sup> Ibid.

Abdi Sheikh and Feisal Omar "Al Shabaab militants retake Somali town from African Union" *Reuters* 6 September 15 <<http://www.reuters.com/article/2015/09/06/us-somalia-attack-idUSKCN0R60MB20150906>> accessed 7 October 2015

<sup>65</sup> *BBC*: 3 April 2015 <<http://www.bbc.co.uk/news/world-africa-15336689>> accessed 7 October 2015

demonstrating it to have been ineffective at providing security for its citizens.<sup>66</sup> The TFG and its supporters could have countered this claim by pointing out that the TFG managed to combat Al-Shabaab and push them out of Mogadishu as well as other areas. However, this was only achieved with the support of a large number of African Union troops (the African Union Mission in Somalia- AMISOM).<sup>67</sup> This shows that the TFG did not hold the monopoly on the legitimate use of force, meaning Somalia is a failed state under the Weberian definition. Puntland and Somaliland have largely been able to limit the influence of Al-Shabaab through their own devices.<sup>68</sup> This would tend to suggest that the governments of Somaliland and Puntland were in fact more legitimate than the TFG, in that they have provided security for their citizens without the aid of other countries, therefore upholding the social contract more effectively than the TFG.

However, it was the TFG that had the recognition and support of the international community, although the USA began implementing what it calls a ‘dual-track’ strategy in 2010, engaging with both the TFG and sub-national entities.<sup>69</sup> In order for this policy to be successful, the Chatham House think-tank has posited that it:

[N]eeds to genuinely encourage and support both national and sub-national efforts to govern, and to recognise that both legitimised local governments and an accepted and functional national government are part of the solution.<sup>70</sup>

---

<sup>66</sup> Ibid.

<sup>67</sup> National Counter Terrorism Center (US Government)  
<[http://www.nctc.gov/site/groups/al\\_shabaab.html](http://www.nctc.gov/site/groups/al_shabaab.html)> accessed 7 October 2015

<sup>68</sup> Chatham House, 2012, p5  
<<https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0112report.pdf>> accessed 7 October 2015

<sup>69</sup> Ibid, pp 3-4

<sup>70</sup> Ibid, p15

In the case of Somaliland, it has done this by promoting democracy and economic development, and engaging with the Somaliland government as a regional administration.<sup>71</sup>

This approach is interesting since it stops short of supporting secession, yet demonstrates an appreciation that a more regional, bottom-up solution to state failure in Somalia is needed. The important point to note here is that whilst the attitude of the international community toward secession from failed states is still anti-secession in this case, the USA has begun to notice the importance of sub-national government. Even if this is not supportive of secession, it could be indicative of a gradual move towards engagement with secessionist movements from failed states. It also shows an erosion of legitimacy on the part of the TFG, in that it essentially means that the USA was aware that the TFG's powers were limited and that belief in the TFG by Somalis was far from universal. If this has been recognised by third parties, then the legitimacy of the TFG was at the very least weakened. This is even the case with parties which recognised the TFG as the government of Somalia, if they also recognised that there are other sources of power in the country powerful enough to warrant engagement.

This analysis has revealed that the legitimacy of the Transitional Federal Government was questionable to say the least. It was reliant on outside help to face the myriad challenges to its power, the most aggressive of which coming from Al-Shabaab. Even when it did exercise its power, it is not always in the interests of providing security for its citizens. Add to this the fact that few Somalis believed in the legitimacy of the TFG

---

<sup>71</sup> Geldenhuys, 2009, p142

(as shown by challenges made to the TFG by Puntland amongst others), and the belief that other, regional sources of power were more legitimate (most notably in Somaliland), and it becomes apparent that the power of the TFG could claim neither monopoly nor legitimacy. Despite this, as already stressed, the TFG was the internationally recognised government of Somalia. This raises the ethical question over whether territorial integrity still trumps self-determination when there is an observable lack of legitimacy in the parent state.

### The Federal Government of Somalia.

In 2012 the government of Somalia transitioned into the Federal Government of Somalia (FGS). The lower house of said government, the House of the People, uses the 4.5 formula drawn up by the TFG, representing the clans, whilst the upper house, is structured to represent the states.<sup>72</sup> It is noted by UNSOM that the seats in the upper house would be voted for by the State Assemblies individually, but that ‘special arrangements’ would be made for the Somaliland region.<sup>73</sup> Whilst Somaliland is ostensibly represented in the FGS, there has been consternation from Hargeisa that the representatives of Somaliland in Mogadishu are not, in fact, representative of the region and therefore have questionable legitimacy.<sup>74</sup> The representatives in the FGS are not directly elected by the citizens of their regions, but voted for by clan elders and ‘electoral delegates’.<sup>75</sup> The representatives for Somaliland have further questions over their

---

<sup>72</sup> UNSOM Fact Sheet on Somalia’s 2016 Electoral Process 23<sup>rd</sup> October 2016  
<<https://unsom.unmissions.org/fact-sheet-somalia%E2%80%99s-2016-electoral-process>>  
accessed on 17<sup>th</sup> July 2017

<sup>73</sup> Ibid.

<sup>74</sup> Peter Chonka “‘Regional’ representation and resistance: Is there a relationship between 2017 elections in Somalia and Somaliland?” *Life and peace Institute* 3<sup>rd</sup> March 2017 <<http://life-peace.org/hab/regional-representation-and-resistance-is-there-a-relationship-between-2017-elections-in-somalia-and-somaliland/>> accessed on 17<sup>th</sup> July 2017

<sup>75</sup> Ibid.

legitimacy as they were chosen in Mogadishu and not in Somaliland, whereas other states' representatives were chosen in their own states.<sup>76</sup> Further illegitimacy has been alleged through claims of Hargeisa suggesting that Mogadishu has selected 'fake elders' for the process, in that they are not from the Somaliland region but from Mogadishu.<sup>77</sup> Somaliland still refuses to take part in the process of forming a united government in Mogadishu.<sup>78</sup>

The legitimacy of the FGS is further brought into question by the fact that a one-person-one-vote election was promised for 2016, yet that year arrived, and such an election has yet to be held.<sup>79</sup> The democratic deficit of the FGS is apparent by the number of people it was chosen by: "In 2012, 135 clan elders chose the MPs who then chose the president. This time [2016], 14,025 people will choose the MPs, significantly less than 0.2% of the population. And those 14,025 were chosen by just 135 clan elders."<sup>80</sup>

This shows a lack of capacity and ability to govern, and an inability to provide political goods that in turn undermine the legitimacy of this government.

Furthermore, it would appear that the FGS are still incapable of providing security in Somalia and there are reports from the BBC of Somalis losing the belief in the legitimacy of the FGS. The FGS is entirely reliant on the AU and Ethiopia for support and the BBC

---

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Mary Harper "Somalia's rocky road to democracy" *BBC* 19<sup>th</sup> October 2016  
<<http://www.bbc.co.uk/news/world-africa-37482832>> accessed 18<sup>th</sup> July 2017

<sup>80</sup> Ibid.

reports that even with this support there is dissatisfaction with the ineffectiveness of federal troops in combating Al-Shabaab in comparison with local militias, which has led to calls for greater autonomy, or even secession, taking Somaliland as a precedent.<sup>81</sup>

The foregoing observations note a lack of legitimacy of the FGS, despite attempts to make the government more representative and increase its control over Somalia, similar control and legitimacy issues experienced by the TFG remain. The fact that such issues remain, combined with the fact that the establishment of the FGS is so recent and therefore the government is arguably unproven, mean that this thesis looks at both the TFG and FGS when assessing the legitimacy of the Mogadishu government.

#### Current attitudes towards sovereignty in Somalia and recognition of Somaliland.

It is now necessary to examine in detail exactly how the sovereignty of Somalia and the secession of Somaliland has been approached in this instance so as to analyse the ethical and practical questions surrounding said approach to secession from a failed state. Whilst the FGS and the TFG before it were the sole recognised governments of Somalia, foreign forces are still active within Somalia. Indeed, as seen earlier, they are considered necessary to the existence of the Mogadishu government. This would suggest a compromise to the country's sovereignty. Despite this, Somaliland remains unrecognised.

---

<sup>81</sup> Mary Harper, *BBC*, 2017 <<http://www.bbc.co.uk/news/world-africa-39855735>> accessed 21<sup>st</sup> July 2017

Before examining the arguments for and against the recognition of Somaliland in detail, it is important to objectively analyse initiatives to stabilise Somalia with the country in one piece. The chapter has already discussed this to an extent, having considered the foreign interventions that have taken place in Somalia, the makeup of the TFG/FGS and the American ‘double-track’ strategy. However, it is now important to examine the negotiations and actions that demonstrate how international actors intend to resolve the internal conflict and how they intend to unify Somalia and Somaliland, if indeed there are any clear intentions at all.

As mentioned, the FGS and the TFG before it have been the internationally recognised governments that have been supported as the sole government of a unified Somalia. So now it is important to consider the nature of this support. Whilst a united Somalia is supported, the relevant actors are aware that achieving such a feat will be difficult, and have implemented various military and political initiatives in an attempt to accomplish this by stabilising the country. For example, the United Nations supports African Union military peacekeeping action.<sup>82</sup> The latest developments include the UN promoting law and order (at least in the capital) by providing medical support to the Somali National Police.<sup>83</sup>

The UN Integrated Strategic Framework (ISF) 2014-2016 re-iterates UN support for a united Somalia: “The overall vision of the ISF... is to support the Somali process of

---

<sup>82</sup> UN: “Expanding role of UN Office in Somalia will require increased investment, Security Council told” UN News Centre 14 October 2015  
<<http://www.un.org/apps/news/story.asp?NewsID=52266#.VikyfX6rTIU>> accessed on 22 December 2015

<sup>83</sup> Ibid.

establishing a sovereign, secure, democratic, united and federal Somalia”.<sup>84</sup> However, the same document made a reference to a certain degree of engagement with Somaliland.

The ISF aims to achieve the following:

1. Inclusive politics: Build a politically stable and democratic Somaliland that adheres to the principles of good governance.
2. Security: Build professional, capable, accountable and responsive Somaliland security institutions that operate in service of the rights, obligations and protection needs of all sectors of society, while safeguarding deep-rooted peace and stability.
3. Justice: Improve access to an efficient and effective justice system for all.
4. Economic Foundations: Strengthen the management of Somaliland’s natural, productive and human resources, and create an enabling economic and financial environment to maximise economic growth and participation in the regional and global economy.
5. Revenue and Services: Build public service capacity to raise revenues, manage resources and ensure the provision of streamlined quality services in an accountable and transparent manner that guarantees inclusiveness and equity.<sup>85</sup>

While these objectives can be seen to strengthen Somaliland as a state along with its government, security and economy, it can be claimed that Somaliland already has a head start on the rest of Somalia in these areas.<sup>86</sup> The UN’s intentions towards Somaliland are thus unclear, since it still supports a united Somalia and therefore would not support recognition of Somaliland. This raises the following question: does the UN intend to strengthen the government, economy and security of Somaliland as a federal unit of

---

<sup>84</sup> United Nations Somalia Integrated Framework 2014-2016 p9  
<<https://unsom.unmissions.org/Portals/UNSOM/Somalia%20ISF%202014-2016%20FINAL%20signed.pdf>> accessed on 23 October 2015

<sup>85</sup> Ibid.

<sup>86</sup> Chatham House “Somaliland’s Place in the World” Africa Programme Conference Summary, December 2011, p2  
<<https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/1211confsummary.pdf>> accessed 23 October 2015

Somalia? This is unclear in the ISF document, but seems likely as the ISF does invoke a commitment to federalism.<sup>87</sup> This could prove difficult, as referendum results show Somaliland seems committed to independence.<sup>88</sup> This has resulted in an impasse between Somalia, Somaliland and the international community, and has left the status quo as a stalemate whereby Somaliland remains unrecognised but is *de facto* independent, providing an obstacle to a united Somalia.

Whilst neither the UN nor any of the members of the UN General Assembly have recognised Somaliland, a number of important people and organisations, sometimes governmental, have advocated its recognition. Indeed, in 2004 the British Member of parliament Tony Worthington brought the issue of recognition of Somaliland to the House of Commons.<sup>89</sup> Worthington visited Somaliland a number of times on fact-finding exercises with the Select Committee on International Development and came to the conclusion that, as corroborated earlier, Somalilanders do not wish to be associated with the conflict in the south. In the Commons he stated that the British Government should:

[S]top waiting...for the Somalis to come together...This is not going to happen. We should build on the one source of strength in the area—Somaliland. We should reward good behaviour, rather than neglect the area as we do at the moment. If recognising Somaliland is a step too far, we should at the very least pay substantial attention to the needs of Somalilanders in areas such as education, health, livestock, water and the infrastructure.<sup>90</sup>

---

<sup>87</sup> ISF p9 <<https://unsom.unmissions.org/Portals/UNSOM/Somalia%20ISF%202014-2016%20FINAL%20signed.pdf>> accessed 23 October 2015

<sup>88</sup> Ben Farley "Recognition of Somaliland Overdue" *World Politics Review* 26 January 2011 <<http://www.worldpoliticsreview.com/articles/7673/recognition-of-somaliland-overdue>> accessed 25/10/2015

<sup>89</sup> Tony Worthington MP, Hansard, 4 February 2004, Column 273WH <<http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040204/halltext/40204h03.htm>> accessed 3 November 2015

<sup>90</sup> Ibid, Column 276WH

In the same Commons session, Tony Baldry MP backed up the view that a union supported by Somaliland was unlikely. This was based on Somalia's historical persecution of Somaliland in general, and Hargeisa in particular, under Barre's regime.<sup>91</sup>

While this stops short of endorsing recognition, it does not rule out Worthington's support for recognition. It also demonstrates that whilst the British government does not recognise Somaliland, there are those within it that support the *de facto* state. Further to this, Anthony Robathan MP when talking of potential dangers to Somaliland, including a conflict with Puntland, was quoted as saying "The conflict could destroy the Republic of Somaliland, and I am sure that we would not wish that to happen."<sup>92</sup> This would appear to be a statement in support of the existence of Somaliland, and whilst it does not explicitly voice support of recognition, it is difficult to see what else could be meant.

Explicit support for recognition was given by Quentin Davies MP, who suggested that Somaliland deserved British aid due to their efforts to create peace in the region. He stated that:

Although the Government should spend taxpayers' money on contributing to the development of Somaliland, it would be perverse and crazy to do so while by political action or deliberate political inaction—a refusal to recognise—they are cutting Somaliland off from a considerable amount of private sector money that otherwise would flow there.<sup>93</sup>

---

<sup>91</sup> Ibid, Columns 278WH & 279WH

<sup>92</sup> Ibid, Column 284WH

<sup>93</sup> Ibid, Columns 286WH & 287WH

It must be noted however that this debate would not have a direct influence on foreign policy, and any policy made by the Foreign and Commonwealth Office would have to take into account the international ramifications with regard to relations with other states and organisations, most notably the AU. However, it shows that there is clear support for recognition within the British government and that some of the ethical issues surrounding the secession of Somaliland are noted by these politicians, even if it does not have a direct effect on the UK's policy of recognition.

However, despite this support, the dangers of British recognition of Somaliland were laid out. Firstly, Worthington mentions the AU's objection to altering colonial borders, but quickly counters this by pointing out that the secession of Somaliland would in fact mean reverting to colonial borders rather than altering them.<sup>94</sup> Further issues were raised later in the debate. John Barrett MP noted that were the UK to recognise Somaliland it could be accused of regressing to the use of colonial influence, stating that African countries must take the lead in any recognition of Somaliland.<sup>95</sup> In addition to this, the fear of setting a precedent for other secessionist movements was raised, Barrett suggesting that the issues of recognition and support through aid be separated.<sup>96</sup> In terms of how the governments approach secession from failed states, this shows that support from members of a particular government and an awareness of some of the ethical issues surrounding the secession were not in this case sufficient to influence policy to the extent of moving towards recognition. Nevertheless, this can depend on the level of support

---

<sup>94</sup> Ibid, Column 275WH

<sup>95</sup> Ibid, Column 288WH

<sup>96</sup> Ibid.

and the length of the process, as will be seen with regard to South Sudan in the next chapter.

Staying with the UK, it is important to note that whilst the British Government has yet to do so, one sub-governmental authority has recognised Somaliland: Sheffield City Council. This is in no small part due to the influence of the Somaliland diaspora in the city.<sup>97</sup> To a small extent at least, this shows that lobbying, in this case from diaspora, is a practical issue that can influence whether a secession becomes recognised. The size and power of said lobby can vary, and the bigger and more powerful the more significant the influence. The influence of lobbying will be seen again with South Sudan.

Whilst the African Union's concerns about setting a precedent to other secessionist movements and "stirring up more chaos in Somalia" would appear to be major obstacles to widespread recognition of Somaliland, their position does not seem to be completely immovable.<sup>98</sup> A 2005 fact-finding mission by the AU declared that Somaliland 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.'"<sup>99</sup> This indicates there is potential for the AU's attitudes to secession from failed states to change. If such a change were to occur it appears likely that other countries would follow suit, as indicated by John Barrett MP in the aforementioned commons debate. Further positive overtures were given by

---

<sup>97</sup> Magnus Taylor "Why Sheffield is Throwing its Weight Behind Somaliland" *The Guardian* 15 April 2014 <<http://www.theguardian.com/world/2014/apr/15/why-sheffield-is-throwing-its-weight-behind-somaliland>> accessed 5 November 2015

<sup>98</sup> Marc Lacey "The Signs Say Somaliland, but the World Says Somalia" *New York Times* 5 June 2006, <[http://www.nytimes.com/2006/06/05/world/africa/05somaliland.html?\\_r=0](http://www.nytimes.com/2006/06/05/world/africa/05somaliland.html?_r=0)> accessed 06/11/15

<sup>99</sup> Ibid.

the AU when they stated in a 2005 report that: “[C]ompared to ‘other regions of Somalia’, Somaliland had experienced relative peace and stability and ‘made significant headway in the fields of health, education and economic management’.”<sup>100</sup> Whilst this has shown no signs so far of leading to recognition, it does constitute a degree of acknowledgement of the Hargeisa government’s legitimacy (in terms of governing the claimed Somaliland territory) in comparison to Mogadishu.

It appears that if a breakthrough occurred and a country recognised Somaliland, then others could follow. Indeed, Ethiopia has stated that as soon as one country recognises Somaliland, they will be the second to do so.<sup>101</sup> However, such support can be seen as a double-edged sword for Somaliland, as support from one country could prevent support from another should these countries be rivals or relations between them be strained. Christopher Albin-Lackey of Human Rights Watch argues that this is the case with Somaliland, since Egypt and other various Arab states are reportedly reluctant to recognise Somaliland.<sup>102</sup> This is because it is seen as an ally of Ethiopia, a country that the aforementioned states see as a potential regional rival.<sup>103</sup> This shows that the interests of regional actors are a practical issue that needs to be considered in the recognition of secession from failed states. It was seen in the first chapter with regards to Kosovo that a recognition stalemate can arise when there is support for and opposition to recognition from different countries. In general, given the overall sway towards support for territorial integrity amongst states, it seems as though the majority of states within the international

---

<sup>100</sup> Geldenhuys, 2009, p136

<sup>101</sup> Andrew Robathan MP, Hansard 4 February 2004, Column 276WH, <<http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040204/halltext/40204h03.htm>> accessed 17 November 2015

<sup>102</sup> Christopher Albin-Lackey “*Hostages to Peace*”: *Threats to Human Rights and Democracy in Somaliland* (Human Rights Watch, 2009) p51

<sup>103</sup> Ibid.

community come down on the side of non-recognition when such stalemates occur. This is evident from the fact that both Kosovo and Somaliland are yet to be formally recognised by the UN. Indeed, there has been limited engagement with Somaliland from countries such as Ethiopia (who run a trade office in Somaliland), Ghana, the USA and the UK (who have sent parliamentarians to Somaliland), Italy, South Africa, Norway and Djibouti, who have received former Somaliland president Dahir Riyale Kahin. However, this has not translated into recognition, and Ethiopia and Djibouti, despite this engagement have been reluctant to support Somaliland's claim to statehood, the latter explicitly supporting the Mogadishu government. This further shows a predilection of states to support the parent state over secessionist claims in situations such as this.<sup>104</sup>

Earlier the chapter began to discuss the USA's approach towards Somaliland with its 'dual-track' policy. According to the US Department of State, the official policy regarding recognition of Somaliland is to follow the lead of the African Union, who to date have withheld recognition based on the fear of setting a precedent to other potential secessionist movements.<sup>105</sup> This has not prevented the US from engaging with Somaliland, as has been seen, but is important because it cements the position that full recognition will not take place without the approval of the AU.<sup>106</sup>

From the foregoing analysis, it is observable that Somaliland does have a relatively strong claim to independence on both ethical and practical grounds despite the lack of

---

<sup>104</sup> Geldenhuys, 2009, pp141-2

<sup>105</sup>US Department of State: United States Policy on Somaliland 5 December 2007 <<http://2001-2009.state.gov/p/af/rls/fs/2007/96359.htm>> accessed 17 November 2015

*The Economist* 9 January 2014

<<http://www.economist.com/blogs/baobab/2014/01/somaliland>> accessed 17 November 2015

<sup>106</sup> Geldenhuys, 2009, p142

recognition. Two notable observations which support independence are the facts that Somaliland was a separate colonial entity to Somalia, and that the referendum held on its constitution reaffirmed a commitment to independence.<sup>107</sup> The chapter now goes on to analyse the case for the recognition of Somaliland despite the attitudes of the international community.

### Somaliland: The Case for Recognition.

Despite being unrecognised by a single state since it declared independence in 1991, a number of academics, journalists and politicians such as Tony Worthington MP have argued in favour of recognising Somaliland's independence. Here the chapter examines some of these arguments, such as the initial rationale for secession, which can be linked with the remedial right to secede. The relative stability of Somaliland is considered as a factor, while the referendum on the Somaliland constitution and independence is examined in order to establish whether it adds legitimacy to the claim for independence. Rebuttals to arguments against recognition are also examined. This analysis will test the logic of the attitude of the international community toward secession from failed states, so that we can further assess the international community's rationale and the consistency of their approach.

The relative peace and stability of Somaliland can be used as an argument for its independence and recognition, which relates in part to arguments made in Chapter 2 surrounding the social contract and legitimacy. Following the fall of Barre and the subsequent civil war Somalia's central government, if there was one, was not protecting

---

<sup>107</sup>Ibid, p138

the security of Somalilanders. Indeed, the Isaaq had been persecuted prior to the fall of Barre, as seen earlier in the chapter.<sup>108</sup> These two issues would serve to make Somalilanders very sceptical and wary of any Mogadishu government that would claim to represent them and provide security for them.

As was seen in Chapter 2 Max Weber believed legitimacy was bestowed by belief in legitimacy on the part of the subordinate, and the persecution under Barre and the subsequent anarchy would very much undermine that belief. Under John Locke's right to revolution, which was also seen in Chapter 2, if a sovereign is not upholding its side of the social contract and failing to provide security for its citizens, then said citizens have a right to look for a new sovereign. Under the remedial right to secede, according to Allen Buchanan, this can include secession. These parameters would appear to have been met in the case of Somaliland, as Somaliland appears to uphold the security of its citizens more effectively than the TFG did or the FGS has so far. However, the secession remains unrecognised. This demonstrates that remedial secession is not always enough to ensure recognition from the international community, and a parent-state can retain support for its territorial integrity despite a lack of legitimacy.

It is not only the lack of legitimacy of the FGS and the TFG before it that strengthens Somaliland's claim for independence, but the comparative legitimacy of the Somaliland government in Hargeisa. An overwhelming majority (97%) of the population of

---

<sup>108</sup> Halden, 2008, pp24-25  
Tony Worthington MP, Hansard, 4 February 2004, Column 273WH  
<<http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040204/halltext/40204h03.htm>> accessed 19 April 2012

Somaliland voted in favour of the constitution, which reaffirmed support for independence.<sup>109</sup> This shows a firm belief in the legitimacy of the government, backed up by the fact that the referendum in question was deemed free and fair by international observers.<sup>110</sup> However, these observers were too few to monitor all parts of Somaliland, and the Sool and Sanaag regions in particular were not monitored.<sup>111</sup> This is important because Sool and Sanaag are disputed by Puntland. This issue has the potential to seriously undermine Somaliland's legitimacy and claim to independence. Until the views of those living in all the regions are heard, states and the AU will fear recognising Somaliland, at least by the former colonial borders it claims, for fear of igniting conflict. Should the populace of these regions not support the Hargeisa government, then Somaliland's legitimacy would be undermined as there would be a lack of belief in Somaliland's legitimacy in these regions. It also brings up an issue seen in Chapter 2: the problem of minorities from a parent-state who are 'caught up' within the territory of a secessionist state. It certainly appears to be the case that certain people in these regions wish to associate more with Puntland than Somaliland, particularly amongst the Dulbahante and Warsangeli clans.<sup>112</sup> Indeed, several thousands of people have been displaced by the conflict.<sup>113</sup> However, it appears that this conflict has not been a major reason for non-recognition, at least on the part of the United States.<sup>114</sup> This ethical and practical problem appears common in secession; it was the case in the Balkans, most noticeably with Bosnia-Herzegovina where an entire sub-national entity needed to be

---

<sup>109</sup> Ben Farley "Recognition of Somaliland Overdue" *World Politics Review*, 26 January 2011

<sup>110</sup> Matt Bryden "State-Within-a-Failed-State: Somaliland and the Challenge of International Recognition" in Paul Kingston and Ian Spears (eds), *States Within States: Incipient Political Entities in the Post-Cold War Era* (New York: Palgrave Macmillan, 2004) p178

<sup>111</sup> Ibid.

<sup>112</sup> Jonathan Paquin *A Stability-Seeking Power: U.S. Foreign Policy and Secessionist Conflicts* (Montreal: McGill, Queen's University Press, 2010) p162

<sup>113</sup> IRIN: "Somaliland Clashes Displace Thousands" 23 July 2010

<<http://www.irinnews.org/report/89941/somalia-somaliland-clashes-displace-thousands>>

accessed 20 November 2015

<sup>114</sup> Paquin, 2010, p162

created in order to placate the minority.<sup>115</sup> Whilst minority problems and the associated conflict do need to be addressed, the example of the Balkans, particularly Bosnia, show that it is not so much of a significant factor in determining whether a state is recognised or not.

An aspect of Somaliland that also validates its legitimacy as a state is the fact that it has held democratic elections, and can thus make claims of being representative of its people. Internationally observed presidential elections were held in 2003 and parliamentary elections were held in 2005.<sup>116</sup> Whilst the 2008 election was postponed, ostensibly due to the need to allow time for voter registration, the fact that all three parties in the legislature agreed to this shows that this was not necessarily an undemocratic move.<sup>117</sup> Whilst there have been reports of suppression of journalists and imprisonment of members of a non-registered party (who were later pardoned),<sup>118</sup> the democratic mechanisms in Somaliland contrast with the Federal Government of Somalia which, as seen, has yet to hold an election where the representatives are directly elected by their people.

A major point in support of recognition of Somaliland is that it has seceded along pre-existing borders, it being a former British colony that was independent for five days in 1960 before uniting with the Somalia that had formerly been Italian Somaliland. This

---

<sup>115</sup> Alberto Nardelli, Denis Dzidic and Elvira Jukic "Bosnia and Herzegovina: The World's Most Complicated System of Government" *The Guardian* 8 October 2014  
<<http://www.theguardian.com/news/datablog/2014/oct/08/bosnia-herzegovina-elections-the-worlds-most-complicated-system-of-government>> accessed 24 July 2015

<sup>116</sup> Geldenhuys, 2009, p138

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

has been used as an argument for recognition from prominent figures and organisations, including Tony Worthington MP and the Senlis international think tank.<sup>119</sup> This argument rebuts the objections of those such as the AU based on the need to maintain colonial borders, since the borders claimed by Somaliland are indeed its former colonial borders.<sup>120</sup> This would appear to greatly strengthen Somaliland's claim for recognition, as it counters the argument against altering colonial borders. It is also the case that, since Somaliland and Somalia were at one point separate entities, however briefly, that the declaration of independence of Somaliland could be seen more as the dissolution of a union rather than a secession along the lines of the breakup of Czechoslovakia, the independence of Montenegro and the referendum on Scottish independence.<sup>121</sup>

The border dispute with Puntland challenges this argument however. Somalia and thus Puntland see the colonial border as a sub-national border, and if it is disputed then it makes it difficult for Somaliland to claim that it is reverting to colonial and pre-union borders. This is because Puntland claims that the border is now different, and Somaliland, not being independent in their eyes, cannot therefore claim its former border. However, this does not change the fact that the border claimed by Somaliland is the former colonial border and the pre-union border. As already seen, the border dispute does not seem to be a major reason for the USA's non-recognition; however, this does not necessarily

---

<sup>119</sup> Paul Reynolds "Somaliland's 'Path to Recognition' *BBC* 25 April 2008  
<<http://news.bbc.co.uk/1/mobile/world/africa/7365002.stm>> accessed on 24 November 2015

Tony Worthington MP, Hansard, 4 February 2004, Column 273WH  
<<http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040204/halltext/40204h03.htm>> accessed 24 November 2015

<sup>120</sup> Somaliland Law- Somaliland International Boundaries  
<[http://www.somalilandlaw.com/somaliland\\_boundaries.html](http://www.somalilandlaw.com/somaliland_boundaries.html)> accessed 24 November 2015

<sup>121</sup> The referendum on Scottish independence did not result in independence of Scotland, but the referendum was nonetheless recognised by the parent-state (UK), showing recognition of Scotland's right to dissolve the union if voted for.

reflect the view of other states. The concerns with the Sool and Sanaag regions do highlight the issues of recursive and sequential secession, as the Chatham House think-tank stated: “The separatist movement Sool, Sanag and Cayn (SSC) demonstrates that the trend for micro-entities in the rest of Somalia also impacts on Somaliland.”<sup>122</sup> This demonstrates that whilst the border dispute between Somaliland and Puntland may not be a major barrier to recognition, it is indeed an issue that needs to be taken into account.

