

The Nexus Between Self-determination, Territorial Integrity and *Uti Possidetis Juris*: The Case of Somaliland

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Abstract

The right to self-determination is important in that it allows a state to enjoy economic, social and political freedom. Arguably, the right to self-determination has existed long before its theorisation under international law. In as much as the right to self-determination is an important right, the right to territorial integrity under Article 2 of the United Nations Charter is equally important. This principle prohibits the use of force by one state against another, thereby compromising its political independence. Thus, the principle of territorial integrity builds on the right to self-determination by allowing states to decide how they will govern themselves politically. Both principles correlate with the principle of *uti possidetis juris*, which is geared towards preserving the colonial borders of former colonies. These three principles come into play in the case of Somaliland which seceded from the parent state, Somalia. The three principles have influenced the recognition of Somaliland in several ways. In practice, there has been tension around how these three principles should be applied. According to precedent, the right to self-determination is encouraged to be exercised under international law up to a point where they lead to cession. This article delves into the nexus between these three principles, and in particular Somaliland's latitude to exercise the right to self-determination to detach itself from the obviously undesirable union with the larger Somali Republic.

Keywords: international law; secession; self-determination; Somaliland; territorial integrity; *uti possidetis juris*

Introduction

Self-determination is both a pertinent and controversial principle in international law. In Africa, it gained prominence during the anti-colonial liberation struggles. However, the concept goes beyond the colonial context and is relevant in many other scenarios.¹ During the 1885 Berlin Conference, European colonial powers partitioned Africa with undue regard to the existing social and political structures, thereby dividing states, kingdoms, and communities, in line with philosophical and legal principles foreign to Africa.² Consequently, communities that were not related were placed together, while those hitherto connected were torn apart.³

Despite their apparent negative impact on localities and entire states, the principles of self-determination and territorial integrity were applied at the time. Self-determination, as a principle, posits people's right to determine their economic and political destiny,⁴ whereas the principle of territorial integrity seeks to safeguard states from external threats to political independence as well as threats of disintegration.⁵ There also arose another principle during the period when most States were emerging from colonial rule ie, *uti possidetis juris* which loosely relates to the freezing of colonial borders as they were at independence which meant that new states inherited the boundaries of the colonial administration.⁶

The dilemma in trying to ensure that states are safeguarded from disintegrating and at the same time are able to attain the right to self-determination, is one that has plagued the international community for eons. In Africa, for instance, the concept of self-determination became a rallying call during the liberation struggle for independence. However, soon after the attainment of independence, African nation-states realised that the principle of self-determination could be employed to dismantle the existing colonial borders.⁷ This is, however, a prospect that is in clear contradiction to the principles of territorial integrity and *uti possidetis juris*. These contradictions saw the proliferation of incessant internal conflict throughout Africa that has, over time cost the continent numerous lives and has also stunted the overall development and growth of its countries.

1 Edward Deci and Richard Ryan, 'Self-determination Theory' in P van Lange, A Kruglanski and Higgins (eds), *Handbook of Theories of Social Psychology* (Thousand Oaks, CA: Sage 2012).

2 Makau Mutua, 'Why Redraw the Map of Africa: A Moral and Legal Inquiry' (1994) 16 *Michigan Journal of International Law* 1113.

3 *ibid.*

4 James Summers, *Peoples and International Law* (2nd edn, Martinus Nijhoff 2014).

5 Christian Marxsen, 'The Concept of Territorial Integrity in International Law: What are the Implications for Crimea?' (2015) *Heidelberg Journal of International Law* 1.

6 Abraham Bell and Eugene Kontorovich, 'Palestine, Uti Possidetis Juris and the Borders of Israel' 58 *Arizona Law Review* 633.

7 Richard Mukisa, 'Toward a Peaceful Resolution of