These arguments show that there is indeed a strong case for the recognition of Somaliland, and the major arguments of the international community such as issues over colonial borders can be countered. However, issues such as the concerns over the Sool and Sanaag regions indicate that should actors within the international community move towards recognition, major issues would need to be taken into account, and provisions for minority rights, as noted in the previous chapters, would need to be taken into account.

## Chapter Conclusion

This chapter has demonstrated that the legacy of Barre, the fractured nature of the clan system and the ongoing civil war have made Somalia ripe for both state failure and secession due to disunity and distrust. Attempts to create a functioning legitimate government have had very limited success due to this disunity and distrust; it has generally been the case that certain clans or groups have felt under- or un-represented, which has led to a legitimacy crisis. It has been established in this chapter that a lack of belief in the legitimacy of the TFG and FGS is felt amongst the Somalis, particularly in

---

<sup>122</sup> Chatham House, 2011, p3

Somaliland. The fact that the FGS and the TFG before it appear unable to protect the security of Somalis also detracts from its legitimacy. With this in mind, Somaliland would appear to have a convincing case for recognition, especially when one considers the overwhelming support for its government by its citizens and the relative stability of the country.

Despite this, states still refuse to recognise Somaliland. The main reason given for this is the reluctance to set a precedent by changing borders, thus inviting further fragmentation of states and a breakdown of the international system of states. The AU has been vocal on this subject, arguing that former colonial borders are inviolable and unchangeable. Nonetheless, this chapter has also shown that the borders claimed by Somaliland *are* in fact former colonial borders, which undermines the stance of the AU and the wider international community. In turn, Somaliland's argument can be countered by border disputes from neighbouring Puntland. However, in the past states have gone ahead and recognised secessionist states which have contained minorities who do not identify with the secessionist state, Bosnia-Herzegovina being an example of this. States have also recognised secessionist states in which there are ongoing border disputes with the parent-state, such as South Sudan, an African secession not based on breaking along former colonial borders. It is this secession which the thesis now goes on to examine.

## Chapter 5- Case Study: Sudan

This case study offers a new perspective on the ethical and practical questions surrounding the current approach towards secession from failed states. Whilst Somaliland is yet to be recognised despite its strong claim for independence and weak, borderline non-existent parent-state, South Sudan was granted independence in 2011 and has been subsequently recognised by all UN member states and has gained UN membership. The chapter assesses the nature of Sudanese state failure and examines how South Sudan came to be recognised in the midst of such state failure, which will allow for a more informed assessment of how secession from failed states is approached by states and organisations. This is because it provides insight regarding whether the elements of Sudanese history that led to its failure as a state and subsequent breakup, such as ethnic and religious divisions and the civil war, influenced the decision of the international community to recognise South Sudan.

Prior to the secession of South Sudan, there was a clear ethnic split within the country. Unlike Somalia, which is ethnically homogeneous, Sudan had two major ethnic groups. The Arabs of the north had been the dominant group in the united Sudan, holding the majority of the wealth and positions of power. However, whilst the North and South had been administered separately under colonisation, in contrast to Somalia and Somaliland they remained a single colonial entity.<sup>1</sup> It is also notable that unlike Somalia, where the FGS and TFG before it have had arguably less control over its territory than any other

---

<sup>1</sup> Anthony J. Christopher, "Secession and South Sudan: an African precedent for the future?", *South African Geographical Journal* 93(2) 2011 pp.126, 128

government in the world, the Sudanese government in Khartoum had relatively speaking, considerably more control over its territory even prior to the secession of South Sudan. State failure was characterised in Sudan more by the lack of legitimacy of government force than the lack of monopoly.<sup>2</sup> That said, Khartoum still had extremely limited control over the South when the region was under its administration. It continues to be considered a very weak government, regularly appearing in the top three of the *Foreign Policy* failed states index.<sup>3</sup>

Of course, the most striking contrast between South Sudan and Somaliland is that South Sudan has achieved widespread recognition and UN membership. The thesis investigates why this is the case in the next chapter. This chapter must look at how Sudan failed as a state, which will inform as to how the South came to secede and be recognised as independent. Connections between the failure of Sudan as a state and reasons for South Sudan's recognition are also explored here. From this the thesis will be able to extrapolate a set of criteria that could lead to secession from a failed state, and potentially develop a number of conditions that must be met for such a secession to be recognised, which in turn will allow the thesis to examine the ethical and practical issues surrounding this approach.

---

<sup>2</sup> Paul D. Miller, "The Case for Nation-Building: Why and How to Fix Failed States" *Prism* 3(1) 2011 p70

<sup>3</sup> Jemera Rone, John Prendergast, Karen Sorensen, *Civilian Devastation: Abuses by All Parties in the War in Southern Sudan* (New York: Human Rights Watch, 1994) p23

Failed States Index 2013, *Foreign Policy*  
<[http://www.foreignpolicy.com/articles/2013/06/24/2013\\_failed\\_states\\_interactive\\_map](http://www.foreignpolicy.com/articles/2013/06/24/2013_failed_states_interactive_map)>  
accessed 31 July 2013

Identity was one factor which had a significant impact on Sudan's state failure and subsequent split. If a people do not ethnically or culturally identify with a state, as the South did not identify with Khartoum, they will often seek independence, especially if they are subjugated by the government. As the South Sudanese diplomat Francis M. Deng stated:

[W]hat generates conflict is not the mere differences of identities, but the implications of those differences in the sharing of power, wealth, social services, employment and development opportunities. In virtually all of these areas, the South was totally neglected.<sup>4</sup>

The subjugation of a people in such a way can strengthen their identity and unity as they fight against their oppressors, and a case for remedial secession may appear evident. If a government is weak, as it can be in failed states such as Sudan, then any central government will find it hard to retain control of a separatist area. This relates to the legitimacy issues previously explored. Firstly, governments in these cases are not upholding their side of the social contract, undermining their legitimacy; secondly, the secessionists lack belief in the legitimacy of the government.

This chapter analyses the events that brought about the recognition of South Sudan in the following ways. It begins by examining, as mentioned, the history of the conflict and state failure, revealing how this conflict and state failure led to the secession and beginning to determine whether said conflict and state failure played a part in how South Sudan came to be recognised. This includes an analysis of the history of ethnic divisions

---

<sup>4</sup> Francis M. Deng "Sudan at the Crossroads" MIT Center for International Studies Audit of the Conventional Wisdom, 07-05, March 2007, p2

in the region, taking into account the area's colonial legacy, the civil war and the build-up to secession, including the obstacles faced by the parties involved and the negotiations that took place, and demonstrates exactly how the secession was handled by the actors involved. This approach is then examined in order to discover the reasons behind the recognition, and whether the case was treated differently because it was secession from a failed state, in turn looking at the ethical and practical questions surrounding this question. Finally, the last section will analyse the ethical and practical implications of the South Sudanese secession on the current approaches to recognition of secession from failed states in general. An important overall question for the chapter to address is what factors help transform the latent potential for secession from a failed state into international recognition? As seen with the case of Somaliland, the fact that the weak government of a failed state may find the prevention of secession difficult does not mean that the secessionist entity will be subsequently recognised by the international community. This chapter explores how South Sudan has managed to achieve recognition, as well as some of the consequences of their recognition.

### What is the nature of Sudanese state failure?

The roots of the failure of Sudan lie in no small part with its colonial legacy, a common feature amongst failed states. Sudan was under Anglo-Egyptian administration for many years.<sup>5</sup> The British, realising the diversity of peoples within Sudan, decided to administer the separate regions in different ways, with Christianity and the English language being encouraged in the South while the North remained Islamic and Arabic-speaking.<sup>6</sup> Importantly, the British had left a demarcated border between the two separately-

---

<sup>5</sup> Deng, 2007, p2

<sup>6</sup> Ibid.

administered regions, meaning that there was a clear territorial claim when the South's claim for independence came.<sup>7</sup> A push for unity following independence in 1956 led to the north pursuing a policy of 'Arabisation' and 'Islamicisation' in order "to mould the nation in the image of the North".<sup>8</sup> This in turn led to resistance from the South and a civil war that lasted until 1972.<sup>9</sup> The peace agreement that ended this conflict recognised the non-Islamic nature of the South, but this was short lived; in 1983 the Arab military government rolled out sharia law across the whole country, sparking another civil war as the South resisted.<sup>10</sup>

It is worth going back to the issue of colonisation, as it contributed to both the state failure of Sudan and also its subsequent split. There was animosity between the Arabs and the Southerners prior to colonisation, not least due to the subjugation through slavery that the South endured at the hands of the northern Arabs.<sup>11</sup> This highlights how deep-seated any resentment and desire for independence is likely to be, and supports the analysis conducted in Chapter 3 regarding how colonial powers used 'divide and rule' tactics to dominate their colonies as well as how such action exacerbated the ethnic divisions and demographic pressures that were seen in Chapter 3 to contribute to state failure. Once the Anglo-Egyptian regime came in to place, the Arabs were further empowered. The British Empire often employed the aforementioned 'divide and rule' strategies in their territories, and Sudan was no exception: "They did so by favouring high status 'Arab' males for the academic educations that would lead to administrative jobs, in the process co-opting

---

<sup>7</sup> Redie Bereketeab "Secession and Self Determination in Somaliland and South Sudan: Challenges to Postcolonial State Building" The Nordic Africa Institute, Uppsala, Discussion Paper 75, 2012, p10

<sup>8</sup> Christopher, 2011, p127

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Heather J. Sharkey, "Arab Identity and Ideology in Sudan: The Politics of Language, Identity and Race" *African Affairs*, 107(426), 2008, p28

these men and thwarting their resistance to the regime.”<sup>12</sup> In doing this the foundations for Arab nationalism were set down, due to the way that:

[T]he British cultivated a group of men who had the literacy and the political know-how to develop and articulate nationalist ideologies. Not surprisingly, these men defined a nation in their own social image, as an Arab Muslim community.<sup>13</sup>

The ingrained advantage that this gave the Sudanese Arabs widened the divisions between North and South. Resentment between the Southerners and the Arabs increased, in the case of the South due to their subjugation, the North allegedly due to their racism towards those in the South whom they saw as inferior and had at times enslaved.<sup>14</sup>

Significantly for the context of this thesis, the idea of Sudan as a nation state had its roots in the period of Anglo-Egyptian rule. It was under Anglo-Egyptian rule that the name ‘Sudan’ came to refer to a defined territory.<sup>15</sup> This territory would later become the state of Sudan and encompass all peoples within that territory, including a concentration of Arabs to the north. This set the conditions for the demographic pressures caused by arbitrary borders drawn up by colonisers who had little or no regard for the ethnicity, culture, tribe, clan or religion of the peoples within them.

Sudanese nationalism also raised its head during the period of Anglo-Egyptian rule. Until the 1930s the word ‘Sudanese’ had simply been used as an adjective to pertain to things of the colonial entity. However, now the word was being used amongst the people of the

---

<sup>12</sup> Ibid, p29

<sup>13</sup> Ibid, p30

<sup>14</sup> Ibid.

<sup>15</sup> Ibid, p31

colony (particularly the Arabs) to refer to themselves: “Nationalists adopted this usage and expanded it, seeking to ennoble the term ‘Sudanese’ as a badge of national identity, without necessarily destigmatizing the legacy of slavery [of Southerners] to which the term had originally referred.”<sup>16</sup> This nationalism may have helped to set the stage for the Arab push for national unity which followed decolonisation.

Arguably, the attempt to assimilate the South as a part of this push for national unity helped to fuel dissatisfaction and dissent amongst the people of the South, which led to the eventual call for secession. Indeed, it would appear that plans were being laid down for Arab dominance in a multi-cultural post-colonial Sudan even before independence. Muhammad Ahmad Mahjub, a leading nationalist who would go on to be a post-colonial prime minister, suggested that the other groups in the territory owed their ‘cultural superiority’ to the Arabs, and therefore the Arabic language and culture should be embraced by the whole of Sudan.<sup>17</sup>

Tensions between North and South heightened in the post-colonial era as the North asserted its dominance. Immediately following independence, the Sudanese government declared Arabic to be the state’s official language and Islam the official religion. Objections, such as the Southern Federal Party’s request that English and Christianity be included as an official language and religion alongside Arabic and Islam, were met with criminal prosecutions.<sup>18</sup> Arabisation was already beginning in the new country.

---

<sup>16</sup> Ibid.

<sup>17</sup> Ibid, p33

<sup>18</sup> Ibid, pp34-35

Arabisation had a distinct impact on the eventual state-failure of Sudan, particularly in the case of language, since “In the Sudan, issues of language, culture, religion and race are so closely interlinked as to be inseparable.”<sup>19</sup> In trying to force the Arabic language on the non-Arabic speakers of the South, many Southerners felt they were being deprived of their identity. This led to ill-feelings towards the north, which were a significant factor in the roots of the civil wars and subsequent state failure and split.

This discussion has demonstrated that Arabisation undermined the legitimacy of the Sudanese state, as the people of the South did not give their consent to be ruled. It also revealed that non-Arabs lacked representation, meaning that the ‘failure of recognition clause’ seen in Chapter 2 could be invoked here. It is also evident that while the ethnic division contributed to state failure and the secession of South Sudan, the fact that the South was denied an identity and representation were also factors. This also explains why some ethnically-divided post-colonial states have strong secessionist movements, and others do not.

Importantly for this thesis, many in the South saw this subjugation by the North as a form of occupation: “[W]hat Northern politicians regarded as policies of national unity, many Southern intellectuals regarded as cultural colonialism, precisely because they had no choice or voice in the matter.”<sup>20</sup> This again shows a lack of legitimacy on the part of the Khartoum government, as the South did not consent to being ruled. If this was indeed the

---

<sup>19</sup> Ibid, p26

<sup>20</sup> Ibid, p36

case, then it further justifies the eventual secession of South Sudan and legitimises the case for independence, going on the precedents seen in the analysis of decolonisation and self-determination in Chapter 1. This is because the aforementioned subjugation can be described as “[t]he subjection of peoples to alien subjugation, domination and exploitation”, which as seen in Chapter 1 is contrary to the UN Charter and Declaration on the Granting of Independence to Colonial Countries and Peoples.<sup>21</sup>

Framed in this context the independence of South Sudan could be seen as decolonisation, or a split in a union, rather than secession. This would make it similar to the Baltic States, who encountered little difficulty in gaining recognition from the international community. This echoes one of the arguments for the secession of Somaliland, that it was a different colonial entity prior to decolonisation, and its subjugation in the union with Somalia under Barre could arguably be described as “alien subjugation, domination and exploitation”.<sup>22</sup>

However, while Somaliland was a separate colonial entity to the rest of Somalia, South Sudan was considered to be part of the same colony as the rest of Sudan, even though it was administered in a different way. On the face of it this would imply that Somaliland has a stronger claim. Of course, as noted, South Sudan was granted recognition and Somaliland has yet to achieve this. This suggests that other elements are at play; however, as has been seen, successful secession is often the result of a combination of factors, of

---

<sup>21</sup> UN “Declaration on the Granting of Independence to Colonial Countries and Peoples” Assembly resolution 1514 (XV) 14 December 1960,

<<http://www.un.org/en/decolonization/declaration.shtml>> accessed 20 August 2014

<sup>22</sup> *Ibid.*

which the argument of South Sudan being a separate entity could be one. Additionally, whether the cases of Somaliland and South Sudan constitute liberation or secession is somewhat open to interpretation. Finally, given the pragmatic and political nature of the international community's attitude towards secession, these situations can be interpreted in ways that suit the interests of states and organisations within the international community.

#### The Civil Wars.

It is worth going into some detail over the origins, events and, most importantly, the consequences of the civil wars that occurred in Sudan between the North and South between 1955 and 2005. The civil wars are particularly significant as they highlight the attitudes of the groups involved in the conflict towards each other and towards self-determination. Some of the origins and events of the conflicts show grounds for a potential remedial secession for the South, which could also be supported by the subjugation they endured under colonisation and in the immediate post-colonial period. Studying the consequences and outcomes of the civil wars can further the understanding of how the movement towards the eventual secession gained momentum. Indeed, a common definition of state failure is the loss of monopoly on the use of violent force, as seen in Chapter 3, and so civil war and state failure are arguably synonymous. This view is backed up by diplomat Francis M. Deng who, unlike those such as Anthony J. Christopher who talk of two separate civil wars, suggest that the Sudanese civil war

persisted on and off more or less from shortly before independence in 1955 until the Comprehensive Peace Agreement was signed in 2005.<sup>23</sup>

The 'first' civil war, or the beginning of the perpetual civil war, depending on how the conflicts are viewed, actually began slightly before independence. In 1955 mutiny broke out in a Southern garrison as it was being transferred from British control to the Northern administration, which went on to spark the Anyanya separatist movement.<sup>24</sup> The Anyanya (or Anya-Nya) were founded by Joseph Lagu, and came to the fore in 1963 as the military wing of the South Sudan Resistance Movement (SSRM).<sup>25</sup> As seen earlier in the chapter, this 'first' civil war could be said to end in 1972 when the Addis Ababa accords were signed. These accords are particularly important to this chapter since they recognised the autonomy of the South for the first time since independence.<sup>26</sup>

However, as seen in Chapter 2, autonomy is not necessarily independence. A people can have autonomy and a degree of self-determination within a state without being recognised as an independent sovereign state by the international community, it was regional autonomy that the South achieved in the Addis Ababa accords.<sup>27</sup> While history shows that the Addis Ababa agreement was short-lived, that the South had got to this agreement meant they had gained a foot in the door. They had achieved regional

---

<sup>23</sup> Francis M. Deng, "Sudan - Civil War and Genocide- Disappearing Christians of the Middle East" *Middle East Quarterly* (8)1, Winter 2001, pp.13-21 also

<<http://www.meforum.org/22/sudan-civil-war-and-genocide>> accessed 25 July 2013

<sup>24</sup> D. Michelle Domke, "Civil War in the Sudan: Resources or Religion?" ICE Case Studies 3 American University, November 1997 <<http://www1.american.edu/ted/ice/sudan.htm>> accessed 25 July 2013

<sup>25</sup> David H. Shinn "Addis Ababa Agreement: was it destined to fail and are there lessons for the Current Sudan Peace Process?" *Annales d'Ethiopie* 20, 2004, p240

<sup>26</sup> Domke, 1997

<sup>27</sup> Ibid.

autonomy, however temporary, and it could be said that this motivated many amongst the movement to push for full independence. On the other hand, it can be said that given the eventual failure of these accords the Southern fighters would settle for nothing less than full independence in the 'second' civil war, given the failure of the autonomy granted under the Addis Ababa accords. This is significant for this thesis as a whole as it again demonstrates the level of pragmatism in the approaches towards an apparently inevitable secession, as seen in the first chapter. Simply granting greater autonomy did not suffice, and full secession was seen as the answer. This relates to the idea of earned sovereignty seen in Chapter 2, whereby recognition may be granted if negotiations for autonomy fail. It was seen in Chapter 1 that there is precedent for this in the cases of Yugoslavia and Eritrea. In this situation, *The Economist* claimed that:

A federal arrangement might have worked if both sides had shown flexibility and magnanimity, but neither proved able to do so. At least 2m people, mostly southerners, have died in the course of marital discord spread over 50 years. Divorce is now the only option.<sup>28</sup>

Additionally, as seen in Chapter 2, Nicola Sturgeon posited that autonomy short of secession can still fuel secessionist movements, as secessionists can be encouraged by showing the ability to govern themselves.<sup>29</sup> Nonetheless, it must be remembered that no two situations are ever the same.

As mentioned above autonomy is not independence, and in the case of the Addis Ababa accords, independence was definitely not on the cards. The Communist Party of Sudan

---

<sup>28</sup> *The Economist* "South Sudan: A Necessary Secession" 6 January 2011 <<http://www.economist.com/node/17851379>> accessed 24 February 2014

<sup>29</sup> *BBC*: "Scotland's deputy first minister says Scottish independence is unstoppable" 5 October 2014 <<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-29498077>> accessed 24 February 2016

recognised that the ‘Southern problem’, as they referred to it, was caused by uneven development in the North and South, and acknowledged the need for regional autonomy for the South. Nevertheless, they also made it clear that “Southerners ‘have the right to develop their respective cultures and traditions within a *united* Socialist Sudan’ [emphasis added]” and called on “all Southerners to build a *united* and democratic Sudan [emphasis added]”.<sup>30</sup> This brings to mind the ambiguity of the right to self-determination analysed in Chapter 2, whereby Khartoum could claim to be granting the South the right to self-determination despite not consenting to secession.

Arguably, the autonomy of South Sudan was a ‘no man’s land’ between unity and separation; it was unclear how the autonomous South was going to fit into the nation as a whole: “Would the south now retreat into itself with possible long-term secessionist implications, or would it emerge as a stronger region capable of playing a role in national politics?”<sup>31</sup> While history suggests that independence would be the eventual aim, there were those even at the time of the Addis Ababa accords who argued that autonomy was not enough and full independence was necessary.<sup>32</sup> Again, this echoes the argument seen earlier and in Chapter 2 that autonomy could encourage a further push for secession.

The Addis Ababa accords granted the South a number of rights in their autonomy, such as the right to use English as the official language of the South, amongst other provisions.<sup>33</sup> However, the granting of rights does not always placate a people who

---

<sup>30</sup> Shinn, 2004, p240

<sup>31</sup> Peter Woodward, *Sudan 1898-1989: The Unstable State* (Boulder: Lynne Rienner Publishers Inc., 1990) p143

<sup>32</sup> Shinn, 2004, p242

<sup>33</sup> *Ibid*, p243

believe themselves to have been wronged. For example, the freedoms Gorbachev gave the Soviet Union under Glasnost and Perestroika encouraged many to push for more freedoms, and in some cases independence. This could be said to have been the case with the concessions made towards South Sudan in the Addis Ababa accords. This is a significant issue which needs to be taken into account when considering secession from failed states; a subjugated people may take advantage of a weak government in order to push for independence if and when they do not see greater autonomy as sufficiently protecting them.<sup>34</sup> This relates to both the remedial right to secession and John Locke's right to revolution.

The years following the Addis Ababa accords saw greater decentralisation and devolution throughout the country, with five areas in the north gaining more regional powers. With its autonomy, the South had greater powers than the regions of the North. However, there were suggestions at the time that the Sudanese President Ga'afar Nimeiri intended to use this to pursue a 'divide and rule' strategy.<sup>35</sup> This idea is strengthened by the way that Nimeiri re-divided the South into three regions, undermining its autonomy.<sup>36</sup> This may have been performed out of a belief that the relative strength of the South compared to the regions of the North could encourage a push for independence, and so spreading disunity would cripple such a plan.

Around the same time as this devolution came civil unrest, often put down to bad living conditions caused by economic upheaval. This unrest was forcefully suppressed by

---

<sup>35</sup> Woodward, 1990, pp154-155

<sup>36</sup> Ibid, pp159-160

Khartoum's security forces. Nimeiri's next move would lead to the second Civil War: his imposition in 1983 of Sharia law across the whole country, including the South.<sup>37</sup> As noted, South Sudan is not just distinct culturally and ethnically from the Arab-dominated North, but also religiously in that the Northerners follow Islam while the peoples of the South generally follow Christianity and traditional religions.

The fact that this culture and religion was imposed on the South against their will would tend to undermine the legitimacy of the Khartoum government, given that the South did not give their consent to be ruled. One could argue that a people breaking free of a culture imposed on them that is not their own is independence as opposed to secession, since as explored earlier in this chapter and in Chapter 1, this enforcement of culture and religion could constitute subjugation by an alien power. It is believed that the brutality the South suffered in the ensuing civil war may also have gone some way to generating sympathy for their cause, thus encouraging the international community to view the conflict as a struggle for independence, or at the very least a remedial secession. In an article in *The Economist* shortly before the referendum on independence, it was noted that "The long marriage between Sudan's Arab-and-Muslim north and its black, animist and Christian south was always unequal and unhappy."<sup>38</sup> This demonstrates that the subjugation of South Sudan was in the public consciousness at the time of the secession. Additionally, *The New York Times* drew particular attention to the brutality of Sudanese government

---

<sup>37</sup> Ibid, pp156-157

<sup>38</sup> *The Economist* 6 January 2011

forces towards the South in its reports on South Sudan's independence, displaying international sympathy for the South due to its subjugation.<sup>39</sup>

While Nimeiri lost power in 1985, the civil war was to continue in one form or another up until the Comprehensive Peace Agreement (CPA) was signed in 2005. This agreement came after over a decade of work by the Inter-Governmental Authority for Development (IGAD), who brokered an agreement with international support between Khartoum and the Sudan People's Liberation Movement/Army (SPLM/A), who represented South Sudan. This gave South Sudan the right of self-government with a referendum on full independence to be taken after six years, during which there would be campaigns to make unity appear an attractive option for the South.<sup>40</sup> South Sudan subsequently voted for independence in 2011 with an overwhelming majority.<sup>41</sup> This chapter now goes on to look at how this independence was achieved, and what can be taken from it in terms of understanding secession from failed states.

## The Build-up to Secession

### The Comprehensive Peace Agreement

Having looked at how peace deals fell through throughout the civil war, it is now imperative to examine the Comprehensive Peace Agreement (CPA). This accord brought

---

<sup>39</sup> Jeffrey Gettleman "After Years of Struggle, South Sudan Becomes a New Nation" *New York Times* 9 July 2011 <[http://www.nytimes.com/2011/07/10/world/africa/10sudan.html?\\_r=0](http://www.nytimes.com/2011/07/10/world/africa/10sudan.html?_r=0)> accessed 25 February 2016

<sup>40</sup> Deng, 2007

<sup>41</sup> *BBC*: "South Sudan referendum: 99% vote for independence" 30 January 2011, <<http://www.bbc.co.uk/news/world-africa-12317927>> accessed 31 July 2013

a degree of peace (albeit fragile at times) between North and South Sudan, and paved the way for South Sudanese independence.

The CPA acknowledged the injustices suffered by the South. The preamble to the part of the CPA known as the Machakos Protocol stated that it was:

MINDFUL that the conflict in the Sudan is the longest running conflict in Africa, that it has caused horrendous loss of life and destroyed the infrastructure of the country, wasted economic resources, and has caused untold suffering, particularly with regard to the people of South Sudan; and

SENSITIVE to historical injustices and inequalities in development between different regions of the Sudan that need to be redressed; and

RECOGNISING that the present moment offers a window of opportunity to reach a just peace agreement to end the war.<sup>42</sup>

The CPA was not necessarily a document recognising the secession of South Sudan; however, it did make a provision for the eventual secession of Sudan following a referendum after a six-year interim period. The above preamble shows that the negotiations and agreement had the traits of both remedial secession and the political pragmatism that uses secession as a tool in conflict resolution which was examined in Chapter 1.

Pragmatism is evident in some of the wording of the CPA, notably in the preamble to the power-sharing agreement where it is written that the parties involved were

---

<sup>42</sup> The Comprehensive Peace Agreement Between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, 9 January 2005, Machakos Protocol, Preamble. p1  
<<https://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf>> accessed 15 March 2016

“CONSCIOUS of the need for an expeditious termination of Sudan’s protracted and costly war” and “MINDFUL AND AWARE of the yearning of all the Sudanese people for a quick, just and sustainable peace”.<sup>43</sup> This indicates that the actors involved aimed to settle the conflict, and indicates that concessions were likely to be made. This could go some way towards explaining why the provision for a referendum on secession was included, since the urgent need for conflict resolution indicated in the preamble can cause secession to be tabled as an option to placate an oppressed people and thus end a conflict. This was observed in Chapter 1 with regards to the Balkans and Eritrea, and is reminiscent of the principles of remedial secession noted in Chapter 2.

Whilst secession was not a certainty when the agreement was made, the fact that it was provided for can be attributed to the conditions described in the aforementioned preamble, in other words that the conflict had been perpetual and South Sudan had suffered injustices. The fact that the moment appeared ripe for negotiation provided the opportunity to float secession as an option. This was a pragmatic move in order to demonstrate to the delegates of South Sudan that the agreement was serious about ending the conflict and protecting the rights of South Sudan and the South Sudanese.

The CPA detailed the right to self-determination and autonomy for South Sudan, but initially tried to implement this through a power- and wealth-sharing agreement that ran under a so-called ‘one-country-two-systems model’.<sup>44</sup> It was stated in the preamble to

---

<sup>43</sup> Ibid, 26<sup>th</sup> May 2004, Power Sharing, Preamble, p11

<sup>44</sup>The Comprehensive Peace Agreement, pp2, 8-9, 12, 25

the section of the CPA on power sharing that: “[T]he successful implementation of this Agreement shall provide a model for good governance in Sudan that shall help to create a solid basis to make unity of the country attractive and preserve peace.”<sup>45</sup>

This appears to be in line with the norm that is a default support for territorial integrity. However, 99.57% voted in favour of South Sudanese secession in the eventual referendum.<sup>46</sup> With hindsight, this overwhelmingly large mandate for secession means it appears that making unity attractive was never really going to be a realistic endeavour. This can lead one to reason that the CPA’s attempt to make unity attractive was a), a concession for Khartoum, and/or b), a pragmatic move which ostensibly upheld the principle of territorial integrity whilst acknowledging the inevitability of the secession. There is precedent for the latter point as seen in Chapter 1, particularly with reference to the case of Yugoslavia. The foregoing shows how some of the practical issues surrounding secession from failed states are approached.

South Sudanese President Salva Kiir did initially support upholding the power-sharing deals in the CPA and supported a government of unity, at least ostensibly.<sup>47</sup> However, the SPLM pulled out of the unity government in 2009 due to “Khartoum's failure to fully

---

UN: “Sudan Peace Agreement Signed 9 January Historic Opportunity, Security Council Told” Security Council Press Release 8 February 2005, <<http://www.un.org/press/en/2005/sc8306.doc.htm>> accessed 1 March 2016

<sup>45</sup> The Comprehensive Peace Agreement, Power Sharing, Preamble, p11

<sup>46</sup> *BBC*: 30 January 2011, <<http://www.bbc.co.uk/news/world-africa-12317927>> accessed 31 July 2013

<sup>47</sup>Roseline F. Tekeu and Alicia Ranck “Is the Comprehensive Peace Agreement Holding?: Summary of Comments made by H.E. Salva Kiir, First Vice-President of Sudan and president of Southern Sudan on November 7<sup>th</sup> 2007 at the Woodrow Wilson Center” in *Implementing Sudan’s Comprehensive Peace Agreement: Prospects and Challenges* The Africa Program: Woodrow Wilson Center May 2008 p38

implement key elements of the Comprehensive Peace Agreement.”<sup>48</sup> This shows that the SPLM might initially have had faith in Sudan remaining together, but the fragile nature of the agreement caused them to lose faith. Part of this can be attributed to the fact that the agreement “lacked broader support throughout the country”.<sup>49</sup> The fact that the SPLM apparently had faith in unity to begin with undermines the arguments about the secession being inevitable; however, the wider lack of support for the CPA shows evidence for the inevitability of the split.

The previous failure of the Addis Ababa agreement would have made the South wary of any deal in which they would still be answerable to Khartoum, given Khartoum’s previous failure to respect the autonomy of the South as set out in the Addis Ababa agreement. However, the CPA not only set out to ensure the autonomy of the South, but also included provisions for power, wealth and resource-sharing, plus a protocol on security arrangements.<sup>50</sup> So why was it necessary to include provisions for a referendum on independence in the agreement? Aside from the scepticism caused by the failure of Addis Ababa, much of it had to do with the reluctance of the North to relinquish power combined with the inability of the South to implement a deal. It is important to note that John Garang, the Southern leader who initially signed the agreement, was himself in favour of a united Sudan which would see power shared between both North and South. His sudden death in a helicopter crash significantly changed the course of the negotiations, since much of the work towards a peaceful union was based on Garang’s

---

<sup>48</sup> VOA News: “Sudan Peace Accord at Risk as SPLM Pulls Out of Unity Government” 01 November 2009, <<http://m.voanews.com/a/a-13-2007-10-12-voa30/351405.html>> accessed 2 March 2016

<sup>49</sup> Ibid.

<sup>50</sup> United Nations Mission in Sudan: The background to Sudan's Comprehensive Peace Agreement <<http://unmis.unmissions.org/Default.aspx?tabid=515>> accessed 22 August 2013

personal relationship with Vice-President Ali Osman Taha. Following Garang's death, the split in the SPLM between the secessionists and the unionists grew deeper, and gradually the unionists lost influence. Garang's successor Salva Kiir was pro-independence, seeing it as the only way for South Sudan citizens to avoid being 'second-class citizens'.<sup>51</sup> This echoes the principles of remedial secession, as secession appeared to Kiir to be the only option in terms of upholding the rights of the South Sudanese.

In addition to this, Khartoum's reluctance to comply with much of the CPA added to the feeling of mistrust that marred the attractiveness of unity. As Special Envoy of George W. Bush, Richard S. Williamson wrote:

The north did not disarm and demobilize its proxy Arab militias as it had committed to do in the CPA. The north did not fully integrate joint security forces, nor did it provide transparent accounting for the sharing of oil revenues as agreed to in the CPA. The point is that . . . the south has developed a deep distrust of Khartoum's reliability.<sup>52</sup>

This led to the CPA being reduced to little more than a ceasefire, which was in any case violated on a number of occasions.<sup>53</sup>

Since the main question of this thesis relates to the ethical and practical issues surrounding the *current practice* of recognition of secession from failed states, it makes sense to examine the attitudes of international actors and third parties towards the CPA

---

<sup>51</sup> Roberto Belloni, "The Birth of South Sudan and the Challenges of Statebuilding" *Ethnopolitics* 10 (3-4), 2011, p413

<sup>52</sup> Asteris Huliaras, "The Unanticipated break-up of Sudan: Causes and Consequences of Redrawing International Boundaries" *Commonwealth & Comparative Politics* 50(3) 2012 p261

<sup>53</sup> *Ibid.*

at the time and how the ethical and practical issues were approached. More will be made of this when analysing the reasons why South Sudan became recognised. However, it is important to note here the initial actions and reactions of international actors in the creation of the CPA, as it is essential to establish why international actors were involved at all and to note the impact they had on the ethical and practical issues that arose. According to studies by the Woodrow Wilson Center, international partners and diplomats noted the lack of trust and confidence between the parties in the negotiations, which was embodied by the lack of foresight in terms of planning for the implementation of the agreements made.<sup>54</sup> The concern shown by these international actors demonstrates that there was an international desire for the agreement to succeed. Whilst the possibility of secession was still in the agreement, it can be reasoned that a successful agreement would make it more likely for the country to remain united since an outcome which proved mutually satisfactory to both parties would provide a strong platform from which to campaign for unity.

It appears that since the CPA set out to make unity appear desirable, insufficient measures were put in place for the creation of a South Sudanese government should the South vote for independence.<sup>55</sup> While a system of government for the South was drawn up in the CPA, this was a government for the South as a polity of a united Sudan, and was a government dominated by the SPLM.<sup>56</sup> This exposes a lack of foresight in the CPA, and

---

<sup>54</sup> Mike Jobbins, "The CPA Implementation: Taking Stock", Woodrow Wilson Center, May 2008, p7

<sup>55</sup> CPA "The Right to Self Determination of the People of South Sudan" p8 article 2.4.2

<sup>56</sup> CPA "Power sharing"- The Government of South Sudan: The Legislature of South Sudan, p32 article 3.5.1.1

meant that international involvement in any independent South Sudan would be limited. It also meant that the SPLM would dominate South Sudanese politics post-independence.

The United States of America was an important actor in the creation of the CPA. The interest and involvement of the USA was due to the influence of American Evangelical Christians. According to Asteris Huliaras, this group of Christians took an interest in Sudan as they considered the Muslims of the North to be persecuting the Christians in the South.<sup>57</sup> It was due to their influence that the US became more involved in the Sudanese peace process, and “under strong pressure from Washington, Khartoum and the rebels finally reached an agreement in Machakos, Kenya, that acknowledged the right of the Southern Sudanese to self-determination.”<sup>58</sup> This went on to develop into the CPA, which, at the behest of the United States, included the provision of a referendum for South Sudanese independence to be held in 2011.<sup>59</sup>

Just how much of an impact this group of Christians had on the eventual secession and recognition of South Sudan is assessed when the chapter examines the reasons behind the recognition of South Sudan by the international community. Here it is important to note that on the face of it this suggests that the US influence was pro-secession, which would be a departure from the international norm of territorial integrity. However, the fact that this apparent US support for secession appears to be based on the persecution of the Southern Christians again highlights the characteristics of remedial secession. A

---

<sup>57</sup> Asteris Huliaras “The Evangelical Roots of US Africa Policy” *Survival* 50(6) 2008 p163

<sup>58</sup> Ibid, pp171-172

<sup>59</sup> Eddie Copeland *New State Formation: The Case of South Sudan* (unpublished MA Dissertation, University of Leicester) 2013 p26

degree of pragmatism was also apparent in the US support for a referendum. Ambassador Johnnie Carson, then US Assistant Secretary of State for African Affairs, stated that:

A delay in the referendum would have seriously jeopardized the entire CPA and potentially have condemned Sudan to more conflict and instability. Furthermore, a referendum that lacked credibility and international recognition would have greatly eroded the willingness of all parties to abide by the terms of the CPA.<sup>60</sup>

This implies that the provision of a referendum on independence in the CPA was a necessary concession in order for the South to take the peace agreement seriously and abide by its terms. This again demonstrates the phenomena observed in Chapter 1 whereby secession is used as a pragmatic tool in conflict resolution.

A major criticism of the CPA is that it set the wheels in motion for secession before certain issues were properly resolved, notably the status of the Abyei region on the proposed border between Sudan and South Sudan, a clear oversight in terms of the ethical and practical issues associated with secession. The parties were unable to decide who the region belonged to during the CPA negotiations, but made the provision for the establishment of the Abyei Boundary Commission (ABC) which was tasked with ruling over the status of Abyei, its decision to be final and binding.<sup>61</sup> However, Khartoum

---

<sup>60</sup> Johnnie Carson, "Transcript: The Conclusion of the Comprehensive Peace Agreement: US Perspectives and Policy Goals in Sudan" Chatham House, 7 March 2011 p2 <<https://www.chathamhouse.org/sites/files/chathamhouse/public/Meetings/Meeting%20Transcripts/070311carson.pdf>> accessed on 9 March 2016

<sup>61</sup> Dorina Bekoe, Kelly Campbell and Nicholas Howenstein, "Resolving the Boundary Dispute in Sudan's Abyei Region" United States Institute for Peace, 26 October 2005 <<http://www.usip.org/publications/resolving-the-boundary-dispute-in-sudans-abyei-region>> accessed 9 March 2016

refused to accept this decision and the issue remained unresolved.<sup>62</sup> The fact that the referendum went ahead despite this issue being unresolved can be explained using Carson's points about the dangers of delaying said referendum. It also indicates that the those involved acted with a short-term attitude since the dispute is ongoing, an attitude that appears potentially flawed in terms of addressing the ethical and practical issues. This criticism and others are now evaluated in order to assess the challenges that South Sudan encountered in gaining independence and how the parties involved addressed them.

### Obstacles to Secession

There were a number of political and practical obstacles to the secession of South Sudan. How the parties involved dealt with these can tell us much about why South Sudan became recognised, why it was seen to be an exceptional case, and the consequences this secession had for the international norm of territorial integrity. This will inform the later analysis of whether South Sudan was treated differently because it was a secession from a failed state, which will in turn inform the analysis of how the context of state failure affects the ethical and practical issues associated with secession.

At least two major issues affecting the secession involved how the border between Sudan and South Sudan was drawn. The way this was done would throw up demographic, political and economic issues due to the locations of oil fields and the unclear status of

---

<sup>62</sup> Carson, 7 March 2011, p3  
<<https://www.chathamhouse.org/sites/files/chathamhouse/public/Meetings/Meeting%20Transcripts/070311carson.pdf>> accessed 9 March 2016

the Abyei region. The issue of borders is particularly important in the context of Africa, because of the arbitrarily-drawn colonial borders and the AU's insistence that these borders are inviolable and should not be changed by post-colonial states. It is thus crucial to note the way that this important issue was dealt with, and to question whether it was dealt with effectively. This will allow the thesis to establish the circumstances under which the rules over colonial borders may be waived, and whether state failure is one of these circumstances.

The issues surrounding Sudan's borders with South Sudan are unprecedented in Africa; as Anthony J. Christopher points out, South Sudan "has no separate colonial heritage, and hence no recognised boundary".<sup>63</sup> This weakens the argument that this was a case of decolonisation or liberation rather than secession. Nimeiri attempted to redraw the administrative boundary, such as it was, during the Addis Ababa accords following the discovery of oil in the area.<sup>64</sup> This meant that his government would have more direct control over the oil fields.<sup>65</sup> This now appears to have been a very significant event in the context of South Sudanese independence, especially due to the poor state of South Sudan's economy. It appeared that South Sudan would be extremely reliant on oil wealth in order to support its poverty-stricken population.<sup>66</sup> Officially according to the CPA the

---

<sup>63</sup> Christopher, 2011, p125

<sup>64</sup> Shinn, 2004, p248

<sup>65</sup> Ibid.

<sup>66</sup> Pulitzer Center: "Awaiting Independence Vote, Southern Sudan has High Hopes" 28 November 2010 <<http://pulitzercenter.org/articles/southern-sudanese-say-independence-vote-will-improve-life>> accessed 31 July 2013

oil fields were split between the territories.<sup>67</sup> However, the boundaries and drilling rights would be disputed even post-independence.<sup>68</sup>

As noted earlier, the Abyei issue was left unresolved at the time of South Sudan's recognition. One of the major problems when deciding the fate of Abyei was that a tribe known as the Misseriya favoured remaining part of Sudan, whilst the majority of the region appeared to favour joining South Sudan.<sup>69</sup> A solution which would give various minority rights to the Misseriya was proposed by Douglas Johnson of the ABC.<sup>70</sup> Along with the provisions in the CPA (echoing the Good Friday Agreement in Northern Ireland) that gave the inhabitants of Abyei the right to hold Sudanese and/or South Sudanese citizenship, as well as guaranteed rights of movement across the border, this aimed to avoid splitting the region. However, there is still talk from Khartoum about splitting the region, which has a degree of international support. Unsurprisingly, this direction is resisted by South Sudan as it would go against previous agreements.<sup>71</sup> A potential problem with areas such as this is that they may potentially be a candidate for recursive secession, which brings to mind the way in which the breakup of Yugoslavia was approached and the emphasis placed on minority rights. This shows that in this respect, approaches to secession shows a degree of consistency in that minority rights are taken into consideration; however, it also shows that it can be difficult to reach agreements on this issue, as they need to be satisfactory to all parties involved.

---

<sup>67</sup> Ibid.

<sup>68</sup> BBC: "South Sudan: What is the Fighting About" 10 May 2014  
<<http://www.bbc.co.uk/news/world-africa-25427965>> accessed 10 March 2016

<sup>69</sup> Belloni, 2011, p423

<sup>70</sup> Ibid, p417

<sup>71</sup> Ibid.

The reaction of the UN towards the Abyei issue was to deploy a peacekeeping force. Security Council Resolution 1990 implemented the United Nations Interim Security Force for Abyei (UNISFA) which, for six months, was to be comprised of “a maximum of 4,200 military personnel, 50 police personnel, and appropriate civilian support”.<sup>72</sup> This was a temporary measure focussed on maintaining security and creating a demilitarised zone in the region, and was not intended to decide its long-term status. Resolution 1990 did, however, call on the governments of Sudan and South Sudan to resolve the status of Abyei via the African Union High Level Implementation Panel.<sup>73</sup> Resolutions 2104 and 2230 extended the presence of the security force; Resolution 2104 also re-stressed the importance of the territorial integrity of both Sudan and South Sudan, and recognised the threat that the border tensions posed to security. It also urged the two parties to work further on settling issues over the administration of the area, and to take heed of the various committees advising on the matter and their decisions.<sup>74</sup> Resolution 2230 noted the lack of action taken on the previous resolutions by the two parties.<sup>75</sup> This shows that the UN, took an active interest in upholding the secession of South Sudan and attempting to resolve the issues and conflict that came with it, showing an awareness of this ethical and practical issue involved in the secession. However, its ability to find solutions to said issues was limited by a lack of cooperation from the parties involved.

---

<sup>72</sup> UN Security Council Resolution 1990, Paragraph 1, 27 June 2011  
<[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/1990\(2011\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1990(2011))> accessed 11 March 2016

<sup>73</sup> Ibid, Paragraph 9

<sup>74</sup> UN Security Council Resolution 2104, Preamble, Paragraphs 6-9 19 May 2013  
<[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/2104%20\(2013\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2104%20(2013))> accessed 29 November 2016

<sup>75</sup> UN Security Council Resolution 2230, Preamble, 14 July 2015  
<<http://www.un.org/press/en/2015/sc11968.doc.htm>> accessed 29 November 2016

Problems with development and infrastructure raised practical questions over South Sudan's viability as a country.<sup>76</sup> Political, administrative and security institutions have been lacking as have public works and welfare, as South Sudan "has barely 100km (62 miles) of asphalted road, no solid institutions, scant medical and educational facilities, a fledgling judiciary and only the skimpiest police."<sup>77</sup> Yet these concerns did not seem to have as great an impact on states' decisions to recognise the new country as perhaps they might have. What is interesting here is that the recognition process went ahead despite these problems, showing again a degree of short-sightedness. As mentioned in the previous section, the haste with which the peace process was carried out, of which the referendum on secession was a part, can be attributed to pragmatism. The actors involved, were keen to use this window of opportunity to create a peace settlement that would be palatable for the South, and the option of secession appeared necessary given the failure of previous agreements. However, it appears that even pragmatic decisions require careful thought and planning, and rushing through an agreement without resolving important issues can lead it to unravel. This was the case in this instance, which undermined the pragmatism of rushing through an agreement.

A lack of infrastructure and the inability of a state to provide for its citizens undermines arguments for secession based on legitimacy, remedial secession and the social contract. As seen in Chapters 2 and 3, the social contract is undermined if a people's security is not upheld or is threatened by the parent-state under remedial secession/Locke's right to

---

<sup>76</sup> Pulitzer Center, 28 November 2010 <<http://pulitzercenter.org/articles/southern-sudanese-say-independence-vote-will-improve-life>> accessed 31 July 2013

<sup>77</sup> *The Economist*, 6 January 2011 <<http://www.economist.com/node/17851379>> accessed 28 March 2016

revolution. The same goes for the legitimacy of the parent-state, and the people involved can have grounds for secession.

However, if the subsequent secessionist state is incapable of providing security for its citizens then this case is undermined. One of the more persuasive arguments for the recognition of secession from a failed state is that the prospective secessionist state may be more legitimate than the parent-state, by providing better, more effective security and upholding basic human rights that were not upheld by the parent-state. If this is the case, then there is a strong case for recognition based on the ideas surrounding remedial secession and the social contract which have been discussed in this thesis. However, this was not the case with South Sudan, as it is evident that it was not a more effective or legitimate state than Sudan. This is due to the fact that South Sudan lacked the infrastructure for a successful state, issues in the peace agreement were left unresolved, and the civil war which has continued within South Sudan since independence.

### Why was South Sudan recognised?

The factors which led to the recognition of South Sudan as a sovereign state are now analysed. From this the chapter will be able to establish factors that might be significant, or which mark out South Sudan as a unique case. These will then be used in the next chapter to establish why South Sudan became recognised and not Somaliland, and in doing so paint a clearer picture of the factors that could lead to the recognition of secession from a failed state, which ethical and practical issues are taken into consideration, and whether such an approach is appropriate given the ethical and practical issues involved.

On the face of it, the recognition of South Sudan could simply be said to be an action upholding the principles of democratic secession, due to the overwhelming support for independence shown in the referendum results.<sup>78</sup> The existence of a previously-demarcated border may well have strengthened this claim as it did in the breakup of Yugoslavia, again reinforcing the idea that this was secession rather than independence or the dissolution of a union.<sup>79</sup> The referendum itself does not give the full picture. Other secessionist movements which have conducted referenda showing overwhelming support have not been recognised, Somaliland amongst them.<sup>80</sup> It was agreed as part of the CPA that the result of the referendum on independence would be respected and recognised.<sup>81</sup> It is therefore necessary to examine the potential reasons why this was agreed by the parties involved.

It has already been seen that the South had a *prima facie* good case for remedial secession, having suffered greatly at the hands of Khartoum. Going back to the analysis of remedial secession and legitimacy in Chapter 2, Khartoum could be said to have forfeited its legitimacy since it neither protected the security of South Sudan nor did the Southerners believe in its legitimacy. Yet remedial secession alone is not enough to warrant recognition, since there are many other peoples and regions who have an equally strong or even stronger case for remedial secession than South Sudan. Allowing secession on

---

<sup>78</sup> BBC: 30 January 2011, <<http://www.bbc.co.uk/news/world-africa-12317927>> accessed 31 July 2013

<sup>79</sup> Changes to the border made by Nimeiri notwithstanding.

<sup>80</sup> Paul Kingston and Ian Spears, *States Within States: Incipient Political Entities in the Post-Cold War Era* (New York: Palgrave Macmillan, 2004) p178

<sup>81</sup> CPA, Machakos Protocol, 20 June 2002, p4, <<https://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf>> accessed 24 March 2016

the basis that a people, group and/or region have been persecuted by their central government would mean that every time a group suffered prolonged persecution, it would result in a new state.

One could argue that this has been the case, even if it is part of a slow trend. South Sudan is not the only state to be recognised at least partially due to the remedial right to secede; other examples include Eritrea and Bangladesh. Indeed, as seen earlier there is an (albeit subjective) argument that South Sudan was a case of independence from cultural colonialism.<sup>82</sup> However, there have been many cases where there is a strong case for remedial secession yet universal recognition has not been granted, such as Kurdistan, Kosovo (at the time of writing) and Palestine. Indeed, it seems as though it is preferable to explore other options to end the persecution of a people before resorting to recognising the secession of the persecuted party, which supports the idea posited in Chapter 2 that remedial secession is a last resort in serious cases of persecution. The apparent unviability of South Sudan as a state shows that solutions other than full secession may be preferable.

It thus seems that whilst remedial secession may well have been a factor in the decision of states to recognise South Sudan, it was not the sole influence. This brings the thesis back to the concept of earned sovereignty which was introduced in Chapter 2. As seen, earned sovereignty is essentially a more refined version of the remedial right to secede. It means that the prospective secessionists, having met the criteria for remedial secession,

---

<sup>82</sup> Sharkey, 2008, p36

must additionally show commitment to democracy and human rights under international administration with the potential to eventually earn recognition as an independent sovereign state. It can be seen as a way to address some of the practical and ethical issues that arise from secession.

A number of aspects of earned sovereignty were apparent in the recognition of South Sudan, most observable in the commitment of the parties to negotiations and the international involvement in the CPA (the UN was closely involved with the development of the CPA under the auspices of IGAD) as well as the fact that the CPA decreed a transition period prior to the referendum on independence.<sup>83</sup> In the ‘*Chapeau*’ of the CPA, it was stated that the negotiated settlement aimed to be: “[F]ounded on the values of justice, democracy, good governance, respect for fundamental rights and freedoms of the individual, mutual understanding and tolerance of diversity within the realities of Sudan”.<sup>84</sup> This adds credence to the idea that the recognition of South Sudan was based upon the concept of earned sovereignty. Indeed, according to Princeton N. Lyman, the Senior Adviser to the President of the USA:

What Americans wanted to believe was that those in South Sudan who suffered so much in their fight for dignity, freedom, and ultimately independence were also dedicated to democracy, human rights, and transparency of government.<sup>85</sup>

---

<sup>83</sup> UN: The background to Sudan's Comprehensive Peace Agreement  
<<https://unmis.unmissions.org/Default.aspx?tabid=515>> accessed 15 March 2016

<sup>84</sup> Comprehensive Peace Agreement, *Chapeau*, 2005, p.xi

<sup>85</sup> Princeton N. Lyman “The United States and South Sudan: A Relationship Under Pressure” *Council of American Ambassadors*, Fall 2013,  
<[https://www.americanambassadors.org/publications/ambassadors-review/fall-2013/the-united-states-and-south-sudan-a-relationship-under-pressure#\\_ftn4](https://www.americanambassadors.org/publications/ambassadors-review/fall-2013/the-united-states-and-south-sudan-a-relationship-under-pressure#_ftn4)> accessed 23 March 2016

This goes to show that there was a belief in the principle of earned sovereignty when it came to South Sudan, at least as far as the USA was concerned. However, Lyman went on to write that whilst many were indeed dedicated to that idea, “it is not built into the governance system of the country, which still resembles more that of a liberation army than a modern civilian government.”<sup>86</sup> He went on to describe how the officials of the SPLM/A were usually generals who had little experience of political administration, adding that as the army was mostly centred around an ethnicity-based militia, the ability of the government and Army of South Sudan to deal with ethnic tensions was severely compromised.<sup>87</sup>

So, whether the principles laid out in the *Chapeau* of the CPA were actually adhered to is another matter. Following the 2011 independence referendum, the NGO Human Rights Watch reported that:

[F]ighting between the government Sudan People's Liberation Army forces and armed opposition groups has increased, and soldiers have been responsible for grave human rights abuses, including unlawful killings of civilians and looting and destruction of civilian property.

Police have also been implicated in day-to-day human rights violations and problems in the administration of justice, including arbitrary arrests and detentions.<sup>88</sup>

Whilst this conflict took place after the interim period, the fact that it happened such a short time afterwards shows that if South Sudan was indeed recognised on the basis of earned sovereignty then this approach was flawed. Indeed, this serves as further evidence

---

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> “South Sudan: Put Human Rights First”, *Human Rights Watch* 30 June 2011 <<https://www.hrw.org/news/2011/06/30/south-sudan-put-human-rights-first>> accessed 15 March 2016

that the concept itself is flawed, as previously noted in Chapter 2. The lack of adherence to the CPA and the problems associated with making South Sudan a viable state point to the need for a more engaged approach on the part of the international community (perhaps embodied by the UN) towards secessions of this nature.

An extended analysis of post-secession South Sudan is beyond the scope of this thesis. However, the UN noted that South Sudan encountered severe obstacles to establishing a successful state upon gaining independence, further undermining the idea that South Sudan was a case of earned sovereignty:

South Sudan assumed independence with daunting challenges to its aspiration of nation-building, many emanating from long-standing structural and systemic issues as well as historical divisions among communities and within political and military elites. Many of these issues came to the fore almost immediately from the first year of independence.<sup>89</sup>

The United Nations Mission in South Sudan (UNMISS) also noted that there had been ethnic tensions in the region prior to independence, which continued after independence.<sup>90</sup> This indicates that not enough was done by those involved in the CPA during the interim period between its signing and the referendum to ensure that South Sudan would be a successful state in the event of its independence.

This shows that those involved in orchestrating the secession were aware that the new state would be fragile, yet recognised it regardless. From this it can be seen that both the

---

<sup>89</sup> UN: "Conflict in South Sudan: A Human Rights Report" p14, 8 May 2014  
<<https://unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/UNMISS%20Conflict%20in%20South%20Sudan%20-%20A%20Human%20Rights%20Report.pdf>> accessed 16 March 2016

<sup>90</sup> Ibid, pp14-15

concept of earned sovereignty and the pragmatism of recognising secession in aid of conflict resolutions may indeed have been motives for the international recognition of South Sudan, since evidence for the process of earned sovereignty was apparent, as was evidence of remedial secession. However, with hindsight it is clear that further state-building action was needed.

It was noted when analysing the CPA that the parties involved showed signs of pragmatism in agreeing to the referendum on independence. The idea of states and organisations approaching secession pragmatically has been a theme throughout the thesis, particularly in cases in which secession appeared inevitable. Earlier in the chapter certain aspects of the CPA and the negotiations surrounding it were shown to have signs of pragmatism about them, and it was noted that, following the failure of the Addis Ababa agreement, secessionist feelings were so strong in South Sudan that the momentum of the movement would have been difficult to stop. It therefore made sense to act pragmatically for the sake of ‘damage limitation’, in a similar manner to the way they approached the breakup of Yugoslavia. For example, unity was ostensibly promoted in the run-up to the referendum in order to lend lip service to the principle of territorial integrity whilst recognising South Sudan’s remedial right to secede, and whilst an agreement was not reached, the issue of minority rights was broached with respect to Abyei. However, whilst the decision to allow the referendum may have been based on both pragmatism and principle, as has been seen, not enough was done in terms of planning for post-independence South Sudan. This indicates that the pragmatism employed by the actors involved, and particularly the actors involved with the CPA and independence process, was reactive pragmatism. Given the struggles faced by post-secession South Sudan, it would seem that there is a case for more pro-active response.

It was mentioned earlier that the secession of South Sudan received support from Christian groups in the United States, and it is now crucial to assess exactly how much influence this support had in securing international recognition for South Sudan. In order to accomplish this, the influence of this Christian lobby itself needs to be assessed. To quantify how much influence the Christian religion has on US politics, “About a quarter of US citizens claim to be evangelicals, or ‘born-again’ Christians.”<sup>91</sup> This means that this group has immense voting power and arguably influence on policy, as administrations may wish to win votes by pandering to them. It has been said by Huliaras that this was particularly the case with the Bush Administration, which ran from 2001-2009.<sup>92</sup>

From this it can be seen that the internal workings of third-party states, particularly democratic ones, have a considerable impact on the likelihood that a secessionist movement will receive official recognition. If a regime is oppressive, then that fact can be used to rally sympathy and support for the secessionists, invoking the remedial right to secede. If the government is also weak, then they are at a disadvantage in negotiations and will usually have to make more concessions than perhaps they would like. If they are being coerced or cajoled with carrot-and-stick tactics into providing for a possible secession in a negotiation by a powerful third party such as the United States, then the likelihood for a successful secession and subsequent recognition is increased. The Khartoum government was both oppressive and weak, and so there is a strong case to

---

<sup>91</sup> Huliaras, 2008, p161

<sup>92</sup> Ibid.

suggest that the foregoing practical and ethical issues partially explain how South Sudan achieved recognition.

It must here be noted, however, that the US *enabled* South Sudan to become independent and recognized; it did not *cause* it.<sup>93</sup> The referendum itself served as a means to legitimise universal recognition and accession to the United Nations. Nonetheless, many *de facto* states remain unrecognised despite holding similar referenda. The fact that this referendum had been born out of negotiations mediated by international actors (Norway, the UN, US and UK), along with the global influence of these actors and the high global profile of the negotiation, added legitimacy to this referendum.<sup>94</sup> Despite this, a secessionist state with support from powerful nations will not always become recognised. For example, as seen in Chapter 1, Kosovo has the recognition and support of a number of powerful nations including the US, but has yet to achieve recognition from the UN, demonstrating that other factors are also important. However, a major difference between Kosovo and South Sudan is that Kosovo declared independence without the consent of its parent-state Serbia, whereas the potential secession of South Sudan via referendum was written into the CPA and agreed upon by Sudan.

This analysis shows that there is evidence that recognition is based on various factors, both ethical and practical, analysed earlier in the thesis, such as past persecution or subjugation, illegitimacy on the part of the parent-state (echoing the concepts of remedial secession and earned sovereignty), the prospects for a more legitimate government, and

---

<sup>93</sup> Copeland, 2013, p27

<sup>94</sup> *The Economist*, 06 January 2011

pragmatism. Yet we have seen that recognition based on these factors was somewhat flawed, in that the subsequent state of South Sudan has encountered its own problems with lack of legitimacy. These have arisen due to its failure to provide security, as has been observed and is examined further in the next section. One may therefore ask why such an approach was taken; was it simply optimism? Were there other contextual factors which influenced their decision-making? The next section begins by asking one of the most important questions of the thesis.

### [Was South Sudan recognised because it seceded from a failed state?](#)

It can be argued that South Sudan's status as a secession from a failed state had a significant bearing on the way it was handled. For example, it is conceivable that it meant that the actors involved took an even more pragmatic approach in their attitude. The thesis has already seen that solutions such as federalism and power-sharing are often sought before resorting to secession in conflict resolution, and the Sudanese civil wars were no exception. However, in the context of a failed state such as Sudan these options may be limited due to the limited level of control available to the government and the limited power of the other groups involved in the conflict. This is illustrated in Sudan by the protracted nature of the civil war, which was ostensibly the largest contributor to Sudan's status as a failed state. It has already been discussed how the failure of the Addis Ababa agreement contributed to the notion that secession was the only way forward for the South. There is much evidence to suggest that the international community saw little choice but to recognise the independence of South Sudan given the failure of negotiated settlements in the past.

This pragmatic approach can in turn be explained, and indeed facilitated, by applying the remedial right to secession in a specific way that also highlights some of the legitimacy issues discussed in this thesis. As seen in Chapter 3, failed states often cannot and/or will not protect the security of their citizens. Sudan was a prime example of this, as the ongoing civil war not only meant that Khartoum was unable to protect the security of the South, but that it also actively undermined it.<sup>95</sup> Further to this, the civil war showed that Khartoum did not have the monopoly on the legitimate use of force, solidifying Sudan's status as a failed state. The monopoly on force was gone due to the power of the SPLM, and the state's legitimacy was gone as the people of the South no longer believed in it and were explicitly rejecting the rule of the Khartoum regime, not least since Khartoum was undermining their security. This meant that the usual arguments against secession based on territorial integrity were weakened. The status of Sudan as a failed state meant that its territorial integrity was already severely compromised. The case for the recognition of South Sudan was also strengthened as Khartoum's legitimacy was undermined and as the SPLM/A's legitimacy gained credibility due to the people's belief in it, as shown by the referendum results. Indeed, the loss of power by Khartoum and Sudan's status as a failed state would have weakened its negotiating position and made the government more amenable to concessions, such as the provision of the referendum on independence in the CPA.

The wording of parts of the CPA serve as evidence for the foregoing ethical and practical issues that arose from this secession. As noted earlier, the protracted nature of the conflict in Sudan, which was the main contributor to the country's status as a failed state, had

---

<sup>95</sup> Gettleman, *New York Times*, 2011

gained the attention of international actors, most notably the UN. It was realised by the UN and the other parties involved with the CPA that there was a sense of urgency in resolving said conflict, which was noted in the preamble to the power-sharing agreement in the CPA seen earlier in the chapter.<sup>96</sup> This sense of urgency, caused by Sudan's status as a failed state, meant that the actors involved would be more likely to make concessions in the negotiations, of which the referendum on independence was one.

#### [A Note on the Consequences of the Secession](#)

As previously noted, an analysis of post-secession South Sudan is outside the scope of this thesis, the focus being on the current practice of recognition. However, it must be noted that there were clear indicators that actors within the international community did not wish the case to set a precedent that might upset the norm of territorial integrity, even of failed states. Jeff Radebe, South African Minister of Justice and Constitutional Development, stressed to the UN Secretary General that “Sudan represents an exceptional case, which does not negate this sacrosanct principle of respect of colonial borders... this act in no way creates a precedent for secessions [sic] tendencies.”<sup>97</sup> This indicates little to no change in the overall attitude of states and organisations toward secession since there have been other ‘exceptional’ cases in the past, as seen in the first chapter. It is however evident from the case of Sudan and the examples identified in Chapter 1 that for a secession borne out of civil war and state failure to be successful, international involvement in the process appears to be necessary.

---

<sup>96</sup> CPA, 26<sup>th</sup> May 2004, Power Sharing, Preamble, p11

<sup>97</sup> Christopher, 2011, p129

## Chapter Conclusion

This chapter has demonstrated that many ethical and practical factors that arose in this case of a secession from a failed state and how some of them influenced the eventual recognition. However, the overall approach is a pragmatic one.

The analysis conducted in this chapter has seen that the history of oppression of the South by Khartoum invoked the remedial right to secede, the civil wars had undermined the security of the South in particular and therefore also undermined the legitimacy of Khartoum's rule over the South. The failure of the Addis Ababa agreement showed indicators of the 'failure of recognition' clause in that representation of the South was undermined by the failure of the agreement, this further undermined the legitimacy of Khartoum's claim to the South. It was also noted early on in the chapter that Khartoum's dominance of the South and refusal to recognise their religion or culture amounted to colonialism, meaning that South Sudan could be said to be a product of independence rather than secession. However, this argument is a matter of subjective definition in the interpretation of independence and secession. That said, the subjective nature of such a definition would mean it could be interpreted by the international community to serve pragmatic aims and/or a state's self-interest.

The protracted nature of the civil war drew international attention, partially due to the influence of Christian groups in the USA, and the CPA was drafted to bring an end to the destructive conflict. Due to the previous failure of the Addis Ababa agreement, the enduring conflict, a distrust of Khartoum and overwhelming support for independence in

the South, the provision for a referendum on secession was seen as a pragmatic necessity in the agreement, and the international involvement in the CPA meant that the results of the referendum were recognised by the international community. The fact that Khartoum consented to the referendum and its outcome was a significant factor in why South Sudan achieved recognition, and arguably this came from Sudan's weakened negotiating position as a failed state.

The oppression of the South was a major contributor to Sudan's status as a failed state. Likewise, it can also be attributed as a reason for the CPA and the provision for secession made within it. To this extent, a link between state failure and secession is once more observable, and it would appear that Sudan's status as a failed state led those international actors involved in the CPA to act in the way they did. From this it is apparent that in situations such as this, secession is a likely outcome of state failure and, in this instance, those involved acted pragmatically for the sake of conflict resolution. However, success was limited since a lack of infrastructure and development within South Sudan and conflict within the new country have been extremely detrimental to South Sudan's security and stability. This was an important oversight in the approach of the international community towards secession from failed states, since these issues would appear inherent in many failed states as observed in Chapter 3.

The pragmatic approach noted above appears to be somewhat in contrast to the approach towards the secession of Somaliland, in which we observed an adherence to the principle of territorial integrity. This contrast will be examined in the next chapter, where the attitudes toward secessions from failed states are analysed.

## Chapter 6- How secession from Failed States is Approached.

This final chapter brings together the key findings of the thesis and offers a comprehensive account of the ethical and practical issues surrounding the current approaches to secession from failed states. It first condenses the key findings of the thesis up until this point, before identifying the most significant features of the current approach and critically analysing them. This thesis has examined the phenomena of both secession and state failure and their impact upon one another. A number of patterns in the approaches towards secession from failed states have emerged throughout this thesis, which are analysed in this chapter to establish exactly what the current approaches towards secession are and what ethical and practical issues arise. Such patterns include the assessment of the legitimacy of both the parent-state and the secessionist entity; the concept of remedial secession and the related idea of earned sovereignty; the principle of democratic secession; and also, the idea that principle itself is secondary to pragmatism in these situations, although pragmatism can sometimes be justified by principle. These patterns and themes are further scrutinised in this chapter in order to assess the ethics and practicality of them. This will also allow the thesis to ascertain which patterns are the most important in terms of explaining and influencing the current approach towards secession from failed states in ethical and practical terms.

Since this thesis also focuses on the issue of state failure and specifically secession from failed states, this chapter also examines the relationship between the two phenomena. It concentrates on the points at which state failure has been a contributing factor to or facilitated secession, with a particular focus on the two main case studies of Somalia/Somaliland and Sudan/South Sudan while also taking lessons from Yugoslavia

and Eritrea. This will help gain an understanding about the ethical and practical issues that surround approaches secession from failed states. The reasoning behind the two distinct approaches taken towards Somalia and South Sudan will give an idea as to what it takes for a secession from a failed state to become recognised. The foregoing analysis will aid the thesis in assessing whether secession from failed states is approached differently to secession from stable states given the different ethical and practical issues involved such as questions over legitimacy and conflict resolution.

Once the approach of states and organisations towards secession from failed states has been analysed, the chapter then examines ways in which this approach could be revised to be more effective, ethical and beneficial to the regions involved. This discussion also takes into account the need to avoid undermining the international system of states.

### Patterns in the Approaches to Secession in General.

#### Legitimacy

In some cases, the concept of legitimacy has played a significant part in states' decision over whether to recognise a secession or not. This can refer to both the legitimacy of the parent-state and the legitimacy of the secessionist state. It was seen to an extent in Chapter 1 that if the secessionist state is seen as more legitimate than the parent-state then it has a chance of achieving recognition, and conversely if it is seen as less legitimate than the parent-state then recognition is much less likely. So which factors could make a secessionist state more legitimate than the parent-state?

Chapter 2 posited that the legitimacy of a state is determined by a number of factors, most importantly for the purposes of this thesis, Max Weber's notion that a state has to adhere to a 'moral standard' and 'operative ideals'.<sup>1</sup> As has been seen, these support the notion that the social contract works both ways. The citizen must adhere to the social contract to gain security from the sovereign, and likewise in order for the citizen to adhere to the contract and gain said security the sovereign must uphold said security. Any violation of this would theoretically lead to a loss of legitimacy on the part of the government, and therefore, people could look for a new sovereign. This is similar to John Locke's notion of a right to revolution and, according to Allan Buchanan, this could mean looking for a new sovereign in a new state – in other words, secession.<sup>2</sup> As has been seen, this has led to the idea of remedial secession, particularly if the security of the citizens is being actively undermined, for example through persecution. This is a concept that will be revisited later.

However, remaining with the legitimacy issues that could make a secessionist state more legitimate than the parent-state, we return to Weber's idea that legitimacy is bestowed upon a state if there is a belief in legitimacy both by the citizens and by the state.<sup>3</sup> This has two distinct and contradictory implications for secession, as noted in Chapter 2; at face value, Weber's idea implies that if the citizens of a secessionist state no longer believed in the legitimacy of the parent-state and had sufficient belief in a secessionist state, then a secession and the subsequent state would be legitimate. James Mayall

---

<sup>1</sup> David Beetham, *Max Weber and the Theory of Modern Politics* (London: George Allen & Unwin Ltd, 1974) p115

<sup>2</sup> Allan Buchanan, "Theories of Secession" *Philosophy and Public Affairs* 26 (1) 2006 p37

<sup>3</sup> David Beetham, *The Legitimation of Power* (Basingstoke: Macmillan, 1991) p6

summarised this when he stated that “The people...are the final source of state legitimacy”.<sup>4</sup>

However, David Beetham takes a different view, arguing that it is the belief of the international community in a state in the form of recognition that bestows legitimacy.<sup>5</sup> In practice it often seems that actors within the international community use Beetham’s reasoning. A number of secessionist entities have seceded and held referenda to demonstrate their people’s belief in the legitimacy of the secessionist state yet remain unrecognised, such as Somaliland, Transdnistria and Crimea.<sup>6</sup> It should of course be noted that there have been a number of political, pragmatic and moral reasons given for not recognising these entities by actors within the international community.<sup>7</sup> However, this is enough to demonstrate that belief by the people in the legitimacy of a secessionist state is not by itself enough to bestow legitimacy in the eyes of the international community.

---

<sup>4</sup> James Mayall, “Sovereignty, Nationalism and Self-Determination” *Political Studies* XLVII, 1999, p484

<sup>5</sup> Beetham, 1991, p122

<sup>6</sup> Ben Farley “Recognition of Somaliland Overdue” *World Politics Review*, 26 January 2011 <<http://www.worldpoliticsreview.com/articles/7673/recognition-of-somaliland-overdue>> accessed 25 October 2015

Paul Kingston and Ian Spears, *States Within States: Incipient Political Entities in the Post-Cold War Era* (New York: Palgrave Macmillan, 2004) p178

European Parliament: Directorate General For External Policies: “The Transdnistrian Issue: Moving Beyond the Status Quo”, 2012, p21 <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224472/evidence-stefan-wolff-the-transnistrian-issue.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224472/evidence-stefan-wolff-the-transnistrian-issue.pdf)> accessed 27 June 2016

Daniel W. Drezner “Putin's excuse for a referendum is wrong: Crimea isn't Kosovo – at all” *The Guardian* 17 March 2014 <<http://www.theguardian.com/commentisfree/2014/mar/17/putin-referendum-crimea-kosovo>> accessed 17 March 2015

OSCE Newsroom: “OSCE Chair says Crimean referendum in its current form is illegal and calls for alternative ways to address the Crimean issue” 11 March 2014, <<http://www.osce.org/cio/116313>> accessed 19/03/15

<sup>7</sup> Ibid.

Conversely, as was seen in the early part of the thesis, a lack of legitimacy on the part of the parent-state due to a lack of belief in its legitimacy has resulted in the recognition of a number of secessions. A prime example of this is the breakup of the Federal Republic of Yugoslavia. This can be explained by the fact that neither the majority of the citizens of the seceding republics nor the international community believed in the legitimacy of the FRY as the sovereign representative government of the territory of the former Socialist Federal Republic of Yugoslavia.

The concept of legitimacy is of distinct importance in this thesis, not least due to the Weberian idea of state failure noted in Chapter 3 in which defines a failed state as one that lacks the monopoly on the *legitimate* use of force.<sup>8</sup> As Chapter 3 argued, a state can fail by losing either the monopoly or the legitimacy. Legitimacy can be lost by both the loss of the ‘moral standard’ and by a loss of belief in the state’s legitimacy, although both the citizens and the potential recognising states would have to lose their belief.

It would also appear, as has been seen in cases of recognised remedial secession, that undermining minority rights and security in a state is an ethical factor that can lead to both citizens and organisations and other states losing belief in the legitimacy of said state and gaining belief in the legitimacy of a secessionist state. Secessionist states that have been recognised in this manner that have been observed in this thesis include Bangladesh, South Sudan and Eritrea. Interestingly, it appears from the analysis in

---

<sup>8</sup> *The Economist* “Failed States: Fixing a Broken World” 29 January 2009  
<<http://www.economist.com/node/13035718>> accessed 25 February 2015

Chapter 1 that in the case of the FRY, Belgrade's inability to maintain belief in its legitimacy from the citizens of the various republics (other than Serbia) led to the FRY eventually losing other states', and the UN's belief in its legitimacy, showing a link between internal and external legitimacy. When violence ensued, Belgrade's use of force was seen as illegitimate. This lack of legitimacy made the FRY's sovereignty untenable, which was a factor in the previously observed inevitability of the split. As suggested in the analysis in Chapter 1, the recognition of the subsequent states from the split can be seen as a pragmatic move on the part of the recognising actors. However, it can also be seen as a response to the illegitimacy of the FRY and its lack of viability as a successor state to the SFRY. The two conclusions are not mutually exclusive, and recognition of the subsequent republics can be seen as a pragmatic response to the FRY's inability to remain united due to the illegitimacy of the Belgrade government's authority.

A major ethical argument explored in this thesis is that the state has a responsibility to protect its citizens, and should it be unwilling or unable to do so then its legitimacy is called into question. As Mayall puts it, "When a government could no longer protect the lives of all of its citizens...it forfeited its legitimacy."<sup>9</sup> This implies that failed states are illegitimate, and if there is a secessionist entity within such an illegitimate/failed state that *is* capable of providing protection and security to its citizens then it has a strong case for recognition. However, as the case study of Somalia showed, the recognised states within the international community do not necessarily see it this way. This implies that recognition is more of a political process than a matter of principle. Nevertheless, the ethical principle of the responsibility to protect has been alluded to when recognition has

---

<sup>9</sup> Mayall, 1999, p483

been considered, if only implicitly. This has been apparent in the cases of remedial secession that have been examined in this thesis.

### Remedial Secession

Remedial secession has been an ethical and practical theme in cases where the states and organisations have considered recognising a secession, as well as a theme throughout this thesis. The principle of remedial secession was set out in Chapter 2, and has been evident, at least ostensibly, in the secession and recognition of Eritrea, South Sudan, Bangladesh and the partial recognition of Kosovo.

The remedial right to secede is based on John Locke's right to revolution, and relates to the aforementioned issues surrounding state legitimacy. As was established in Chapter 2, according to Buchanan, the remedial right to secede hypothesises that if a people are being persecuted, then the sovereign is not upholding their end of the social contract. The sovereign therefore forfeits their legitimacy, leaving the persecuted people free to look for a new sovereign.<sup>10</sup> This could be in the form of a revolution or, according to Buchanan, secession.<sup>11</sup> Buchanan writes that remedial secession should be seen as a 'last resort'.<sup>12</sup> Cases such as South Sudan and Kosovo, in which internationally-brokered negotiations were conducted with the aim of keeping the secessionist state united with its parent-state (the unwillingness of certain parties notwithstanding), show that this is a view shared by many actors within the international community.

---

<sup>10</sup> Buchanan, 2006, p37

<sup>11</sup> Ibid.

<sup>12</sup> Allen Buchanan *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law* (Oxford, Oxford University Press, 2004) p331

It was noted in Chapter 1 that there is a degree of pragmatism in the international community's approach towards secession, in that they have recognised secessionist states when a split seemed inevitable in order to exert a degree of control over the situation, and ensuring provision for issues such as minority rights in the new states so as to prevent sequential and recursive secession. This was particularly observable in the Balkans, as seen in Chapter 1. The same chapter noted that while most actors within the international community still generally observe an anti-secessionist norm, this is not absolute. The analysis of the breakup of Yugoslavia showed that certain actors in the international community were reluctant to endorse secession.<sup>13</sup> However, the illegitimacy of the FR Yugoslavia combined with the ensuing violence led many of these actors to act more pragmatically. Whilst apparently pragmatic, this act of recognition still relates to the ethical principle of remedial secession due to Belgrade's violent actions. This is particularly demonstrable if one takes into account Buchanan's view of remedial secession as a last resort.<sup>14</sup>

The evidence suggests that states born from remedial secession are only recognised if the fundamental rights of the secessionist people, such as the right to security and freedom from persecution, have been *actively* undermined by the parent-state. Although it was posited in Chapter 3 that the principle of remedial secession may be extended to situations in which people's security and rights are being passively undermined due to a lack of control of the central government, international actors have so far yet to take this approach. This implies that a lack of legitimacy on the part of the parent-state alone is

---

<sup>13</sup> Marc Weller "The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia" *The American Journal of International Law* 86(3), 1992, p570

<sup>14</sup> Buchanan, 2004, p331

insufficient for a secession to become recognised. It appears that the nature of the parent-state's illegitimacy must be such that the people are coming to harm as a direct result of the parent-state's actions. This relates to the principles of the Responsibility to Protect, which focusses on "genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement" and states that "If a state is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations".<sup>15</sup>

Whilst one could attribute the recognition of the republics seceding from the FRY to a lack of control by Belgrade, it is observable from the analysis conducted in Chapter 1 that the fact that violence ensued was a decisive factor in influencing the actors involved to act pragmatically and recognise the seceding republics. Part of the reason for this pragmatism may also have been to contain the crisis and prevent it spreading beyond the states of the former Yugoslavia, this being one of the West's key aims in its involvement.<sup>16</sup> This demonstrates an inclination to consider remedial secession when international security is at risk, highlighting the political side of recognition.

Certainly, it appears that Somaliland serves as evidence that states are not willing to invoke the principle of remedial secession in cases where security is being passively undermined. This is despite the fact that the people of Somaliland have historically had

---

<sup>15</sup> UN Office of the Special Adviser on the Prevention of Genocide "Responsibility to Protect" <<http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>> accessed 1 September 2016

<sup>16</sup> Australian Parliament: Parliamentary Research Service: *The Collapse of Yugoslavia: Background and Summary* Research Paper No14 1995-6 pii, <<https://www.aph.gov.au/binaries/library/pubs/rp/1995-96/96rp14.pdf>> accessed 2 September 2016

their security actively undermined, having suffered military attacks from the Barre regime as observed in Chapter 3. This reinforces the idea that recognising remedial secession is a last resort, and states and organisations appear to have favoured intervention as a tool of stability in cases such as Somalia, rather than recognising the secession of a potentially more stable state (Somaliland). The main conclusion to be drawn from this is that many actors within the international community are indeed wary of secession for fear of undermining the international system of states, and that remedial secession is very much the exception rather than the rule.

#### Earned Sovereignty

Even in cases in which remedial secession has become recognised it has sometimes come with additional caveats such as a commitment to democracy, human rights and security, as Chapter 2 noted when analysing the concept of earned sovereignty.<sup>17</sup> Whilst this does not necessarily represent a ‘pattern’ as such in the approaches towards secession, it has been observable to a degree in secessions such as those of Kosovo and South Sudan. However, the value of earned sovereignty as an ethical and practical concept is questionable as it has had limited success in practice.

As established in Chapter 2, the idea of earned sovereignty stipulates that the seceding state must prove a commitment to democracy, human rights and security before a remedial secession is recognised.<sup>18</sup> In theory, this commitment is ensured by a period of external administration and mediation during which the mechanisms for democracy and

---

<sup>17</sup>Grace Bolton and Gezim Visoka “Recognizing Kosovo’s Independence: Remedial Secession or Earned Sovereignty” Occasional Paper 10/11, St Anthony’s College, Oxford University, October 2010, p6

<sup>18</sup> Ibid.

security will be implemented. Following this period, the secessionist state can then potentially achieve recognition and sovereignty. However, despite efforts made to ensure the promotion of democracy, human rights and security during the interim period, it is difficult to ensure that such principles will endure long-term. Chapter 5 observed that there were aspects of earned sovereignty in the negotiations leading to the secession and recognition of South Sudan. Despite this, the case of South Sudan supports the argument that it is difficult to ensure long-term commitment to the principles of democracy, human rights and security, or even in the medium-term in this case. As was noted in the case study, aspects of the CPA suggested the concept of earned sovereignty was being applied.<sup>19</sup> Nonetheless, the government was still largely modelled on the SPLA/M, and those involved lacked the experience, knowledge and resources to implement a secure environment which would foster human rights and a democratic process.<sup>20</sup> This shows that for the concept of earned sovereignty to be credible, at the very least there needs to be an extended period of international administration to ensure that there is sufficient infrastructure and political will to implement security, human rights and democracy. This is of particular ethical and practical importance in the case of a secession from a failed state, since such a state is likely to have limited infrastructure and security.

#### Democratic Secession

The importance of democracy has indeed been a theme when it comes to the way in which the secession is considered for recognition. Referenda have been a near-universal aspect of recognised secessions since the end of the Cold War. However, as observed in

---

<sup>19</sup> Comprehensive Peace Agreement, Chapeau, 2005, p.xi

<sup>20</sup> Princeton N. Lyman "The United States and South Sudan: A Relationship Under Pressure" *Council of American Ambassadors* Fall 2013, <[https://www.americanambassadors.org/publications/ambassadors-review/fall-2013/the-united-states-and-south-sudan-a-relationship-under-pressure#\\_ftn4](https://www.americanambassadors.org/publications/ambassadors-review/fall-2013/the-united-states-and-south-sudan-a-relationship-under-pressure#_ftn4)> accessed 23 March 2016

Chapters 2 and 4 as well as the present chapter when discussing legitimacy, there have also been a number of secessionist entities that have voted for secession yet remain unrecognised. It is by now very clear that the will of a secessionist people alone is not sufficient to ensure recognition. Theoretical reasons, both ethical and practical, as to why recognising a state based on democratic secession alone is not enough were examined in Chapter 2, such as the argument that it undermines the principle of territorial integrity and the international system of states.

Chapter 2 also examined whether it could be detrimental to the pluralist theory of state, since in a pluralist state theoretically minorities will have their rights protected and therefore the need for secession is diminished. This point relates to the ‘failure of recognition’ clause that was also examined in Chapter 2. This goes some way towards explaining why democratic secession is not always recognised, since under the failure of recognition clause the secessionist people need to have their rights undermined by the parent-state before attempting democratic secession in order for the secessionist state to be recognised. This idea can be linked with remedial secession, which has been seen at times to have become recognised by states *en masse*. According to Alan Patten, the ‘failure of recognition’ clause is mostly relevant to multi-national states, and can be invoked if the federal/union/parent-state government denies self-government to one or more of the nationalities within the state. This is a broader justification for secession than remedial secession, which rests mainly on the secessionists having their rights and security actively undermined through persecution, as this chapter established.

However, the fact that it is a concept chiefly concerning multi-national states means that this broader justification could arguably be less of a threat to territorial integrity and the international system of states, and could also work to uphold the principle of self-determination. If democratic secession is recognised under the principle of failure of recognition, then the principle of *uti possidetis juris* can be upheld as there are often national or federal borders within multi-national states such as the United Kingdom or the former FRY. Despite this, Chapter 2 observed a major issue with recognising democratic secession from a multi-national state. In the case of the breakup of the FRY, the Serbs resident in many of the seceding republics (with the important exception of Bosnia-Herzegovina) were denied self-determination as a constituent people.<sup>21</sup> This highlights the importance of ensuring minority rights, even if not as a constituent people. It is of great significance that where this issue led to protracted violence in Bosnia-Herzegovina, a degree of self-determination did have to be offered to the Serbs in the form of the Republika Srpska.<sup>22</sup> This shows that even in cases of democratic secession from a multi-national state based on the failure of recognition clause that respects the principle of *uti possidetis juris* (the retention of existing boundaries), minority rights, pluralism and sometimes self-determination within the secessionist state have to be respected.

Interestingly, the possibility of democratic secession has been accepted by a parent-state even though the 'failure of recognition' clause had not been met. The 2014 independence

---

<sup>21</sup> EC Declaration on Montenegro- Brussels 10 January 1992 in S Trifunfovska (ed.) Yugoslavia through Documents: From its Creation to its Dissolution" (Dordrecht: Nijhoff, 1995) p474

<sup>22</sup> Alberto Nardelli, Denis Dzidic and Elvira Jukic "Bosnia and Herzegovina: The World's Most Complicated System of Government" *The Guardian* 8 October 2014  
<<http://www.theguardian.com/news/datablog/2014/oct/08/bosnia-herzegovina-elections-the-worlds-most-complicated-system-of-government>> accessed 24 June 2015

referendum in Scotland went ahead despite Scotland already having a degree of self-determination by way of the Scottish Parliament. This re-iterates the importance of the consent of the parent-state when it comes to recognising secessionist referenda.

In cases in which the consent of the parent-state has not been forthcoming, it appears as though universal recognition has not been attained. This is evident in the cases of Kosovo and Crimea (although the former gained a wider degree of recognition than the latter). As mentioned in Chapter 1, Principle 5 of the UN Declaration of Friendly Relations states that:

A state's right to territorial integrity prevails over the right of any of its peoples to self-determination, provided that state conducts itself in accordance with the principles of equal rights and self-determination of peoples.<sup>23</sup>

This implies that so long as the parent-state has provided for the rights of ethnic and/or national minorities, then it is under no obligation to recognise a referendum on secession held by such an ethnic and/or national minority (although this was not the case with Scotland).

The main conclusion to be drawn from this is that ethically and practically speaking, democratic secession is a limited right and can only be exercised legitimately with the consent of the parent-state and/or in conjunction with the remedial right to secede. Eritrea and South Sudan, as seen in Chapters 1 and 5 respectively, showed elements of

---

<sup>23</sup>UN: "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" United Nations General Assembly Resolution 2625 (XXV). Twenty-fifth session 24 October 1970 <<http://www.un-documents.net/a25r2625.htm>> accessed 19 November 2014

remedial secession in conjunction with the eventual consent of the parent-state. Consent from Belgrade was not immediately forthcoming in the case of the breakup of Yugoslavia. However, once the situation became violent, aspects of the remedial right to secede were arguably apparent. Yet it appears that the decision to recognise the seceding republics was more to do with pragmatism than principle due to the need to end the associated violence, again showing that pragmatism can be compatible with principle.

### Pragmatism

A major observation made in the first chapter of this thesis, and to a lesser extent in Chapter 5, is that recognition can appear to be based on politics and pragmatism. Pragmatic acts of recognition have been observable in situations where a multi-national state has broken up because the parent-state lacked legitimacy, making the central government unable to prevent the split (Yugoslavia and the USSR). They have also been seen in cases where secessions have become violent, and recognition has been used as a tool in conflict resolution and/or as a tool for the relevant actors within the international community to exercise a degree of control over the situation (Yugoslavia, Eritrea and South Sudan). Whilst these acts of recognition can be seen as pragmatic recognitions of secessions where a split was inevitable, one can argue that they were supported by the principle of remedial secession. The cases of the former Yugoslavia, Eritrea and South Sudan all involved oppression at the hands of the parent-state that had led to war. Negotiated settlements were attempted, and it became apparent that recognising secession was necessary in the view of the international community. This supports

Buchanan's idea of remedial secession being a last resort to resolve conflict and injustice.<sup>24</sup>

As observed in the thesis, pragmatic recognition allows for the relevant actors within the international community to exercise some control over the split and to carry out a degree of damage limitation. This could include making provision in negotiations for brokering a longer-term peace, providing for minority rights and ensuring that democracy and human rights are provided for in the new state. This relates to the concept of earned sovereignty and also ostensibly limits the possibility of recursive secession, since there will supposedly be less incentive for minorities to attempt secession as the new state provides for minority rights. This would suggest that pragmatism and principle are not mutually exclusive, since a pragmatic act of recognition can fit in with the principle of remedial secession and the concept of earned sovereignty.

However, in practice the approach has been used inconsistently. For example, some secessions have been recognised in situations in which the parent-state has lacked legitimacy, such as those mentioned. However, others such as Somaliland have not despite the fact that the recognised Somali government has lacked legitimacy, as seen in Chapter 4. Success in terms of creating a functioning, legitimate and democratic state has been limited. Chapter 2 noted that Eritrea has not developed into a democracy, while Chapter 5 observed that questions remain over South Sudan's legitimacy as a state. This may suggest that a pragmatic approach is based more on politics than principle; for example, it was noted in Chapter 5 that Christian groups and lobbies in the US had an

---

<sup>24</sup> Buchanan, 2004, p331

interest in an independent South Sudan. Additionally, Chapter 1 noted that the limited recognition of Kosovo also sees the self-interest of states at play, with some states recognising for the sake of regional security, and others not recognising due to fears of setting a precedent of secession. Some of these countries possess secessionist movements within their own borders, such as Spain and Russia. The foregoing analysis shows a major practical aspect of the current approach towards secession.

[How do the classic arguments against secession hold up in the context of a failed state?](#)

Chapter 3 analysed the sovereignty of failed states and threw into question some of the ethical and practical arguments against secession explored in the first two chapters, such as the idea that secession undermines *pluralism*. Here the thesis further adapts the concept of *remedial secession* to the context of a failed state, and from there examines whether *earned sovereignty* is applicable in such a situation. This section also suggests that the current approach might indeed be ethically and practically flawed, and that the *Declaratory Theory* of statehood might be more applicable in the context of failed states than it would be in the context of stable states.

As seen in the first two chapters of the thesis, the arguments against secession based on setting a precedent that could undermine the international system of states are indeed valid. If one is to grant secession to one group, then why not others?<sup>25</sup> The thesis has seen a number of cases of recursive and sequential secession; if one takes the former Yugoslavia as a failed state (since it lost the monopoly on the legitimate use of force)

---

<sup>25</sup> Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*, (Boulder: Westview Press, 1991) p102

then this illustrates that recursive and sequential secession are still concerns in the context of a failed state. If this were allowed to continue unabated, it would have the potential to undermine the entire states-system. In any case, ethically speaking, no state should strive to be ethnically pure, and with this in mind the right to self-determination should be exercised through representation within a state as opposed to granting independence to every ethnicity within a state.

However, in a failed state the parent-state has already arguably forfeited its sovereignty, and therefore arguably its right to territorial integrity. Of course, this argument is subjective, the argument that a state does not necessarily lose its sovereignty if it loses control over its territory has been seen. Nonetheless, it is important here to differentiate between two major types of failed state: those which have lost the monopoly on the legitimate use of force by *abusing* their power, and those who have lost the monopoly on the legitimate use of force through an *inability* to enforce their power. It appears that the former has arguably been seen to have lost its sovereignty in the eyes of the international community, or at least its sovereignty is temporarily no longer seen as inviolable. When such abuses of power have occurred in the past, particularly with regard to the oppression of a people, then at times humanitarian intervention has taken place and at times it has led to remedial secession. India's intervention in Bangladesh (then East Pakistan) and the region's subsequent independence and recognition is a good example of this.<sup>26</sup> However, humanitarian intervention is not without criticism and opposition. It has been

---

<sup>26</sup> Pavkovic and Radan, 2007, pp103-108

argued that it goes against the UN Charter, and moves for humanitarian intervention have been threatened and sometimes thwarted with veto in the UN Security Council.<sup>27</sup>

Nonetheless, the fact that such intervention has taken place is undeniable, whether moral and/or legal or not, and so one could observe a change in the norm of sovereignty and territorial integrity when it comes to failed states that abuse their power. This would lead to a validation of the argument for remedial secession in the case of state failure where there are issues over the self-determination of a group. Of course, it is also important to consider failed states that are *unable* to maintain their monopoly of legitimate power, rather than those who lose the legitimacy of their power through abuse. Somalia is an example of a state that is unable to maintain said monopoly.<sup>28</sup> The Transitional Federal Government had to vie for control of the country with secessionists, warlords and the Al-Shabaab militant Islamic group.<sup>29</sup> In such situations it can be concluded that the sovereignty of such a state is compromised, which is evident from the interventions that have taken place in Somalia throughout the nation's collapse.<sup>30</sup> These interventions, however, have been in support of maintaining the unity of the country and installing a

---

<sup>27</sup> James Piereson "Against Humanitarian Intervention" *The American Spectator* 18 September 2013 <<http://spectator.org/articles/54836/against-humanitarian-intervention>> accessed 17 August 2015

Ove Bring "Should NATO take the lead in formulating a doctrine on humanitarian intervention?" *NATO Review* 47(3) Autumn 1999 <<http://www.nato.int/docu/review/1999/9903-07.htm>> accessed 17 August 2015

UN Security Council Veto List <<http://research.un.org/en/docs/sc/quick>> accessed 31 August 2016

<sup>28</sup> Although as was noted in Chapter 4, prior to the fall of the regime of Siad Barre the legitimacy of said regime could be questioned due to abuse of power.

<sup>29</sup> *BBC*: Somalia Profile <<http://www.bbc.co.uk/news/world-africa-14094503>> accessed 19 August 2015

<sup>30</sup> *Ibid.*

CIA World Factbook: Somalia <<https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>> accessed 19 August 2015

federal government to rule over the entire country.<sup>31</sup> One can conclude from that that whilst sovereignty is compromised in this situation, it is not compromised in such a way as to advocate the breakup of the state as it might in the case of a state that has failed due to abuse of power, where the remedial right to secession can be applicable.

However, there appears to be an inconsistency here in the principle of the remedial right to secede. The previous chapter suggested this right is based on Locke's right to revolution, so if the sovereign is not upholding its side of the social contract then the citizens have the right to appoint a new sovereign. In the case of remedial secession this is interpreted as establishing a new sovereign in a new territory separate to the parent-state so as to exercise self-determination. One can thus make the ethical argument that that in a failed state with an ineffective government the sovereign is still not upholding its side of the social contract. This is because although the sovereign is not actively undermining the security of the citizens, it is unable to maintain their safety. It can thus be argued that the remedial right to secede applies in this case. There appears to be a lack of empirical precedent to this argument however. Whilst one could argue that Yugoslavia was a case in which the government was unable to provide security to all its citizens due to rival secessionist actors, there were also instances of violent oppression as we saw in Chapter 1, and so the remedial right to secede could more readily apply as the case was more clear-cut. Additionally, the breakup of the USSR could be seen as such a case of state failure as the Politburo was unable to maintain the monopoly of legitimate force. However, in the USSR's case there was mutual consent over the breakup between the secessionists and Yeltsin's Russian government.

---

<sup>31</sup> Ibid.

This lack of precedent could explain the inconsistency in the principle of remedial secession. Strengthening a weak government in order to legitimise its power, and possibly granting autonomy short of independence to minority groups within that state, could stabilise the state in question whilst still preserving the principle of territorial integrity. However, in the case of Somalia, as was seen in Chapter 4, this approach has so far failed to work, and so the international community's approach towards secession appears flawed and in need of reform. Ideas for such reforms are discussed toward the end of this chapter.

Part of the rationale for calling for the way secession from failed states is approached to be reformed is partly based on pragmatism. If the central government of a failed state is unable or unwilling to provide security for its citizens, and there is a secessionist entity that is capable of doing so, it would make ethical and practical sense to recognise said entity as independent and grant it full international sovereignty. The entity could then continue to provide security for the people within it. However, this would have to be provisional on the basis of earned sovereignty, so as to ensure that the citizens of the secessionist state would indeed have more security under the secessionist state than they would under the parent-state.

It must be stated here, however, that the concept of earned sovereignty is not always correctly enforced and is not infallible, as seen with Eritrea and South Sudan. This shows that concerns over minority rights within secessionist states are valid in the case of secessions from failed states, and so the concept of earned sovereignty would have to be

enforced more rigorously than it has been. If the way that approaches to secession from failed states are to be reformed in the aforementioned way, then it echoes the declaratory theory of secession, since the secession would become recognised by virtue of its *de facto* existence. In order to avoid setting a precedent that could lead to similar secessions and a breakdown of the global system of states, then this reform of the way that the secession from failed states is approached must only be applied in exceptional circumstances. Given the recursive failure of secessionist states such as Eritrea and South Sudan, there is an ethical argument that such circumstances must be even more exceptional than previous instances of recognition of secession from a failed state.

This harks back to ethical and practical issues discussed in the previous chapters on minority rights. The examples discussed in Chapter 1 have shown that the ‘exceptional’ cases in which secession was recognised often arose when the secession seemed inevitable. In those cases, as noted in Chapter 1, international organisations (such as the EU/EC in the case of the Balkans) implemented measures to ensure minority rights in the new states, so as to ensure that these actors had a degree of control over the secession and the subsequent states did not themselves collapse. It appeared in Chapter 1 that there is some form of consensus on the guidelines for recognising secession, in other words when it appears inevitable and conforms to the guidelines regarding minority rights, and so on. However, there appears to be little to no agreement or consistency on how rigorously such guidelines are enforced. No two secessions are the same, and therefore guidelines upon recognition will have to be flexible. For example, in the case of a secession from a failed state gaining recognition, international actors would have to be more active in ensuring that issues over minority rights and democracy are upheld in the

new state. They would also need to ensure that the political structures are strong, as such a state may not have the finances and/or resources to uphold this.

The analysis in this section has shown that whilst ethical and practical concerns about issues of minority rights and the potential for recursive and sequential secession remain, theoretically questions of sovereignty are of less ethical and practical importance in the case of a failed state. If issues over minority rights are resolved and safeguards put in place to reduce the risk of recursive and sequential secession, in other words the granting of autonomy to certain groups, then the case for recognising a secession could appear stronger in the context of a failed state. This is the case if the secessionist state meets the criteria discussed in this chapter: if it is more stable than the parent-state and supports minority rights. This chapter will conclude by consolidating these ideas for reform and building on them.

#### [Recognition of secession from failed and conflicted states.](#)

Breaking up a state has been used in the past as a conflict resolution tool, for example in South Sudan, Yugoslavia and to an extent the Korean peninsula. As has been seen, state failure is often perpetuated, exacerbated and sometimes even caused by inter-ethnic and nationalistic conflict. There would thus appear to be a certain degree of ethical and practical logic in exploring the option of breaking a state along ethnic or national lines in order to placate ethnic or national grievance. Whilst this has been done in the past, it is generally seen by the actors involved as a last resort. This can be illustrated by the fact that, as was established in Chapter 1, it was performed when there was a degree of inevitability about the split as was the case in Yugoslavia. With this in mind, it is

necessary to establish exactly what causes this inevitability so that it can be determined when this might be a viable option.

In the case of Yugoslavia, as seen earlier in the thesis, the fact that the Badinter-Herzog committee ruled that it was a case of dissolution rather than secession made it easier for the resulting states to become recognised, and also illustrates the perceived inevitability of the breakup.<sup>32</sup> The fact was that the unanimity of the support for secession in constituent republics such as Croatia and Slovenia, as illustrated by the referenda, and the lack of legitimacy of the Belgrade government that had failed to exert its claim for the FRY as a successor state to the SFRY, were compounded by a lack of success in negotiations aimed at unity. This made it difficult for states to recognise and the UN to accept Yugoslavia and the Belgrade government and not to recognise the resulting republics.<sup>33</sup> More importantly, the fact that violent conflict was involved in the breakup made it important for a solution to be found quickly.<sup>34</sup>

The fact that it was looking less and less likely that Yugoslavia would remain united meant it was logical to find a solution to the conflict that involved breaking it up. It took time and persistent effort from NATO, and there are still challenges such as the disputed status of Kosovo. However, the region is now much more stable and violent conflict is

---

<sup>32</sup> Alain Pellet "The opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples." *European Journal of International Law* 3(1), 1992, p182

<sup>33</sup> Roland Rich, "Recognition of States: The Collapse of Yugoslavia and the Soviet Union" in *The European Journal of International Law* 38(4), 1993, p39

"The background of the Yugoslav Crisis: A Review of the Literature" Netherlands Institute for War Documentation p34 <<http://niod.nl/sites/niod.nl/files/VI%20-%20The%20Background%20of%20the%20Yugoslav%20crisis%20-%20A%20review%20of%20the%20literature.pdf>> accessed 12 April 2015

<sup>34</sup> Hans-Dietrich Genscher: Interview with Rayna Breuer for *Deutsche Welle* 25 June 2011, <<http://www.dw.de/recognizing-slovenia-croatia-brought-peace-genscher-says/a-15182463>> accessed 8 September 2016

dramatically reduced.<sup>35</sup> This demonstrates that in cases of state failure characterised by inter-ethnic/nationalistic conflict and a lack of legitimacy on the part of the parent-state, there is an ethical and practical argument for granting independence to groups with grievances.

This idea is supported by the remedial right to secede and legitimacy arguments based on the social contract, since the parent-state is not providing security for the citizens of potential secessionist states, and is even actively undermining it by perpetuating conflict. One could counter this with the argument that the secessionists could also be perpetuating the conflict. However, when a unified solution seems unlikely, as was the case in Yugoslavia, then a pragmatic approach to conflict resolution can be required to impose a degree of order on the situation and ensure that the resulting states are set up in such a way that further conflict and/or recursive secession is avoided. This was attempted with a degree of success in the Balkans.

When considering breaking up a state for the purpose of conflict resolution, as could theoretically be performed to stabilise state failure caused by ethnic conflict and a lack of legitimacy of the parent-state, it is important to consider the concept of *Uti Possidetis*. *Uti Possidetis Juris*, the law of enshrining the borders granted to a state at the time of independence, serves to counter the danger of recursive secession and has been cited in the context of both decolonisation and the breakup of Yugoslavia.<sup>36</sup> This is an interesting

---

<sup>35</sup> NATO Briefing: "Bringing peace and stability to the Balkans" February 2005  
<[http://www.nato.int/nato\\_static/assets/pdf/pdf\\_publications/20120103\\_balkans-e.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_publications/20120103_balkans-e.pdf)>  
accessed 28 July 2015

<sup>36</sup> Trifunfovska (ed.), 1995, p474

and important ethical and practical issue when considering the breakup of a failed state. If using this law in order to resolve conflict in a failed state, then applying it can help to avoid further conflict as well as recursive and/or sequential secession, since only secessionist movements with a historical claim to a territory with clear borders could become recognised. Clear borders are defined here as the borders of a state prior to a union or occupation, and/or federal borders, going on the precedent of the breakups of Yugoslavia and the USSR and the decolonisation that occurred in the latter half of the twentieth century.

This law can be seen as a useful tool when considering recognition of secession from a failed state for the purposes of conflict resolution, since it can placate the ethnic violence associated with state-failure whilst still ostensibly upholding the principle of territorial integrity. It was seen in Chapter 1 that the international community applied this principle in the case of the breakup of Yugoslavia. However, as seen in the case study on Somaliland, there is a claim to a historical border (the colonial border of British Somaliland with Italian Somalia) which is the basis of Somaliland's secessionist territory, and this claim does not appear to be working in the secessionist country's favour.<sup>37</sup> This can be partially explained by an ongoing dispute over the border with the

---

Aleksandar Pavkovic "Recursive Secessions in Former Yugoslavia: too Hard a Case for Theories of Secession?" *Political Studies* 48(3), 2000, p485

Patrick K. Muwanguzi "Reconciling Uti Possidetis and Self Determination: The Concept of Interstate Boundary Disputes" p1  
<[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1023163](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1023163)> accessed 29 July 2015

<sup>37</sup> Dereje Feyissa and Markus V. Hoehne, *Borders and Borderlands as Resources in the Horn of Africa* (Woodbridge: Boydell & Brewer, 2010) p99

neighbouring region of Puntland.<sup>38</sup> This shows that the concept of *Uti Possidetis* can only be used practically if the border in question is undisputed.

### A comparative analysis of the approaches towards the secession of Somaliland and South Sudan.

This thesis has seen that markedly different methods and approaches have been taken by states and organisations towards secession from failed states in the cases of Somaliland and South Sudan. Simply put, South Sudan has achieved recognition whereas Somaliland has not. This is despite the fact that Somaliland arguably has the remedial right to secede, having been a separate entity prior to decolonisation, fulfilling the criteria for democratic secession and having a pragmatic case for secession given its relative stability in comparison to the rest of Somalia.

However, it is now important to revisit the ways in which these cases of secession from a failed state have been approached, bearing the principles of secession and the patterns of secession noted in the approach of the international community at the beginning of this chapter in mind. In this fashion the approaches can be critically examined in order to establish whether there is logic to the approach, despite the inconsistency of South Sudan being recognised and Somaliland not, and thus to assess the ethics and practicality of said approach.

It is also important to look at how this approach relates to the principles of secession noted in Chapter 2 and the stances on secession given by the various international

---

<sup>38</sup> Ibid.

organisations in Chapter 1. This will begin to discover whether states and organisations treat secessions from failed states differently to secessions from stable states, and uncover ways in which this approach needs to be revised in ethical and practical terms.

A major factor in South Sudan gaining recognition was that it garnered the sympathy of various actors within the international community, including powerful states such as the USA, having suffered directly and recently at the hands of Khartoum. This was reflected in the Western media at the time.<sup>39</sup> Additionally, the parties involved entered into internationally-recognised negotiations, of which a referendum on secession was a part. This would suggest the principles of democratic secession, consent and secession as a last resort were being observed. It is the fact that the parties involved in the secession of South Sudan entered into these negotiations that most clearly distinguishes this case from that of Somaliland, whose lack of recognition can thus *prima facie* be attributed to a rejection of unilateral secession. The Chatham House think-tank argued that entering into an internationally-recognised process allowed an agreement to be made between Khartoum and Juba, between whom there was deep mutual distrust.<sup>40</sup>

---

<sup>39</sup> *The Economist* "South Sudan: A Necessary Secession" 6 January 2011 <<http://www.economist.com/node/17851379>> accessed 24 February 2014  
Jeffrey Gettleman "After Years of Struggle, South Sudan Becomes a New Nation" *New York Times* 9 July 2011 <[http://www.nytimes.com/2011/07/10/world/africa/10sudan.html?\\_r=0](http://www.nytimes.com/2011/07/10/world/africa/10sudan.html?_r=0)> accessed 25 February 2016

<sup>40</sup>Chatham House "Somaliland's Place in the World" Africa Programme Conference Summary December 2011 p5  
<<https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/1211confsummary.pdf>> accessed 23 October 2015

Moreover, the internationally recognised CPA “became the constitutional guarantee of recognition and put South Sudan in a secure legal position.”<sup>41</sup> The right to South Sudan’s independence was therefore enshrined in the fact that the CPA was recognised by both Sudan and South Sudan.<sup>42</sup> This once more highlights the importance of the consent of the parent-state. The significance of South Sudan’s involvement in internationally-recognised negotiations is supported by Ambassador Johnnie Carson in an interview with the BBC. In this he stated that it was these internationally-recognised negotiations, which importantly involved both the parties of Sudan and South Sudan, that distinguished the case of South Sudan from that of Somaliland.<sup>43</sup> He emphasised that the process was agreed to by both sides and recognised by IGAD and the AU, while in contrast describing the situation with Somaliland as having “no mutually agreed upon process for the disintegration and fragmentation of Somalia”.<sup>44</sup> Finally, he noted that “the people of Somalia have not had an opportunity to decide and vote on this”.<sup>45</sup> This again shows the ethical significance the placed on the consent of the parent-state.

An important question to address here is why consent was forthcoming from Khartoum but not from Mogadishu? This can be attributed to international pressure on Khartoum to engage in peace talks, which derived from the previously-mentioned international sympathy for the South and the fact that a negotiated settlement seemed impossible without floating the possibility of a referendum on secession. This again demonstrates that secession can be recognised as a last resort if it appears inevitable. This was also

---

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ambassador Johnnie Carson: Interview with Zeinab Badawi for the *BBC* (1:20) 27 January 2011 <[http://news.bbc.co.uk/1/hi/programmes/world\\_news\\_today/9378666.stm](http://news.bbc.co.uk/1/hi/programmes/world_news_today/9378666.stm)> accessed 12 July 2016

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

seen in the previous chapter, particularly in terms of US pressure on Khartoum to enter into peace negotiations where was in part fuelled by the Christian lobby in the US.<sup>46</sup> The same chapter demonstrated that there were pragmatic reasons for providing for an independence referendum in the peace process, especially as Carson stated that ignoring the referendum would have jeopardised the CPA.<sup>47</sup> Accordingly, there has been less pressure on the FGS and the TFG before it in Somalia to negotiate with Somaliland over secession since these governments themselves have not actively persecuted Somalilanders. Recognition of Somaliland has been considered by governments, as shown by the findings of Tony Worthington MP with the Select Committee on International Development. Despite this, negotiations on secession are not seen as being as important as they were in the case of South Sudan, since it is not a question of resolving a war between Mogadishu and Hargeisa.<sup>48</sup>

The foregoing does not suggest that Somaliland has no claim to recognition. Indeed, it has a number of practical arguments in its favour that South Sudan did not; for example, the claim to pre-existing colonial borders that, according to the AU, are sacrosanct. While admittedly this border is disputed by Puntland, as seen in Chapter 4, the fact remains that this was the border between the colonies of British Somaliland and Italian Somalia.<sup>49</sup> As a result, the AU's recognition of South Sudan when it broke down a state

---

<sup>46</sup> Asteris Huliaras "The Evangelical Roots of US Africa Policy" *Survival* 50(6) 2008 pp171-172

<sup>47</sup> Johnnie Carson, "Transcript: The Conclusion of the Comprehensive Peace Agreement: US Perspectives and Policy Goals in Sudan" Chatham House 7 March 2011 p2  
<<https://www.chathamhouse.org/sites/files/chathamhouse/public/Meetings/Meeting%20Transcripts/070311carson.pdf>> accessed 9 March 2016

<sup>48</sup> Tony Worthington MP, House of Commons, Hansard, 4 February 2004, Column 273WH  
<<http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040204/halltext/40204h03.htm>> accessed 03 November 2015

<sup>49</sup> Kingston and Spears, 2004, p178

based on existing colonial borders, yet refusal to recognise Somaliland which would be a reversion to existing colonial borders, represents an inconsistency in its approach.

It could be posited that this is a pragmatic decision, made in order to prevent conflict between Somaliland and Puntland and/or Somalia. However, it was noted in Chapter 5 that border disputes still exist between Sudan and South Sudan over Abyei that were not properly resolved at the time South Sudan was recognised, showing a further inconsistency in the approach of the AU. It appears then that the consent of the parent-state in agreeing to secession negotiations takes primacy in the eyes of the AU over claims to previous colonial borders, despite the contentious nature of the union between Somalia and Somaliland noted in Chapter 4. The AU's approach towards Somaliland's claim to previous colonial borders also differs from their approach to the situation of Eritrea. However, again consent of the parent-state in that situation was eventually forthcoming, and the secessionist movement again managed to obtain a degree of support from the US.

It was also observed in Chapter 4 that there was a historic case of remedial secession for Somaliland, given that they had suffered persecution at the hands of Siad Barre. One can contest that the argument no longer stands as Barre has since been deposed. This could be countered using the ethical argument put forward in Chapter 3, that the security of citizens is still being undermined in Somalia due to a lack of effective control by Mogadishu. Somaliland should thus be recognised under a broadened definition of the remedial right to secede, since the Hargeisia government can provide better security for them than the FGS.

However, it generally appears as though remedial secession has only been universally recognised when security and human rights are being *actively* undermined by the parent-state. This approach can be explained by the fact that a state *passively* undermining a people's rights, in other words by having limited power over the territory and thus being unable to uphold them, is not necessarily 'at fault' in the same way as a state that is actively persecuting a people. The foregoing comparison shows that the consensus amongst most states in the international community remains to support territorial integrity over self-determination through secession even in the case of failed states. One possible exception to this might be situations in which war seems to be at a stalemate. Including provisions for recognising secession in negotiations could then appear to be necessary in order to strike a peace deal, making secession and recognition inevitable.

It appears that whilst the principle of democratic secession was upheld in the case of South Sudan, it was not in the case of Somaliland. This shows that there are additional criteria which need to be fulfilled, such as the aforementioned entry into internationally-recognised negotiations and the consent of the parent-state. This shows a rejection of unilateral secession, which is consistent with the findings of both Chapters 1 and 2. As previously mentioned, remedial secession has also been taken into account in secession from failed states in South Sudan and arguably in Eritrea and Yugoslavia. Yet it is apparent that this principle is only upheld in situations in which the persecution by the parent-state has a) been recent and b) developed into war, with the secessionists prompting recognition to be explored as a pragmatic tool of conflict resolution as already noted. The fact that Somaliland's most significant incident of oppression occurred over

two decades ago under a deposed dictator, combined with the fact that it exists relatively peacefully (border skirmishes notwithstanding), undermines its case for remedial recognition, at least in the eyes of the international community.<sup>50</sup> Deon Geldenhuys adds to this idea by suggesting that Somaliland has been “a victim of its own success” in as much as “its peace and stability amid the turmoil of Somalia did not capture media headlines or arouse humanitarian concerns.”<sup>51</sup> This shows a marked contrast with the way the West turned their attention to the humanitarian issues in South Sudan, in no small part due to the way it was reported in the media.

With South Sudan, it appears as though there was an attempt to embrace the concept of earned sovereignty. This is evidenced by the international nature of the negotiations as well as the idea of the interim period between the CPA and the referendum on independence, along with the wording of the CPA as seen in the previous chapter. However, it also appears as though the international actors involved did not monitor the situation adequately, which would appear to be an ethical and practical oversight. The fact that UNMISS noted that much of the post-secession conflict could be attributed to pre-existing ethnic/tribal tensions implies that not enough was done in the interim period to ensure that minority rights would be provided for should South Sudan secede.<sup>52</sup> It was noted in the first chapter that the provision of minority rights have been a feature of negotiations involving secession, notably in the Balkans. Such issues were overlooked

---

<sup>50</sup> Unrepresented Nations and Peoples Organisation “Somaliland: Cooperation With Puntland On Security And Border Disputes” 2 May 2014 <<http://unpo.org/article/17101>> accessed 13 July 2016

<sup>51</sup> Deon Geldenhuys, *Contested States in World Politics* (London: Palgrave Macmillan, 2009) p139

<sup>52</sup> UN: “Conflict in South Sudan: A Human Rights Report” 8 May 2014 p14 <<https://unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/UNMISS%20Conflict%20in%20South%20Sudan%20-%20A%20Human%20Rights%20Report.pdf>> accessed 16 March 2016

in the case of South Sudan, which would suggest a severe shortcoming in the way in addressing the ethical and practical issues associated with this particular secession from a failed state.

It is conceivable that the instability South Sudan has faced since independence may have a negative effect on Somaliland's bid for recognition, due to the fear that an independent Somaliland may descend into similar instability due to divisions along clan lines.<sup>53</sup> However, this concern is somewhat speculative. Whilst inter-clan conflict has been a problem in Somalia, Chapter 4 also saw that inter-clan disputes are not so much of an issue in Somaliland. That said, it is conceivable that the unresolved conflict with Puntland over Sool and Sanaag could lead the international community to believe that a South Sudan-esque post-recognition conflict in Somaliland is a distinct possibility, which could deter widespread recognition.

Legitimacy has been a major theme of this thesis, and at this point it is important to assess just how much the legitimacy of the parent-state is taken into account when considering recognition from failed states. It appears that in the case of Somalia the FGS, and the TFG before it have been internationally recognised as the legitimate governments of the whole country, at least ostensibly. This can be demonstrated by the very act of recognition and the lack of recognition given to Somaliland. However, as noted in Chapter 4, the legitimacy of the FGS and the TFG before it is contestable, mostly due to

---

<sup>53</sup> Abshir Mohamud Ahmed "Somaliland: The South Sudan Scenario" Democracy Chronicles 19 January 2016 <<https://democracychronicles.com/south-sudan-scenario/>> accessed 27 March 2016

their inability to provide security for its citizens, but there have also been reported cases of the TFG actively undermining the security of Somalis.<sup>54</sup> There also appears to have been a lack of belief in the legitimacy of the TFG and subsequently the FGS amongst Somalis, not just in Somaliland but also in Puntland and other areas of the country (partially due to support for Al-Shabaab).<sup>55</sup> It would appear logical that the West would support Mogadishu against Al-Shabaab, given their affiliation with Al-Qaeda.<sup>56</sup> Yet as noted in Chapter 4, Somaliland has largely managed to limit Al-Shabaab influence within its claimed territory.<sup>57</sup> The fact that Somaliland has been able to do this, in other words to demonstrate control over its territory and provide security for its citizens (at least to a greater degree than the TFG and the FGS, as seen in Chapter 4), combined with the apparent support of its people shown by referendum results, arguably shows Somaliland to be a more legitimate state than Somalia with a more legitimate claim to control over its territory than, again as Chapter 4 saw, the FGS has and the TFG before it had.

However, this has not been the view of other states in that none have yet recognised Somaliland, which would conclude that either legitimacy is not taken into account when considering secession from failed states, or that legitimacy is seen differently in the

---

<sup>54</sup> Stephanie Hanson and Eben Kaplan "Somalia's Transitional Government" *Council on Foreign Relations* 12 May 2008, <<http://www.cfr.org/somalia/somalias-transitional-government/p12475#p6>> accessed 6 October 2015

<sup>55</sup> Alex Thurston "Puntland, the TFG, and the Continuing Fragmentation of Somalia" Sahel Blog 24 January 2011 on <<https://sahelblog.wordpress.com/2011/01/24/puntland-the-tfg-and-the-continuing-fragmentation-of-somalia/>> accessed 7 October 2015

BBC, 3 April 2015, <<http://www.bbc.co.uk/news/world-africa-15336689>> accessed on 1 October 2015

<sup>56</sup> BBC: "Who are Somalia's al-Shabab?" 3 April 2015 <<http://www.bbc.co.uk/news/world-africa-15336689>> accessed 01/10/15

<sup>57</sup> "Somalia's Transition: What Role for SubNational Entities? Chatham House Meeting Report January 2012 p5 <<https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0112report.pdf>> accessed 6 October 2015

international realm to the way it is seen in the domestic. In theory, domestic legitimacy stems from the social contract as well as the Weberian idea of holding the monopoly on legitimate force. However, it appears that international legitimacy is based on recognition more than other factors. As this thesis has seen, states that have used force in an illegitimate manner, as well as states that do not have a monopoly on the use of force, have remained recognised as states by the international community.

In the case of Sudan, the Khartoum government's legitimacy was undermined by the way it had forcefully imposed its power on the South and actively undermined their security and rights through persecution. However, the Khartoum government is still recognised as legitimate over Sudan *alongside* Juba as the legitimate government of South Sudan. This implies that if a parent-state's rule over a secessionist state is deemed illegitimate, then the parent-state itself does not necessarily lose legitimacy in the eyes of other states. This also demonstrates that Somaliland does not have a case for recognition in the view of other states simply because the TFG's legitimacy *as a national government* has been undermined. This approach does not take into account the arguments that Hargeisa can provide better security for Somaliland and that its citizens believe in its legitimacy, which were discussed in Chapter 4.

[Are secessions from failed states treated differently to secessions from stable states in ethical and practical terms?](#)

Secessions from stable states have tended to receive the consent of the parent-state. Examples of this include the breakup of Czechoslovakia, the split of Montenegro from

Serbia, and to an extent the breakup of the Soviet Union.<sup>58</sup> Where mutual consent has not been granted and secession becomes violent, as seen in Chapter 3, it has arguably caused or contributed to the failure of the state. This is because the parent-state no longer has the monopoly on the legitimate use of force, having lost the monopoly due to the secessionist movement taking up arms. If the secessionists have popular support, then one can argue that the parent-state has lost a degree of legitimacy since those who support the secessionists no longer believe in the legitimacy of the parent-state or consent to their rule. This illustrates a tautology between the phenomena of secession and state failure.

The way in which these situations are approached depends on the legitimacy of the secessionists. If the parent-state had previously made no attempt to make constitutional and governmental provision for the minority which is now seceding, then the failure of recognition clause is triggered. However, as noted in Chapter 1, in practice the reaction actors within the international community could be more political and pragmatic. A crucial argument of this chapter, and indeed of this thesis, has been that recognition of secession from failed states appears to only be recognised as a tool for conflict resolution, perhaps using the remedial right to secede for additional justification. For a secession from a failed state to become recognised, the secessionist conflict must therefore be at a stalemate with little chance of a peace deal that does not involve recognition of the secession. This shows that the general approach towards secession is largely pragmatic.

---

<sup>58</sup>The breakup of Czechoslovakia was based on mutual consent of the governments involved however it was not put to a referendum. Glenn Campbell "Scottish independence: Lessons from the Czech/Slovak split" *BBC* 20 January 2013 <<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-21110521>> accessed 19 July 2016

CIA World Factbook: Montenegro <<https://www.cia.gov/library/publications/the-world-factbook/geos/mj.html>> accessed 19 July 2016

Initially Gorbachev opposed the breakup, but Yeltsin as President of Russia supported it.

In this sense the approach is different to the approach towards secession from stable states, simply by the very fact that conflict is present. Secession is therefore (in some situations) a potential option that negotiations can use to end the conflict.

However, actors within the international community appear to attempt to observe some of the same aspects and procedures when considering secession from failed states as with secession from stable states. For example, there may be a referendum to demonstrate the will of the secessionists and their consent to be governed by the secessionist state, and also an attempt to gain the consent of the parent-state. In the case of Sudan, this came through negotiations to end the conflict borne out of the stalemate, while in the case of Ethiopia and the secession of Eritrea, this came through a change in the Ethiopian government. This gives a degree of consistency to the way in which the international community approaches secession overall.

However, this may not be the way forward. This thesis has demonstrated that there are certain ethical and practical issues surrounding secession from failed states that do not apply to every case of secession; questions surrounding the ability of the parent-state to govern and provide security and rights that in turn lead to more questions about the legitimacy of the parent-state. For this reason, the chapter concludes by examining ways in which approaches towards secession from failed states can be revised, and whether it is likely, possible, advisable or necessary.

## Ways in which the approaches towards secession from failed states can be revised.

The remedial right to secede has been a theme throughout this thesis, and its use has been apparent in many cases in which secession has been recognised, including Bangladesh, Eritrea and most importantly for this thesis, South Sudan. However, this chapter has concluded that recognition is usually only born out of remedial secession if the secessionists have experienced recent or ongoing direct persecution at the hands of the parent-state, and if other attempts to resolve the oppression/conflict have been exhausted. However, it is argued here that the definition of remedial secession could in fact be broadened to include situations in which the parent-state is passively undermining the security and rights of the secessionists by being unable to provide such political goods. As has been seen, Somaliland is a prime example of a secessionist state which could benefit from this. One limitation of such an approach, however, is that in such a situation of state collapse, any number of secessionist movements could potentially jump on the opportunity in order to stake their claim for independence.

As with other cases of recognition, cases must be judged on individual merit in order to avoid setting a precedent that could undermine the international system of states, and secessions should only be recognised in exceptional circumstances. An example might be when the secessionist state fulfils the criteria for statehood under the Montevideo Convention *and* can prove a better ability to uphold the security and rights of its citizens than the parent-state, as well as fulfilling the requirements of democratic secession and undergoing the process of earned sovereignty.

Whilst the preceding argument is a broadening of the criteria for recognition of secession from a failed state, it is not a big deviation as many aspects remain the same as current practice. For example, the situation in Somaliland appears to be a stalemate, and Hargeisa seems unlikely to recognise the rule of the FGS as illustrated in Chapter 4 by the Somaliland referendum on their constitution and the Isaaq's refusal to take part in the 4.5 negotiations.<sup>59</sup> Hargeisa's reluctance to take part in negotiations on a unified solution can be attributed to the historic oppression the Isaaq suffered under Barre, further justifying the remedial right to secede. Stalemates such as this when there is resentment or a lack of trust between the parties can mean that a solution involving self-determination short of secession (whilst a valid option in some cases, as illustrated by the Republika Srpska) is very difficult to implement practically. Kosovo demonstrated this with its stubbornness during negotiations over independence or re-integration.

Since a unified solution seems unlikely in the case of Somaliland, there appear to be two choices of approach: leave Somaliland as an unrecognised *de facto* state despite its relative stability compared to other parts of Somalia, or recognise it. It appears as though most states and organisations will go with the former option, since the benefits of secession from a failed state are only immediately apparent if there is ongoing conflict.

As observed earlier in the present chapter and in Chapter 2, the concept of earned sovereignty sought to place further safeguards on the principle of remedial secession. It

---

<sup>59</sup> J. Peter Pham, "Somalia: Where a State Isn't a State" *The Fletcher Forum of World Affairs* 35(2), Summer 2011, p137

Kingston and Spears, 2004, p178

has been noted that this is a concept that has been used in Kosovo (although Kosovo has yet to achieve UN recognition) and to an extent in South Sudan (with extremely limited success). On the face of it, it appears that this concept is suitable for use when considering secession from failed states. The reasoning behind this argument is that there would be little point in recognising a secession from a failed state if the subsequent state is just as unstable and vulnerable to further ethnic conflict that could in turn potentially lead to recursive secession. This is a particularly important ethical and practical issue in cases of secession from failed states when the society of the secessionist state is already divided, as it was along tribal lines in South Sudan. If justifying recognition for the sake of conflict resolution and stabilisation in the region, the new state(s) must therefore fulfil the caveats associated with earned sovereignty that we saw in the last chapter, namely commitment to democracy, human rights and security.<sup>60</sup> There would also need to be a commitment to upholding minority rights, a principle voiced in the Badinter-Herzog Committee.<sup>61</sup> Again, this would be aimed at reducing the possibility of further violence and ensuring that the solution to split the failed state did indeed bring peace and stability. This approach has been successful to an extent with Yugoslavia, at least in the secessionist state if not in the parent-state.

As noted in Chapter 2, the idea of earned sovereignty requires a period of mediated international administration, and if the caveats of earned sovereignty are not met then 'rehabilitated autonomy' can ensue. This means that the option of self-determination without secession is still available, which could potentially stabilise a failed state whilst still upholding territorial integrity. However, this option is somewhat speculative since it

---

<sup>60</sup> Bolton and Visoka 2010, p6

<sup>61</sup> Pellet, 1992, p178

is without precedent, having not really been used alongside the theory of earned sovereignty in practice. Self-determination without secession has worked to bring a degree of stability to states, such as in the case of the Republika Srpska within Bosnia.<sup>62</sup>

Whilst, as mentioned in Chapter 5, a full analysis of post-secession South Sudan is outside the scope for this thesis, it is evident from the fractured nature of South Sudanese society and the subsequent civil war in South Sudan that the actors involved with brokering a secession in the name of conflict resolution need to be more proactive if the concept of earned sovereignty is to be successful.<sup>63</sup> This means more engagement with the process of setting up a constitutional system in a new state to ensure all peoples within the new state are represented. The *Chapeau* of the CPA, as noted in Chapter 5, referred to the values of “justice, democracy, good governance, respect for fundamental rights and freedoms of the individual, mutual understanding and tolerance of diversity within the realities of Sudan”.<sup>64</sup> However, this appears superficial and little was done on the part of the actors involved to implement such principles, perhaps because part of the aim of the CPA was to make unity appear attractive.<sup>65</sup>

As noted in Chapter 5, little was done in the CPA to prepare for a post-independence government, showing that should the concept of earned sovereignty be employed by the

---

<sup>62</sup> Nardelli, Dzidic and Jukic *The Guardian* 8 October 2014 on <http://www.theguardian.com/news/datablog/2014/oct/08/bosnia-herzegovina-elections-the-worlds-most-complicated-system-of-government> accessed on 24 July 2015

<sup>63</sup> UN: “Conflict in South Sudan: A Human Rights Report” 8 May 14 p14 <https://unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/UNMISS%20Conflict%20in%20South%20Sudan%20-%20A%20Human%20Rights%20Report.pdf> accessed 16 March 2016

<sup>64</sup> Comprehensive Peace Agreement, Chapeau, 2005, p.xi

<sup>65</sup> CPA “The Right to Self Determination of the People of South Sudan” p8 article 2.4.2

international community when considering secession from failed states then better provisions need to be made should the secessionists gain independence. These provisions should include minority rights and adequate representation for minorities in a similar disposition to the Badinter-Herzog commission. This appears to be somewhat at odds with the way sovereignty is seen in existing states. Many existing states do not uphold the fundamental human rights of their own citizens let alone minorities, yet are still perceived as sovereign by other states and the UN. Earned sovereignty in this respect holds new states to a higher standard than existing states, and greater international involvement in earned sovereignty would enshrine that double-standard into practice.

However, with the coming of the Responsibility to Protect, it appears that the current international norm is changing, although we are currently in the early stages of this change. Whilst intervention based on the Responsibility to Protect has been inconsistent, the principle of holding existing states to a moral standard is still an ethical principle espoused by the UN. The significance of this is that it points to the need for a more consistent, ethical and principled approach to responsible sovereignty. With this in mind, mechanisms need to be put in place to ensure that new states created through the principle of earned sovereignty adhere to the responsibility to protect. For example, trustees of the interim period should be permitted and ready to intervene should the new state fail in its responsibilities. Ideally, this would be done with UN oversight in order to avoid connotations of imperialism.

Indeed, the revival of a modified UN Trusteeship Council would help facilitate international oversight of cases of earned sovereignty, with an altered mandate to focus

on cases of remedial secession as well as decolonisation. This would still have to be limited to cases in which remedial secession was a), a last resort to serious injustice; b), an act of conflict resolution; and/or c), from a perpetually failed state in which the secessionist state already had functioning state structures and could provide for better rights and security than the parent-state, as in the *sui generis* case of Somaliland. Restricting it in this way would limit damage to the international norm of territorial integrity.

It should certainly be noted that the legacy of colonialism makes an ethical and practical case for reform of the way the secession from failed states is approached. The arbitrarily-drawn borders that showed little to no regard for the demographics of the region suggests that there is scope for significant conflict and subsequently state failure as groups vie for dominance, or attempt to assert dominance through oppression of other peoples. Indeed, this has been the case in a number of African countries, for example in Rwanda, Burundi and Sudan.<sup>66</sup> This could potentially lead to calls for remedial secession.

As noted in Chapter 1, the AU has decreed that the colonial borders are the borders of the post-colonial states, and are unchangeable and inviolable. However, this policy was waived in the case of the secession of South Sudan, implying that it is not a universal and absolute rule throughout the AU. However, as is evident from the post-independence conflict in South Sudan, while secession may go some way towards resolving conflict with the parent-state it may also intensify conflict within the secessionist state as the

---

<sup>66</sup> Awoowe Hamza, "Ethnic Conflict: Colonialism's Never-Aging Offspring" *Huffington Post* 26 February 2014 <[http://www.huffingtonpost.co.uk/awoowe-hamza/ethnic-conflict\\_b\\_4854220.html](http://www.huffingtonpost.co.uk/awoowe-hamza/ethnic-conflict_b_4854220.html)> accessed 27 July 2016

groups within it vie for power. The post-secession conflict in South Sudan may lead states and organisations to be wary of employing the principle of remedial secession in the future. Unified solutions may be more desirable and also more feasible.

The writings of Pierre Englebert and Rebecca Hummel analysed in this thesis play down the link between a weak state and secession, even in heterogeneous post-colonial African states.<sup>67</sup> This supports the argument that the international community should favour unified solutions to conflict. As argued in Chapter 1, this is indeed already the attitude of many states and organisations towards secession, particularly given the AU policy of retaining colonial borders. This attitude can go some way toward explaining what Englebert and Hummel call “Africa’s secessionist deficit”, despite the fact that there have been a plethora of post-colonial secessionist movements in Africa.<sup>68</sup> The recognition of South Sudan proved to be an exception to the AU’s policy, and the aftermath might make the AU and other actors within the international community reluctant to make further exceptions.

However, there is a strong argument for the recognition of Somaliland as seen in this chapter and in Chapters 3 and 4. The recognition of Somaliland would not necessarily mean a huge departure from the current attitude of states and organisations towards secession from failed states. As noted earlier in this section, Somaliland has a case for remedial secession, albeit one that requires a slight broadening of the definition. Recognition of Somaliland would also fit in with the AU’s policy on the retention of

---

<sup>67</sup> Pierre Englebert and Rebecca Hummel “Let’s Stick Together: Understanding Africa’s Secessionist Deficit”, *African Affairs* 104 (416), 2005, pp410-412

<sup>68</sup> *Ibid*, p399

colonial borders, having been a separate colonial entity; such a secession along previous colonial borders would not be unprecedented, as seen with Eritrea. The main practical problem with this would be the border dispute with Puntland, although Puntland's border claim would violate the AU's policy on colonial borders.

The major practical and ethical question which arises when discussing the attitudes towards secession from failed states is whether a more consistent approach is needed, whether a pragmatic approach is desirable, or whether a pragmatic approach guided by principle would be best. This thesis argues that a more active principled approach with room for pragmatism is required, whilst still retaining the current practice of using secession as a last resort. The UN and other international actors, such as other organisations and mediating states, also need to take a more active role in situations of secession from failed states, be it in brokering a unified solution or negotiating a secession and in upholding stability in the immediate aftermath.

A pragmatic approach would allow the actors involved to act appropriately to each situation on its own merits, given that no two situations are exactly alike. A completely consistent approach based on rigid principle would be impractical. However, certain principles are important in order to prevent encouraging unilateral secession and undermining the international system of states, an issue of particular concern in failed states due to their already fractured nature. This thesis argues that the principles of remedial secession and earned sovereignty should be used as guidance, as they are useful for measuring the legitimacy of both the parent-state and the secessionist state respectively. These principles can be broadened or narrowed depending on the fragility

of the situation. The nature of failed states means that the parent-state's legitimacy can be more easily called into question; however, the fractured nature of failed states also means that secession must be a last resort in order to avoid setting a precedent for other groups. Nonetheless, principles could be broadened for a relatively stable state with a relatively strong claim, such as Somaliland.

It is of paramount importance that the actors involved in brokering a potential secession closely monitor the situation before, during and after the secession, and perhaps even police it if necessary. This should take the form of international mediation in negotiations and UN peacekeeping in any new state, both during any interim period and immediately following recognition. This will help to ensure that the new state is viable in terms of providing infrastructure, representation and security to its citizens, which will help to avoid, or at least control, recursive violence and potentially recursive secession.

#### Chapter Conclusion.

This chapter has highlighted the importance of a number of themes and issues that are inherent to the approaches towards secession, and secession from failed states in particular. The relationship between pragmatism and principle in their approach has been of note. For example, in both the cases of South Sudan and the breakup of Yugoslavia principle was apparent in the tacit support for the secessionists by various states and organisations under the principle of remedial secession, yet there was also an element of pragmatism in terms of using secession as a conflict resolution tool. Whilst the true motives of the relevant actors will always be uncertain, this observation shows that pragmatism and principle may not be mutually exclusive motives in the international

community's approach to such situations. Further to this, and adding to Buchanan's idea of remedial secession as a last resort, it appears as though states and organisations are more likely to recognise remedial secession if it aids conflict resolution or prevents the spread of conflict. This points to a wider disposition of many states and organisations to prioritise engagement with conflict between clear belligerents over the general disintegration of state structures. This in turn shows that whilst pragmatism and principle are not mutually exclusive, pragmatism and politics will have an influence on the use of principle in practice.

It is also apparent from this analysis that states and organisations are more likely to intervene in situations in which people are actively being persecuted, under the auspices of the Responsibility to Protect. This implies that a similar approach to remedial secession is taken, and cases such as South Sudan and the Balkans are testament to this. Whilst this thesis has posited the idea of a limited widening of the principle of remedial secession to include certain situations of secession from collapsed states, such as failed states that have lost the monopoly on power rather than those which are using power illegitimately, this approach has yet to be seriously considered by most states and organisations.

Elements of the concept of earned sovereignty have been apparent in situations where international actors have become involved in conflict resolution relating to remedial secession, for instance in South Sudan and Kosovo. However, this chapter has established that this concept needs more attention and consistency, perhaps with formal UN trusteeships being used in such situations. In addition, the present chapter has shown

that secession from failed states involves more complex issues relating to legitimacy than secession from a stable state would. However, many of the same fears over setting a secessionist precedent remain, and the issues of legitimacy are only taken into account in situations of conflict and/or serious human rights abuses. Even then, these issues are secondary to pragmatism.

In conclusion, this chapter has argued that there is room for both pragmatism and principle in the approaches towards secession from failed states. While the principles do need to be applied a little more consistently, a degree of pragmatism can be used in determining how broadly they should be applied. This will depend on the situation, as every situation is different, and some cases will be fraught with more risk than others. Indeed, all of these situations will pose a degree of risk, which is why the approach needs to be more proactive in cases of earned sovereignty when it comes to secession from failed states.

## Thesis Conclusion

It has been observed throughout this thesis that preservation of territorial integrity seems to be favoured over endorsing a clear right to secession, largely for fear of creating a secessionist precedent that could undermine the international system of states through recursive and/or sequential secession. Where a secession has been recognised, this can often be seen as a pragmatic response to situations where secession appeared inevitable and recognition could be seen as a way of controlling a conflict. The use of secession as a conflict resolution tool shows that whilst recognition of secession is often a pragmatic and/or political act, ethical principle does hold a place in the consciousness of the recognising actors when it comes to recognition of secession. This combination of pragmatism and principle is particularly observable in cases of recognition which can be justified through the principle of remedial secession. Examples include South Sudan, Bangladesh and Eritrea.

Legitimacy has been another key ethical principle that this thesis has engaged with. Whilst it is a normative principle that has only been implicit in the approach of states and organisations towards secession, it does make up part of the foundations of the remedial right to secede and hence has been seen to be a factor in the recognition of secessions. The concept of earned sovereignty, which was observable in the secession and partial recognition of Kosovo, is also evidence that legitimacy does figure in the approach of states and organisations towards secession. Earned sovereignty argues that in order for a secession to become recognised, the secessionist state/government needs to prove that it upholds basic tenets of legitimacy; in other words, security and representation. This shows that many states and organisations consider legitimacy to be an important ethical

issue, particularly if the balance of legitimacy is clearly shown to shift away from the parent-state towards the secessionist state. However, in practice this approach has been flawed, as security and representation have not always been properly ensured. Additionally, it sanctions a double standard of holding new states to a higher level of responsibility than existing states.

Despite this, the concept of earned sovereignty does show the importance of legitimacy, and thus highlights an important ethical issue that arises in secession from failed states. Governments of failed states, as has been observed, have a deficit of legitimacy. This deficit is primarily centred around their failure to uphold their responsibilities as a state as outlined in social contract theory and taken forward with the Responsibility to Protect. There is therefore an argument that secession from failed states can be considered for recognition based on the remedial right to secede due to the illegitimacy of the parent-state. Indeed, it was noted in Chapter 3 that the lack of legitimacy of a failed state can actually encourage secession.

A remedial secession from a failed state was indeed recognised in the case of South Sudan, yet not in the case of Somaliland. This thesis has postulated that this is because the response of states and organisations towards remedial secession from failed states is reactive rather than proactive. Settlements involving remedial secession usually only occur in cases where the oppression that has led to the remedial secession has been recent. It is also something of a last resort used on occasions when secession has appeared inevitable, in order for the international community, or at least the relevant actors within it, to exert a degree of control over the situation. The Badinter-Herzog Commission the

international involvement with the CPA are examples of attempts to control the situation in order to protect minority rights within the new state and prevent recursive secession, with elements of earned sovereignty apparent, showing an observation of the ethical and practical issues involved with these secessions. In the case of South Sudan, the international actors did not have enough control. UNMISS noted the potential for conflict within the new state, yet the state was recognised despite having inadequate safeguards against such conflict. This shows that international involvement needs to be more proactive in interim periods between attempts to broker peace through secession and *prior* to recognition, in order to ensure constitutional provision for minority rights and security.

As demonstrated, secession generally appears to be explored as a last resort if negotiations aimed at an alternative (such as regional autonomy) fail. This can be seen as a practical and ethical safeguard against the threats to pluralism and liberal democracy brought about by secession, as seen in Chapter 2. It was noted in the same chapter that if a secessionist state is being unreasonable in its demands, then the secession could be deemed as illegitimate by actors considering recognition. For this argument to stand, a clearer definition of what is unreasonable is desirable. This could consist of, for example, a ruling from an organisation such as the ICJ stating that such a secession is unlawful if the parent-state has fulfilled the failure of recognition clause. However, as also noted, rulings on secession from the ICJ have as yet generally been fairly insubstantial and not legally binding. There is a further practical argument that in a failed state, the parent-state is by definition incapable of upholding a pluralist democracy and thus incapable of fulfilling the failure of recognition clause.

The fact that secession has been used as a tool of conflict resolution for failed states suggests that to some extent international actors do take the environment of a failed state and the associated ethical and practical issues into account when considering such a secession. However, the fact that secession is usually seen as a last resort indicates that more could be done to take into account the environment of a failed state that is *ripe* for secession. As observed in Chapter 3, state failure can encourage secession, for example when a regime keeping the state together falls, as was the case with Somalia and Yugoslavia. When said state is multi-national and/or multi-ethnic, as with Yugoslavia, or formed of a union between two or more states, as with Somalia or the USSR, the collapse of a central regime can lead to secession. In such cases, the ethical and practical issues associated with such an environment need to be taken into account. This was done to an extent with Yugoslavia; the Badinter-Herzog commission can be seen as an attempt to exercise a degree of control over the situation.

However, even this was a reactive measure. A more proactive approach, exploring the possibility of secession earlier rather than waiting until it proved inevitable, could have reduced some of the conflict associated with the secessions. Whilst the state failure in South Sudan was of a slightly different nature, a more proactive approach could also have reduced bloodshed. Whilst these suggestions could be dismissed as speculation or rejected on grounds that they set a secessionist precedent, they can be defended by noting that the nature of a failed state implies that the parent-state has already lost control and legitimacy. If recognising a secession can bring a degree of stability to at least one region, it may therefore be a pragmatic, and ethical step to take. Indeed, given that

secession has been endorsed in the name of stability before, there is an argument that the need for order and stability supersedes concerns over setting a secessionist precedent in situations such as this. Granted, secession has not brought stability in the case of South Sudan, hence the need for more pro-active involvement from international actors using the principles of earned sovereignty.

Having noted the international involvement in secession from failed states, it must be stated that there is an eminently political side to the involvement of third party states, as was particularly observable with the influence of the US Christian lobby in the case of South Sudan. The influence of powerful third parties is particularly significant in the context of secession from failed states. Since the parent-state is likely to be weak and possibly oppressive, this would make them more susceptible to carrot-and-stick tactics in negotiations and potentially encourage them to concede a referendum on secession, as was the case with Sudan. If the parent-state is oppressive then the secessionists can gain international sympathy, facilitating the inclusion of a potential secession in negotiations.

Recognition may well be the pragmatic and ethical thing to do in the case of Somaliland, partly due to its relative stability and partly because it was a separate colonial entity to the rest of Somalia (and even briefly a separate state). For this reason, it can also avoid claims of setting a secessionist precedent. A major observation of this thesis has been that secessionist claims are stronger if based on liberation or the dissolution of a union. As noted, whilst South Sudan was administered separately during its colonial era it was not a separate colonial entity or state, despite being ethnically distinct to the North. The fact that South Sudan became recognised despite this suggests that Somaliland has an

even stronger claim, since it can claim a history as both a separate colony and a separate state (its border dispute with Puntland notwithstanding). One counter-argument to this is that the failure of South Sudan as a state post-secession would make states and organisations reluctant to recognise secession from failed states in future for fear of a similar situation. The border dispute with Puntland could be cited as a potential trigger for post-secession conflict. This is where the argument for a more proactive approach comes in to play; if a negotiated solution to the border dispute is settled *before* Somaliland is recognised, then it may be possible to avoid future conflict.

A proactive stance to secession from failed states can be seen as a break from the current norm. This thesis has seen that politics and the primacy of territorial integrity generally supersedes the lack of legitimacy of the parent-state when the international community is considering secession from a failed state. However, analysis of the Responsibility to Protect has observed that sovereignty is no longer sacrosanct. Whilst questioning sovereignty does not necessarily mean questioning statehood, the existence of the Responsibility to Protect is evidence of a gradual shift in the norm that could conceivably lead to a softened approach to remedial secession if the parent-state is no longer protecting the citizens of the secessionist state. Again, this softening of support for territorial integrity need not mean questioning the *statehood* of the parent-state; as was observed, Sudan did not cease to exist following the secession of South Sudan.

It is important to note that whilst this thesis advocates a softening of the principle of territorial integrity when it comes to secession from failed states, it does not advocate a general right to secede. A prospective secession from a failed state must still fulfil a

number of criteria to be considered for recognition, namely: a distinct nationality; a commitment to human rights and democracy; a commitment to minority rights in order to prevent recursive secession; and a resolution of border issues with neighbours, particularly the parent-state. However, this thesis has challenged the paradigm of the anti-secessionist norm, suggesting further ethical and practical limits to the principle of territorial integrity and has highlighted the importance of legitimacy in situations of secession and state failure, particularly due to its importance for stability.

## Bibliography

### Primary Sources

Comprehensive Peace Agreement Between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, 9 January 2005,

<<https://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf>>  
accessed on 29 November 2016

Conference on Security and Co-operation in Europe Final Act, Helsinki 1975,  
<<http://www.osce.org/mc/39501?download=true>> accessed 21 November 2014

European Community: Declaration on Yugoslavia and on the Guidelines of recognition of New States. 16 December 1991 in *International Legal Materials*, 31 (6) 1992 p1487

European Parliament: Directorate General For External Policies: "The Transdnistrian Issue: Moving Beyond the Status Quo" 2012  
<[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224472/evidence-stefan-woff-the-transnistrian-issue.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224472/evidence-stefan-woff-the-transnistrian-issue.pdf)> accessed 27 June 2016

International Court of Justice: "Accordance with international law of the unilateral declaration of independence in respect of Kosovo" Summary of the Advisory Opinion p5 22 July 2010 <<http://www.icj-cij.org/docket/files/141/16010.pdf>> accessed 03 February 2015

Kosovo Ministry of Foreign Affairs, International Recognitions of the Republic of Kosovo, <<http://www.mfa-ks.net/?page=2,224>> accessed 1 November 2016

Kosovo Ministry of Foreign Affairs, "Countries That Have Recognised the Republic of Kosova" <<http://www.mfa-ks.net/?page=2,33>> accessed 18 January 2015

Montevideo Convention on Rights and Duties of States, 26 December 1933,  
<[http://avalon.law.yale.edu/20th\\_century/intam03.asp](http://avalon.law.yale.edu/20th_century/intam03.asp)> accessed 31 October 2016

NATO Briefing: "Bringing peace and stability to the Balkans" February 2005  
<[http://www.nato.int/nato\\_static/assets/pdf/pdf\\_publications/20120103\\_balkans-e.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_publications/20120103_balkans-e.pdf)>  
accessed 28 July 2015

NATO: "Framework document on the establishment of the NATO-Georgia Commission" September 2008,  
<[http://www.nato.int/cps/en/natolive/news\\_46406.htm?selectedLocale=en](http://www.nato.int/cps/en/natolive/news_46406.htm?selectedLocale=en)> accessed 26 May 2014

NATO: "NATO's Relations With Russia"  
<[http://www.nato.int/cps/en/natohq/topics\\_50090.htm](http://www.nato.int/cps/en/natohq/topics_50090.htm)> accessed 24 July 2015

NATO: "NATO's Role in relation to the conflict in Kosovo"  
<<http://www.nato.int/kosovo/history.htm>> accessed 27 August 2014

NATO Office of Information and Press: Dajena Kumbaro “The Kosovo Crisis in an International Law Perspective: Self-Determination, Territorial Integrity and the NATO Intervention” 16 June 2001 p31, <<http://www.nato.int/acad/fellow/99-01/kumbaro.pdf>> accessed 16 January 2015

NATO: “Russia’s accusations - setting the record straight” April 2014, <[http://www.nato.int/cps/en/natolive/topics\\_109141.htm?selectedLocale=en](http://www.nato.int/cps/en/natolive/topics_109141.htm?selectedLocale=en)> accessed 26 May 2014

NATO: Statement by the North Atlantic Council on the Russian Recognition of South Ossetia and Abkhazia regions of Georgia 22 August 2008 <[http://www.nato.int/cps/en/natohq/news\\_43517.htm?selectedLocale=en](http://www.nato.int/cps/en/natohq/news_43517.htm?selectedLocale=en)> accessed 18 January 2015

OAU, Organisation of African Unity Assembly Resolution 16(I) 17-21 July, 1964, <[http://www.au.int/en/sites/default/files/ASSEMBLY\\_EN\\_17\\_21\\_JULY\\_1964\\_ASSEMBLY\\_HEADS\\_STATE\\_GOVERNMENT\\_FIRST\\_ORDINARY\\_SESSION.pdf](http://www.au.int/en/sites/default/files/ASSEMBLY_EN_17_21_JULY_1964_ASSEMBLY_HEADS_STATE_GOVERNMENT_FIRST_ORDINARY_SESSION.pdf)> accessed 19 August 2014

Office of the London Representative of the Turkish Republic of Northern Cyprus <<http://www.trnclondon.com/defaulteng.asp?id=1&t=cat>> accessed 05 February 2015

OSCE: “OSCE Chair says Crimean referendum in its current form is illegal and calls for alternative ways to address the Crimean issue” OSCE Newsroom 11 March 2014 <<http://www.osce.org/cio/116313>> accessed 19 March 2015

Scottish Government: “Who can vote in the referendum?” <<https://www.scotreferendum.com/questions/who-can-vote-in-the-referendum/>> accessed 28 May 2015

Serbia Ministry of Foreign Affairs: Address to the Belgrade Ministerial Meeting of the Southeast Europe Cooperation Process by H.E. Mr. Vuk Jeremic Minister of Foreign Affairs of the Republic of Serbia Belgrade” 14 June 2012 <<http://www.mfa.gov.rs/en/vuk-jeremic-speeches>> accessed 12 January 2016

Transdnistria Ministry of Foreign Affairs: “Meeting with Head of the OSCE Mission to Moldova Michael Scanlan” 28 January 2015, <<http://mfa-pmr.org/en/rTz>> accessed 05 February 2015

Transdnistria Ministry of Foreign Affairs: “Nina Shtanski met with the delegation of the Russian Embassy in the RM” 3 February 2015, <<http://mfa-pmr.org/en/fQP>> accessed 5 February 2015

UN: About UN Membership: <<http://www.un.org/en/members/about.shtml>> accessed 07 January 2016

UN: Charter of the United Nations, Chapter 1, <<http://www.un.org/en/sections/un-charter/chapter-i/index.html>> accessed 30 November 2016

UN: “Conflict in South Sudan: A Human Rights Report” 8 May 2014 <<https://unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/UNMIS>>

[S%20Conflict%20in%20South%20Sudan%20-%20A%20Human%20Rights%20Report.pdf](#)> accessed 16 March 2016

UN: “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations” United Nations General Assembly Resolution 2625 (XXV). Twenty-fifth session 24 October 1970, <<http://www.un-documents.net/a25r2625.htm>> accessed 19 November 2014

UN: “Expanding role of UN Office in Somalia will require increased investment, Security Council told” UN News Centre, 14 October 2015 on <<http://www.un.org/apps/news/story.asp?NewsID=52266#.VikyfX6rTIU>> accessed on 22 December 2015

UN General Assembly “Implementing the Responsibility to Protect: Report of the Secretary General”, 12 January 2009 <[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/63/677](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/63/677)> accessed 9 August 2016

UN General Assembly Press Release: “Viewed Narrowly as a Right to Secede, Self Determination Could Threaten Territorial Integrity of States, Third Committee Told.” Third Committee, 29<sup>th</sup> Meeting, 29 October 2002 <<http://www.un.org/press/en/2002/gashc3708.doc.htm>> accessed 5 December 2014

UN Office of the Special Advisor on the Prevention of Genocide: ‘Responsibility to Protect’, <<http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>> accessed 1 September 2016

UN: “Security Council Expresses Support for Somalia’s Transitional Government Ahead of Talks” 13 July 2006 UN News Centre <<http://www.un.org/apps/news/story.asp?NewsID=19199#.VgMPGd9Viko>> accessed 23 September 2015

UN Security Council Resolution 1199, 23 September 1998 <<http://www.shape.nato.int/resources/site7423/general/documents/unscr1199.pdf>> accessed 14 September 2016

UN Security Council Resolution 1990, 27 June 2011 <[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/1990\(2011\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1990(2011))> accessed 11 March 2016

UN Security Council Resolution 2104, 19 May 2013 <[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/2104%20\(2013\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2104%20(2013))> accessed 29 November 2016

UN Security Council Resolution 2230, Preamble, 14 July 2015 <<http://www.un.org/press/en/2015/sc11968.doc.htm>> accessed 29 November 2016

UN Security Council Veto List <<http://research.un.org/en/docs/sc/quick>> accessed 31 August 2016

UN Somalia Integrated Framework 2014-2016 on  
<<https://unsom.unmissions.org/Portals/UNSOM/Somalia%20ISF%202014-2016%20FINAL%20signed.pdf>> accessed on 23 October 2015

UN: “Sudan Peace Agreement Signed 9 January Historic Opportunity, Security Council Told” Security Council Press Release 8 February 2005,  
<<http://www.un.org/press/en/2005/sc8306.doc.htm>> accessed 1 March 2016

UN: The background to Sudan's Comprehensive Peace Agreement  
<<https://unmis.unmissions.org/Default.aspx?tabid=515>> accessed 15 March 2016

UN: The United Nations and Decolonisation: Non-Self-Governing Territories  
<<http://www.un.org/en/decolonization/nonselvgovterritories.shtml>> accessed 7 January 2015

UN Resolution 1514 (XV) “Declaration on the Granting of Independence to Colonial Countries and Peoples” 14 December 1960,  
<<http://www.un.org/en/decolonization/declaration.shtml>> accessed 20 August 2014

UN: United Nations Mission in Sudan: The background to Sudan's Comprehensive Peace Agreement <<http://unmis.unmissions.org/Default.aspx?tabid=515>> accessed 22 August 2013

UNESCO Meeting of Experts on Further Study of the Concept of the Rights of Peoples- Final Report and Recommendations 22 February 1990  
<<http://unesdoc.unesco.org/images/0008/000851/085152eo.pdf>> accessed 16 October 2013

US Department of State, Office of the Historian,  
<<https://history.state.gov/milestones/1989-1992/breakup-yugoslavia>> accessed 31 March 2015

US Department of State: United States Policy on Somaliland, 5 December 2007,  
<<http://2001-2009.state.gov/p/af/rls/fs/2007/96359.htm>> accessed 17 November 2015

US Government: National Counter Terrorism Center  
<[http://www.nctc.gov/site/groups/al\\_shabaab.html](http://www.nctc.gov/site/groups/al_shabaab.html)> accessed 7 October 2015

Van der Stoep, M. “The Protection of Minorities in the OSCE region” Address to the OSCE Parliamentary Assembly Seminar “New Risks and Challenges: Minorities in the Twenty-First Century” Antalya, Turkey, 12-13 April 2000, p4

Worthington, T. Commons Debates, Hansard Vol 417 4 February 2004  
<<http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040204/halltext/40204h03.htm>> accessed 13/12/16

## Secondary Sources

### Books

Abegunrin, O. *Nigerian Foreign Policy Under Military Rule, 1966-1999* (Westport: Greenwood Publishing Group, 2003)

Anaya, J. S. *Indigenous Peoples in International Law* (New York: Oxford University Press, 1996)

Aust, A. *Handbook of International Law*, (Cambridge: Cambridge University Press, 2005)

Beetham, D. *Max Weber and the Theory of Modern Politics* (London: George Allen & Unwin Ltd, 1974)

Beetham, D. *The Legitimation of Power* (Basingstoke: Macmillan, 1991)

Bellamy, A. J. *The Responsibility to Protect: A Defense* (Oxford: Oxford University Press, 2015)

Buchanan, A. *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law* (New York: Oxford University Press, 2004)

Buchanan, A. *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*. (Boulder: Westview Press, 1991)

Buchheit, L. C. *Secession: The Legitimacy of Self-Determination* (New Haven: Yale University Press 1978)

Caspersen, N. *Unrecognised States: The Struggle for Sovereignty in the International System* (Cambridge: Polity Press, 2012)

Coggins, B. *Power Politics and State Formation in the Twentieth Century: The Dynamics of Recognition* (New York: Cambridge University Press, 2014)

Elmi, A. A. *Understanding the Somalia Conflagration: Identity, Political Islam and Peacebuilding* (Oxford: Pambazuka Press, 2010)

Fabry, M. *Recognizing States: International Society and the Establishment of New States Since 1776* (Oxford: Oxford University Press, 2010)

Feyissa, D. and Hoehne, M. V. *Borders and Borderlands as Resources in the Horn of Africa* (Woodbridge: Boydell & Brewer, 2010)

Gebrewold, B. *Anatomy of Violence: Understanding the Systems of Conflict and Violence in Africa* (Abingdon: Routledge, 2016)

Geldenhuis, D. *Contested States in World Politics* (London: Palgrave Macmillan, 2009)

- Hehir, A. *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention* (Basingstoke: Palgrave Macmillan, 2012)
- Hoffman, J. *Sovereignty* (Buckingham: Open University Press, 1998)
- Ker-Lindsay, J. *The Foreign Policy of Counter Secession: Preventing the Recognition of Contested States* (Oxford: Oxford University Press, 2012)
- Kingston, P. and Spears, I. *States Within States: Incipient Political Entities in the Post-Cold War Era* (New York: Palgrave Macmillan, 2004)
- Krasner, S. D. *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999)
- Kreijen, G. *State Failure, Sovereignty and Effectiveness: Legal Lessons from the Decolonization of SubSaharan Africa* (Leiden: Brill Academic Publishers, 2004)
- Laidi, Z. *The Superpowers and Africa: The Constraints of a Rivalry, 1960-1990* (Chicago: University of Chicago Press, 1990)
- Laitin, D. D. and Samatar, S. S. *Somalia: Nation in Search of a State* (Boulder: Westview Press, 1987)
- Lauterpacht, H. *Recognition in International Law* (Cambridge: Cambridge University Press, 1947)
- Nalbandov, R. *Foreign Interventions in Ethnic Conflicts* (Surrey: Ashgate Publishing, 2009)
- Paquin, J. *A Stability-Seeking Power: U.S. Foreign Policy and Secessionist Conflicts* (Montreal: McGill, Queen's University Press, 2010)
- Pavkovic, A. and Radan, P. *Creating New States: Theory and Practice of Secession* (Aldershot: Ashgate, 2007)
- Peters, B. G. *Strategies for Comparative Research in Political Science* (London: Palgrave Macmillan, 2013)
- Renders, M. *Consider Somaliland: State-Building with Traditional Leaders and Institutions* African Social Studies Series Vol 26 (Leiden: Brill Academic Publishers, 2012)
- Rone, R. Prendergast, J. and Sorensen, K. *Civilian Devastation: Abuses by All Parties in the War in Southern Sudan* (New York: Human Rights Watch, 1994)
- Rotberg, R. I. (ed) *When States Fail: Causes and Consequences* (Princeton: Princeton University Press, 2004)
- Van Evera, S. *Guide to Methods for Students of Political Science* (Ithaca: Cornell University Press, 1997)
- Woodward, P. *Sudan 1898-1989: The Unstable State* (Boulder: Lynne Rienner Publishers Inc., 1990)

Bryden, M. "State-Within-a-Failed-State: Somaliland and the Challenge of International Recognition" in Kingston, P and Spears, I. (eds), *States Within States: Incipient Political Entities in the Post-Cold War Era* (New York: Palgrave Macmillan, 2004) p167

Buchanan, A "Secession and State Breakdown", in Chatterjee, D. K and Scheid, D. E. (eds), *Ethics and Foreign Intervention* (Cambridge: Cambridge University Press, 2003) p189

Caplan, R. "The Recognition of New States and the Protection of Minority Rights in Yugoslavia" in Merle, J. C. (ed) *Spheres of Global Justice Volume 1: Global Challenges to Liberal Democracy. Political Participation, Minorities and Migrations* (Dordrecht: Springer, 2013) p269

Clapham, C. "The Global-Local Politics of State Decay" in Robert I. Rotberg (ed) *When States Fail: Causes and Consequences* (Princeton: Princeton University Press, 2004) p77

Cornish, P. "The Military Dimension of Security Sector Governance in Complex Power-Sharing Agreements" in Weller, M. Metzger and Johnson, B. N. (eds) *Settling Self-Determination Disputes; Complex Power-sharing in Theory and Practice* (Leiden: Brill, 2008) p571

EC Declaration on Montenegro- Brussels 10 January 1992 in Trifunovska, S. (ed.) *Yugoslavia through Documents: From its Creation to its Dissolution*" (Dordrecht: Nijhoff, 1995) p473

Ignatieff, M, "State Failure and Nation-Building" in Holzgrefe, J. L. and Keohane, R. O. (eds) *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2004) p299

Janik, R. "The Responsibility to Protect as an Impetus for Secessionist Movements: On the Necessity to Re-Think Territorial Integrity" in Kettemann, M. (ed), *Grenzen im Völkerrecht* (Vienna: Jan Sramek Verlag, 2013) p41

Keohane, R. O. "Political Authority After Intervention: Gradations in Sovereignty" in Holzgrefe, J.L. and Keohane, R. O. (eds) *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2003) p275

Mancini, S. "Secession and Self Determination" in Rosenfeld, M. and Sajo, A. (eds) *The Oxford Handbook of International Law* (Oxford: Oxford University Press, 2012) p481

Mannens, W. "Shared Sovereignty? Minority Claims and the Effectiveness of State Authority" in Krijen, G. (ed) *State, Sovereignty, and International Governance* (Oxford: Oxford University Press, 2004) p145

Rotberg, R. I. "Failed States, Collapsed States, Weak States: Causes and Indicators" in Rotberg R. I. (ed) *State Failure and State Weakness in a Time of Terror* (Cambridge, Mass: Brookings Institution Press, 2003) p1

Zürcher, C. "Chechnya and Kosovo: reflections in a distorting mirror" in Van Ham, P. and Medvedev, S. (eds) *Mapping European security after Kosovo* (Manchester: Manchester University Press, 2002) p179

#### Journal Articles

Ahmed, I. I. and Green, R. H. The Heritage of War and State Collapse in Somalia and Somaliland: Local-Level Effects, External Interventions and Reconstruction, *Third World Quarterly* 20(1), 1999, p113

Baer, J. "Who, Why and How: Assessing the Legitimacy of Secession" *Swiss Political Science Review* 6(3), 2000, p45

Alex J. Bellamy, A. J. "Kosovo and the Advent of Sovereignty as Responsibility", *Journal of Intervention and Statebuilding* 3(2) p163

Belloni, R. "The Birth of South Sudan and the Challenges of Statebuilding" *Ethnopolitics* 10 (3-4), 2011, p411

Birch, A. H. "Another Liberal Theory of Secession" *Political Studies* 32, 1984, p596

Bring, O. "Should NATO take the lead in formulating a doctrine on humanitarian intervention?" *NATO Review* 47(3), Autumn 1999  
<<http://www.nato.int/docu/review/1999/9903-07.htm>> accessed 17 August 2015

Buchanan, A. "Theories of Secession" *Philosophy and Public Affairs* 26 (1), 1997, p31

Carment, D. "Assessing state failure: implications for theory and policy" *Third World Quarterly* 24(3), 2003, p407

Christopher, A. J. "Secession and South Sudan: an African precedent for the future?", *South African Geographical Journal* 93(2), 2011, p125

Clapham, C "Degrees of Statehood" *Review of International Studies* 1998, 24(2), p143

Compagnon, D "Political Decay in Somalia: From Personal Rule to Warlordism" *Refuge*, 12(5), November-December 1992, p8

Crawford, J. "The Criteria for Statehood in International Law" *British Year Book of International Law* 48, 1976-77, p93

Deng, F. M. "Sudan - Civil War and Genocide- Disappearing Christians of the Middle East" *Middle East Quarterly* (8)1, Winter 2001, p13 also  
<<http://www.meforum.org/22/sudan-civil-war-and-genocide>> accessed 25 July 2013

Eckert, A. E. "Constructing States: The Role of the International Community in the Creation of New States" *Journal of Public and International Affairs* Vol. 13, Spring 2002, p19

- Englebert, P. and Hummel, R. "Let's Stick Together: Understanding Africa's Secessionist Deficit", *African Affairs* 104(416), 2005, p399
- Fawn, R. "The Kosovo and Montenegro Effect" *International Affairs* 84(2), Mar 2008, p269
- Grant, T. D. "Defining Statehood: The Montevideo Convention and its Discontents" *Columbia Journal of Transnational Law* 37(403), 1998-1999, p403
- Hoppe, H-H. "Nationalism and Secession" *Chronicles*, November, 1993, p23
- Hoppe, H-H. "Small is Beautiful and Efficient: The Case for Secession", *Telos* 107, Spring 1996, p95
- Huliaras, A. "The Evangelical Roots of US Africa Policy" *Survival* 50(6), 2008 p161
- Huliaras, A. "The Unanticipated break-up of Sudan: Causes and Consequences of Redrawing International Boundaries" *Commonwealth & Comparative Politics* 50(3), 2012, p257
- Kelman, H. "Negotiating National Identity and Self-Determination in Ethnic Conflicts: The Choice Between Pluralism and Ethnic Cleansing", *Negotiation Journal* 13(4), 1997 p327
- Ker-Lindsay, J. "Preventing the Emergence of Self-Determination as a Norm of Secession: An Assessment of the Kosovo 'Unique Case' Argument" *Europe-Asia Studies* 65(5), July 2013, p837
- Kirgis, Jr, F.L. "The Degrees of Self-Determination in the United Nations Era", *The American Journal of International Law* 88(2), 1994, p304
- Krasner "The Hole in the Whole: Shared Sovereignty and International Law" *Michigan Journal of International Law* 25(4), 2004, p1075
- Krasner, S. D. and Risse, T. "External Actors, State-Building, and Service Provision in Areas of Limited Statehood: Introduction" *Governance* 27(4), 2014 p545
- Kreuter, A. C. "Self-Determination, Sovereignty, and the Failure of States: Somaliland and the Case for Justified Secession", *Minnesota Journal of International Law*, 19(2), 2010 p363
- Krushelnycky, A. "Crimea's War of Nerves" *Foreign Policy* 4 March 2014  
<<http://foreignpolicy.com/2014/03/04/crimeas-war-of-nerve/>> accessed 14 January 2016
- Kuperman, A. J. "Rethinking the Responsibility to Protect" *The Whitehead Journal of Diplomacy and International Relations* 10(1), Winter/Spring, 2009, p19
- Mayall, J. "Sovereignty, Nationalism and Self-Determination" *Political Studies* XLVII, 1999, p474
- McConnell, T. "The Invisible Country", *The Virginia Quarterly Review*, 86(1) Winter 2010 pp139-155 also on <<http://www.vqronline.org/articles/2010/winter/mcconnell-invisible-country/>> accessed 26 February 2013

- Miller, P. D. and Mahon, N. "The Case for Nation-Building: Why and How to Fix Failed States" *Prism* 3(1), 2011, p63
- Moore, M. "The Ethics of Secession and Postinvasion Iraq" *Ethics & International Affairs* 20(1), March 2006, p55
- Newman, E. "Failed States and International Order: Constructing a Post-Westphalian World" *Contemporary Security Policy*, 30(3), 2009,
- Newman, E. and Visoka, G. "The Foreign Policy of State Recognition: Kosovo's Diplomatic Strategy to Join International Society" *Foreign Policy Analysis* orw042 (2016) on <<https://doi-org.ezproxy4.lib.le.ac.uk/10.1093/fpa/orw042>> accessed 7 September 2017
- Patten, A "Democratic Secession from a Multinational State" *Ethics* 112, April 2002 p558
- Pavkovic, A. "Recursive Secessions in Former Yugoslavia: too Hard a Case for Theories of Secession?" *Political Studies* 48(3), 2000, p485
- Pavkovic, A. "Secession, Majority Rule and Equal Rights: A Few Questions", *Macquarie Law Journal* (5)3, 2003, p73
- Pellet, A. "The opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples." *European Journal of International Law* 3 (1), 1992, p178
- Pham, J. P. "Somalia: Where a State Isn't a State" *The Fletcher Forum of World Affairs* 35(2) Summer 2011, p133
- Preece, J. J. "Ethnic Cleansing as an Instrument of Nation-State Creation: Changing State Practices and Evolving Legal Norms" *Human Rights Quarterly* 20(4), 1998, p817
- Rich, R. "Recognition of States: The Collapse of Yugoslavia and the Soviet Union" in *The European Journal of International Law* 38 (4), 1993, p36
- Roethke, P. "The Right to Secede Under International Law: The Case of Somaliland" *Journal of International Service*, Fall 2011, p35
- Schake, K. "The Dayton Peace Accords: Success or Failure?" *Studies in Contemporary History and Security Policy* Vol 3, p281
- Sharkey, H. J. "Arab Identity and Ideology in Sudan: The Politics of Language, Identity and Race" *African Affairs* 107(426), 2008, p21
- Shinn D. H. "Addis Ababa Agreement: was it destined to fail and are there lessons for the Current Sudan Peace Process?" *Annales d'Ethiopie* 20, 2004, p239
- Sloane, R. D. "The Changing Face of Recognition in International Law: A Case Study of Tibet", *Emory International Law Review* 16(107), 2002, p107
- Solomon, M. E. "The Legality of Secession: The Legitimacy of Separatist Movements in Western Sahara, Somaliland and South Sudan" *Xavier Journal of Politics* 3(1), 2012, p49

Tir, J. "Dividing Countries to Promote Peace: Prospects for Long-Term Success of Partitions" *Journal of Peace Research* 42(5), 2005, p545

Vidmar, J. "Remedial Secession in International Law: Theory and (Lack of) Practice" in *St Anthony's International Review* 6(1), May 2010, p37

Weller, M "The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia" *The American Journal of International Law* 86(3), 1992, p569

Zachary, G. P. "Africa Needs a New Map" *Foreign Policy* 26/04/10  
<<http://foreignpolicy.com/2010/04/26/africa-needs-a-new-map/>> accessed 30 June 2015

#### Academic Papers/Discussion Papers/Reports

Albin-Lackey, C. "*Hostages to Peace*": *Threats to Human Rights and Democracy in Somaliland* (Human Rights Watch, 2009)

Andersen, L. "International Engagement in Failed States: Choices and Trade Offs" Danish Institute for International Studies, Working Paper 20, 2005

Australian Parliament: Parliamentary Research Service: *The Collapse of Yugoslavia: Background and Summary* Research Paper No14 1995-6  
<<https://www.aph.gov.au/binaries/library/pubs/rp/1995-96/96rp14.pdf>> accessed 2 September 2016

Bekoe, D., Campbell, K., and Howenstein, N. "Resolving the Boundary Dispute in Sudan's Abyei Region" United States Institute for Peace 26 October 2005  
<<http://www.usip.org/publications/resolving-the-boundary-dispute-in-sudans-abyei-region>> accessed 09 March 2016

Bereketeab, R. "Secession and Self Determination in Somaliland and South Sudan: Challenges to Postcolonial State Building" The Nordic Africa Institute, Uppsala, Discussion Paper 75 2012

Bolton, G and Visoka, G. "Recognizing Kosovo's Independence: Remedial Secession or Earned Sovereignty" Occasional Paper 10/11, St Anthony's College- Oxford University, October 2010

Burgess, M. "Territorial and Non-Territorial Identities: Multinational Federalism in Multinational Federalism" Centre for Federal Studies, Rutherford College, University of Kent, Conference paper: "Multinationalism in Perspective: A Viable Model" University of Quebec, 25<sup>th</sup>-27<sup>th</sup> September 2009

Carley, P. "Self-Determination: Sovereignty, Territorial Integrity and the Right to Secession" Report from a Roundtable Held in Conjunction with the US Department of State's Policy Planning Staff, United States Institute for Peace 1996

Johnnie Carson, "Transcript: The Conclusion of the Comprehensive Peace Agreement: US Perspectives and Policy Goals in Sudan" Chatham House 7 March 2011

<<https://www.chathamhouse.org/sites/files/chathamhouse/public/Meetings/Meeting%20Transcripts/070311carson.pdf>> accessed 9 March 2016

Chatham House: “Somaliland’s Place in the World” Africa Programme Conference Summary, December 2011

<<https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/1211confsummary.pdf>> accessed 23 October 2015

Chatham House: “Somalia’s Transition: What Role for SubNational Entities? Meeting Report, January 2012

<<https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0112report.pdf>> accessed 6 October 2015

Copeland, E *New State Formation: The Case of South Sudan* MA Dissertation, University of Leicester, 2013

Deng, F. M. “Sudan at the Crossroads” MIT Center for International Studies Audit of the Conventional Wisdom, 07-05, March 2007

Di John, J. “Conceptualising the Causes and Consequences of Failed States: A Critical Review of the Literature” Crisis States Research Centre, London School of Economics Working Paper 25, January 2008

Domke, D. M. “Civil War in the Sudan: Resources or Religion?” ICE Case Studies 3 American University, November 1997 <<http://www1.american.edu/ted/ice/sudan.htm>> accessed 25 July 2013

Florio, S. “The Fragmentation of Geopolitical Space: What Secessionist Movements Mean to the Present-Day System” University of Grenada 2011 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1760484](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1760484)> accessed 14 September 2011

Haldén, P. “Somalia: Failed State or Nascent States-System?” FOI Somalia Papers: Report 1, Swedish Defence Research Agency 2008

*Human Rights Watch*: “South Sudan: Put Human Rights First”, 30 June 2011 <<https://www.hrw.org/news/2011/06/30/south-sudan-put-human-rights-first>> accessed 15 March 2016

Jaquin, D. “Nationalism and Secession in the Horn of Africa: A Critique of the Ethnic Interpretation” PhD Thesis, London School of Economics 1999 <[http://etheses.lse.ac.uk/73/1/Jacquin Nationalism and secession in the Horn of Africa.pdf](http://etheses.lse.ac.uk/73/1/Jacquin%20Nationalism%20and%20secession%20in%20the%20Horn%20of%20Africa.pdf)> accessed 20 August 2014

Jobbins, M. “The CPA Implementation: Taking Stock” in Woodrow Wilson Center May 2008

Kaldor, M. “Putting Failed States Back Together: Where to Start” *Interdépendances et Aide Publique au Développement*, Ministère des Affaires étrangères 2005-2006

Knopf, P.L. “Enhancing U.S. Diplomatic Engagement with Nonstate Armed Groups” CPA Working Paper, Council on Foreign Relations, October 2011,

<http://www.cfr.org/diplomacy-and-statecraft/enhancing-us-diplomatic-engagement-nonstate-armed-groups/p26162>> accessed 13/12/16

Lyman, P. N. “The United States and South Sudan: A Relationship Under Pressure” *Council of American Ambassadors*, Fall 2013

[https://www.americanambassadors.org/publications/ambassadors-review/fall-2013/the-united-states-and-south-sudan-a-relationship-under-pressure#\\_ftn4](https://www.americanambassadors.org/publications/ambassadors-review/fall-2013/the-united-states-and-south-sudan-a-relationship-under-pressure#_ftn4)> accessed 23 March 2016

McNamee, T. “The First Crack in Africa’s Map?: Secession and Self-Determination after Sudan”, The Brenthurst Foundation, Discussion paper 2012/01

Møller, B. “The African Union as Security Actor: African Solutions to African Problems” *Crisis States Working Papers*, London School of Economics August 2009

Muwanguzi, P. K. “Reconciling Uti Possidetis and Self Determination: The Concept of Interstate Boundary Disputes” p1

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1023163](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1023163)> accessed 29/07/15

Netherlands Institute for War Documentation “The background of the Yugoslav Crisis: A Review of the Literature” <http://niod.nl/sites/niod.nl/files/VI%20-%20The%20Background%20of%20the%20Yugoslav%20crisis%20-%20A%20review%20of%20the%20literature.pdf>> accessed 12 April 2015

Potter D. W. “State Responsibility, Sovereignty, and Failed States” University of Tasmania, Refereed paper presented to the Australasian Political Studies Association Conference University of Adelaide 29 September-1 October 2004

[https://www.adelaide.edu.au/apsa/docs\\_papers/Others/potter.pdf](https://www.adelaide.edu.au/apsa/docs_papers/Others/potter.pdf)> accessed 18 May 2016

Tekeu, R. F. and Ranck, A. “Is the Comprehensive Peace Agreement Holding?: Summary of Comments made by H.E. Salva Kiir, First Vice-President of Sudan and president of Southern Sudan on November 7<sup>th</sup> 2007 at the Woodrow Wilson Center” in *Implementing Sudan’s Comprehensive Peace Agreement: Prospects and Challenges* The Africa Program: Woodrow Wilson Center May 2008

#### Media Sources

*Al Jazeera*: “Somalia’s political restart” 22 August 2012

<http://www.aljazeera.com/programmes/insidestory/2012/08/201282115497642471.html>> accessed 21 January 2013

*BBC*: “Gambia Severs Diplomatic Ties With Taiwan” 15 November 2013

<http://www.bbc.co.uk/news/world-africa-24951115>> accessed 24/07/15

*BBC*: ‘Montenegro Country Profile’ <http://www.bbc.co.uk/news/world-europe-17667132>> accessed 23 September 2014

*BBC*: “Scotland's deputy first minister says Scottish independence is unstoppable” 5 October 2014 <<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-29498077>> accessed 14 October 2014

*BBC*: Somalia Profile <<http://www.bbc.co.uk/news/world-africa-14094503>> accessed 19 August 2015

*BBC*: Somaliland profile, <<http://www.bbc.co.uk/news/world-africa-14115069>> accessed 12 October 2013

*BBC*: South Ossetia profile <<http://www.bbc.co.uk/news/world-europe-18269210>> accessed 23 September 2014

*BBC*: South Sudan Profile <<http://www.bbc.co.uk/news/world-africa-14069082>> accessed 02 February 2015

*BBC*: “South Sudan referendum: 99% vote for independence” 30 January 11, <<http://www.bbc.co.uk/news/world-africa-12317927>> accessed 31 July 2013

*BBC*: “South Sudan: What is the Fighting About” 10 May 2014 <<http://www.bbc.co.uk/news/world-africa-25427965>> accessed 10 March 2016

*BBC*: “Who are Somalia's al-Shabab?” 3 April 15 <<http://www.bbc.co.uk/news/world-africa-15336689>> accessed on 01 October 2015

*BBC*: “Will Sudan Split Set an African Precedent?” 7 January 2011, <<http://www.bbc.co.uk/news/world-africa-12130613>> accessed 14 August 2014

Beaumont, P. “Kosovo’s independence is legal, UN court rules” *The Guardian* 22 July 2010 <<http://www.guardian.co.uk/world/2010/jul/22/kosovo-independence-un-ruling>> accessed 7 December 2010

Campbell, G. “Scottish independence: Lessons from the Czech/Slovak split” 20 January 2013, *BBC* <<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-21110521>> accessed 19 July 2016

Carson, Ambassador J. interview with Zeinab Badawi for the *BBC* (1:20) 27 January 2011 <[http://news.bbc.co.uk/1/hi/programmes/world\\_news\\_today/9378666.stm](http://news.bbc.co.uk/1/hi/programmes/world_news_today/9378666.stm)> accessed 12 July 2016

Drezner D.W. “Putin's excuse for a referendum is wrong: Crimea isn't Kosovo – at all” *The Guardian* 17 March 2014 <<http://www.theguardian.com/commentisfree/2014/mar/17/putin-referendum-crimea-kosovo>> accessed 17 March 2015

Easton, M. “How British is Britain” *BBC* 30 September 2013, <<http://www.bbc.co.uk/news/uk-24302914>> accessed 6 February 2015

*Economist, The*: “From the Archive: Another Country” 4 January 2011 (Original article 24 April 1993), <[http://www.economist.com/blogs/baobab/2011/01/secession\\_africa](http://www.economist.com/blogs/baobab/2011/01/secession_africa)> accessed 25 February 2014

*Economist, The*: “The UN and Humanitarian Intervention: To Protect Sovereignty or to Protect Lives” *The Economist* 15 May 2008  
<<http://www.economist.com/node/11376531>> accessed 13 August 2015

*Economist, The*: “Failed States: Fixing a Broken World” 29 January 2009,  
<<http://www.economist.com/node/13035718>> accessed, 25 February 2015

*Economist, The*: “Somaliland ‘Can’t get no recognition’” 9 January 2014  
<<http://www.economist.com/blogs/baobab/2014/01/somaliland>> accessed 23 September 2015

*Economist, The*: “South Sudan: A Necessary Secession” 6 January, 11,  
<<http://www.economist.com/node/17851379>> accessed, 04 February 2016

Eke, S. “Russia ‘committed Chechnya abuse’” *BBC* 24 February 2005  
<<http://news.bbc.co.uk/1/hi/world/europe/4295249.stm>> accessed 19 April 2016

*Euronews*: “OSCE Declares Ukraine Presidential Election Legitimate” 27 May 2014  
<<http://www.euronews.com/2014/05/27/osce-declares-ukraine-presidential-election-legitimate/>> accessed 19 March 2015

Genscher H-D: Interview with Breuer, R. for *Deutsche Welle* 25 June 2011,  
<<http://www.dw.de/recognizing-slovenia-croatia-brought-peace-genscher-says/a-15182463>> accessed 8 September 2016

*Georgian Daily*: “Nicaragua to establish relations with South Ossetia, Abkhazia” 12 April 2010  
<[http://georgiandaily.com/index.php?option=com\\_content&task=view&id=18173&Itemid=65](http://georgiandaily.com/index.php?option=com_content&task=view&id=18173&Itemid=65)> accessed 30 November 2010

Gettleman, J. “After Years of Struggle, South Sudan Becomes a New Nation” *New York Times* 9 July 2011  
<[http://www.nytimes.com/2011/07/10/world/africa/10sudan.html?\\_r=0](http://www.nytimes.com/2011/07/10/world/africa/10sudan.html?_r=0)> accessed 25/02/16

Gollust, D. “Clinton to Push for Wider Kosovo Recognition” *Voice of America* 13 October 2010 <<http://www.voanews.com/english/news/Clinton-to-Push-for-Wider-Kosovo-Recognition-104901414.html>> accessed 7 December 2010

Hamza, A. “Ethnic Conflict: Colonialism’s Never-Aging Offspring” *Huffington Post* 26 February 2014 <[http://www.huffingtonpost.co.uk/awoowe-hamza/ethnic-conflict\\_b\\_4854220.html](http://www.huffingtonpost.co.uk/awoowe-hamza/ethnic-conflict_b_4854220.html)> accessed 27 July 2016

IRIN: “Somaliland Clashes Displace Thousands” 23 July 2010  
<<http://www.irinnews.org/report/89941/somalia-somaliland-clashes-displace-thousands>> accessed 20 November 2015

Taylor, M. “Why Sheffield is Throwing its Weight Behind Somaliland” *The Guardian* 15 April 2014 <<http://www.theguardian.com/world/2014/apr/15/why-sheffield-is-throwing-its-weight-behind-somaliland>> accessed 5 November 2015

*Guardian, The*: “Scottish Independence Referendum: Final Results in Full” 18 September 2014 <<http://www.theguardian.com/politics/ng-interactive/2014/sep/18/-sp-scottish-independence-referendum-results-in-fulln>> accessed 2 February 2015

Jacobs, F “Transdnistrian Time Slip” *New York Times*, 22 May 2012 <<http://opinionator.blogs.nytimes.com/2012/05/22/transnistrian-time-slip/>> accessed 31 October 2012

Joseph, J. “It’s about decolonisation, not secession” *Free Malaysia Today* 1 September 2014 <<http://www.freemalaysiatoday.com/category/nation/2014/09/01/its-about-decolonisation-not-secession/>> accessed 5 December 2014

Kulish, N. and Chivers, C. J. “Kosovo Is Recognized but Rebuked by Others”, *New York Times* 19 February 2008 <[http://www.nytimes.com/2008/02/19/world/europe/19kosovo.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2008/02/19/world/europe/19kosovo.html?pagewanted=all&_r=0)> accessed 19 November 2014

Lacey, M. “The Signs Say Somaliland, but the World Says Somalia” *New York Times* 5 June 2006, <[http://www.nytimes.com/2006/06/05/world/africa/05somaliland.html?\\_r=0](http://www.nytimes.com/2006/06/05/world/africa/05somaliland.html?_r=0)> accessed 6 November 2015

Macnab, S. “Scottish Independence: Most Scots Back ‘Devo Max’” *The Scotsman* 19 February 2014, <<http://www.scotsman.com/news/politics/top-stories/scottish-independence-most-scots-back-devo-max-1-3310342>> accessed 23 September 2014

Nardelli, A., Dzidic, D., Elvira Jukic, E. “Bosnia and Herzegovina: The World’s Most Complicated System of Government” *The Guardian* 8 October 2014 <<http://www.theguardian.com/news/datablog/2014/oct/08/bosnia-herzegovina-elections-the-worlds-most-complicated-system-of-government>> accessed 24 July 2015

Piereson, J. “Against Humanitarian Intervention” *The American Spectator* 18 September 2013 <<http://spectator.org/articles/54836/against-humanitarian-intervention>> accessed 17 August 2015

Pulitzer Center: “Awaiting Independence Vote, Southern Sudan has High Hopes” 28 November 2010 <<http://pulitzercenter.org/articles/southern-sudanese-say-independence-vote-will-improve-life>> accessed 31 July 2013

*Reuters*: “Azerbaijan says not recognizing Kosovo independence” 18 February 2014 <<http://www.reuters.com/article/2008/02/18/us-kosovo-serbia-azerbaijan-idUSL1856553120080218>> accessed on 5 March 2014

Reynolds, P. “Somaliland’s ‘Path to Recognition’” *BBC* 25 April 2008 <<http://news.bbc.co.uk/1/mobile/world/africa/7365002.stm>> accessed on 24 November 2015

Saul, J and Reed, C. “Shabaab-Somali Pirate Links Growing: UN adviser” *Reuters* 20 October 2011 <<http://www.reuters.com/article/2011/10/20/ozatp-somalia-shabaab-pirates-idAFJOE79J0G620111020>> accessed 06/08/15

*Serbianna*: “Serbia urges UN to prevent new “secession model”” 30 July 2010  
<<http://serbianna.com/news/?p=5948>> accessed 11 November 2010

Sheikh, A. and Omar, F. “Al Shabaab militants retake Somali town from African Union” *Reuters* 6 September 2015 <<http://www.reuters.com/article/2015/09/06/us-somalia-attack-idUSKCN0R60MB20150906>> accessed 07 October 2015

Smith, R. J. “NATO Anxious About Albanian Secession Ideas” in *Washington Post* 28 February 2000, <<http://www.washingtonpost.com/wp-srv/WPcap/2000-02/28/035r-022800-idx.html>> accessed 25 November 2014

“Spain will not officially recognise Kosovo” 18 February 2008, <<http://news-spain.euroresidentes.com/2008/02/spain-will-not-officially-recognise.html>> accessed 5 March 2014

*Sydney Morning Herald*: “Putin calls Kosovo independence 'terrible precedent” 23 February 2008 <<http://www.smh.com.au/news/world/putin-calls-kosovo-independence-terrible-precedent/2008/02/23/1203467431503.html>> accessed on 5 March 2014

*Tass Russian News Agency*: “Georgia’s NATO Bid Prompts New Treaty Between Abkhazia, Russia, Says Foreign Minister” 25 October 2015 <<http://itar-tass.com/en/world/756498>> accessed 18/01/15

Torres, L., Chonghaile, C. N., Sheehy, F. and Allen P. “The Separatist Map of Africa”, *The Guardian* 6 September 2012, <<http://www.theguardian.com/world/interactive/2012/sep/06/africa-map-separatist-movements-interactive>> accessed 6 January 2015

*Voice of America News*: “Sudan Peace Accord at Risk as SPLM Pulls Out of Unity Government” 1 November 2009, <<http://m.voanews.com/a/a-13-2007-10-12-voa30/351405.html>> accessed 2 March 2016

Walkom, T. “Problems with Kosovo recognition” *The Toronto Star* 20 March 2008 <[http://www.thestar.com/opinion/editorialopinion/2008/03/20/problems\\_with\\_kosovo\\_recognition.html](http://www.thestar.com/opinion/editorialopinion/2008/03/20/problems_with_kosovo_recognition.html)> accessed 18 January 2015

#### Internet Sources

“Advice to Secessionist Somaliland: The importance of preserving peace and stability in Northern Somalia” <<http://www.allvoices.com/contributed-news/7410635/content/67202271-lasanod-residents-demonstrate-against-secessionist-somaliland>> accessed 13 September 2011

Ahmad, L “Somalis Debate the Ideal Political System for Clans” *African Arguments* 2 March 2015 <<http://africanarguments.org/2015/03/10/somalis-debate-the-ideal-political-system-for-clans-liban-ahmad/>> accessed 30 September 2015

Ahmed, A. M. “Somaliland: The South Sudan Scenario” *Democracy Chronicles* 19 January 2016 <<https://democracychronicles.com/south-sudan-scenario/>> accessed 27 March 2016

Akande, D. “The Importance of Legal Criteria for Statehood: A Response to Jure Vidmar” *European Journal for International Law*, 2013, <<http://www.ejiltalk.org/the-importance-of-legal-criteria-for-statehood-a-response-to-jure-vidmar/>> accessed 7 January 2016

American Enterprise Institute: Al Shabaab Leadership Profiles, *Critical Threats* <<http://www.criticalthreats.org/somalia/al-shabaab-leadership>> accessed 29 September 2015

Beehner, L and Young, J. “The Failure of the Failed States Index” *World Policy Journal* 17 July 2012 <<http://www.worldpolicy.org/blog/2012/07/17/failure-failed-states-index>> accessed 24 February 2015

Center for Systemic Peace: The Polity Project, “About Polity” <<http://www.systemicpeace.org/polityproject.html>> accessed 21 August 2017

CIA World Factbook: Eritrea, <<https://www.cia.gov/library/publications/the-world-factbook/geos/er.html>> accessed 2 November 2014

CIA World Factbook: Montenegro <<https://www.cia.gov/library/publications/the-world-factbook/geos/mj.html>> accessed 19 July 2016

CIA World Factbook: Somalia, <<https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>> accessed 19 August 2015

Elahi, M. “Social Contract Theory by Hobbes, Locke and Rousseau” <[http://www.academia.edu/3138759/Social\\_Contract\\_Theory\\_by\\_Hobbes\\_Locke\\_and\\_Rousseau](http://www.academia.edu/3138759/Social_Contract_Theory_by_Hobbes_Locke_and_Rousseau)> accessed 11 August 2015

Failed States Index 2011 *Foreign Policy*, <[http://www.foreignpolicy.com/articles/2011/06/17/2011\\_failed\\_states\\_index\\_interactive\\_map\\_and\\_rankings](http://www.foreignpolicy.com/articles/2011/06/17/2011_failed_states_index_interactive_map_and_rankings)> accessed 28 June 2011

Failed States Index 2013, *Foreign Policy* <[http://www.foreignpolicy.com/articles/2013/06/24/2013\\_failed\\_states\\_interactive\\_map](http://www.foreignpolicy.com/articles/2013/06/24/2013_failed_states_interactive_map)> accessed 31 July 2013

Farley, B. “Recognition of Somaliland Overdue” *World Politics Review* 26 January 2011 <<http://www.worldpoliticsreview.com/articles/7673/recognition-of-somaliland-overdue>> accessed 25 October 2015

Fragile States Index 2014 *Foreign Policy*, <<http://www.foreignpolicy.com/fragile-states-2014#highlights>> accessed 19 August 2014

Fund for Peace “Renaming the Failed States Index” 28 May 2014, <<http://library.fundforpeace.org/blog-20140528-fsirenamed>> accessed 24 February 2015

Fund for Peace: Failed States Index 2008 <<http://fsi.fundforpeace.org/rankings-2008-sortable>> accessed 15 September 2015

Fund for Peace: Fragile States Index 2015 on <<http://fsi.fundforpeace.org/rankings-2015>> accessed 24 November 2016

Fund for Peace: “Indicators”, <<http://www.fundforpeace.org/global/?q=indicators>> accessed 22 June 2011

*Fragile States* “Somalia’s Complex Clan Dynamics” 10 January 2012  
<<http://www.fragilestates.org/2012/01/10/somalias-complex-clan-dynamics/>> accessed 1 October 2015

Global Observatory: Catalogue of Indices, 19 September 2012  
<<http://theglobalobservatory.org/2012/09/indices/#conflict>> accessed 29 June 2015

Hanson, S. and Kaplan, E. “Somalia's Transitional Government” *Council on Foreign Relations* 12 May 2008 <<http://www.cfr.org/somalia/somalias-transitional-government/p12475>> accessed 23 September 2015

Herzog, C ‘Political Legitimacy and International Law in Crimea: Pushing the U.S. and Russia Apart’ *Diplomatic Courier* 8 May 2014  
<<http://www.diplomaticcourier.com/political-legitimacy-and-international-law-in-crimea-pushing-the-u-s-and-russia-apart/>> accessed 14 January 2016

Institute for Economics and Peace, Global Peace Index 2012,  
<<http://economicsandpeace.org/wp-content/uploads/2015/06/2012-Global-Peace-Index-Report.pdf>> accessed 20 September 2016

Institute for Economics and Peace, Global Peace Index 2015,  
<[http://economicsandpeace.org/wp-content/uploads/2015/06/Global-Peace-Index-Report-2015\\_0.pdf](http://economicsandpeace.org/wp-content/uploads/2015/06/Global-Peace-Index-Report-2015_0.pdf)> accessed 11 May 2016

Kuntz A. “Redrawing Borders in Africa: Norms and Exceptions” 2013  
<<https://ojs.geneseo.edu/index.php/great/article/download/147/407>> accessed 19 August 2014 p257

Nuridzhanyan, G. “Ukraine vs, Russia in International Courts and Tribunals” *European Journal of International Law* 9 March 2016 on <<http://www.ejiltalk.org/ukraine-versus-russia-in-international-courts-and-tribunals/>> accessed 1 December 2016

Oxford Dictionaries on  
<<http://www.oxforddictionaries.com/definition/english/Balkanize>> accessed 27 May 2014

Radan, P. “Secession and international Law” *H-Net: Humanities and Social Sciences Online* 20 November 2015 <<https://networks.h-net.org/node/3911/discussions/97535/secessionism-and-separatism-monthly-series-%E2%80%9Csecession-and>> accessed 28 July 2017

Somaliland Law- Somaliland International Boundaries

<[http://www.somalilandlaw.com/somaliland\\_boundaries.html](http://www.somalilandlaw.com/somaliland_boundaries.html)> accessed 24 November 2015

Sorens, J. For a “Right of Unilateral Secession: Part One” 5 November 2013 *Pileus* <<http://pileusblog.wordpress.com/2013/11/05/for-a-right-of-unilateral-secession-part-one/>> accessed 16 October 2014

Sorens, J. For a “Right of Unilateral Secession: Part Two” 14 November 2013 *Pileus* on <<https://pileusblog.wordpress.com/2013/11/14/for-a-right-of-unilateral-secession-part-two/>> accessed 16 October 2014

Southwick, K. “Ethiopia-Eritrea: statelessness and state succession”, <<http://www.fmreview.org/FMRpdfs/FMR32/15-17.pdf>> accessed 27 February 2014

Telisk, L.H. ‘Montenegro’s Referendum on Independence’ *Council on Foreign Relations* 19 May 2006 <<http://www.cfr.org/montenegro/montenegros-referendum-independence/p10725#p3>> accessed 16 September 2016

Thurston, A “Puntland, the TFG, and the Continuing Fragmentation of Somalia” *Sahel Blog* 24 January 2011 <<https://sahelblog.wordpress.com/2011/01/24/puntland-the-tfg-and-the-continuing-fragmentation-of-somalia/>> accessed 7 October 2015

Unrepresented Peoples and Nations Organisation: “Somaliland: Case for Recognition” 27 February 2009 <<http://unpo.org/article/9293>> accessed 22 September 2016

Unrepresented Nations and Peoples Organisation: “Somaliland: Cooperation With Puntland On Security And Border Disputes” 2 May 2014 <<http://unpo.org/article/17101>> accessed 13 July 2016

World Bank: Country Policy and Institutional Assessment

<<https://data.worldbank.org/data-catalog/CPIA>> accessed 21 August 2017

World Bank: “Information Note: The World Bank Group’s Harmonized List of Fragile Situations” <<http://pubdocs.worldbank.org/en/586581437416356109/FCS-List-FY16-Information-Note.pdf>> accessed 21 August 2017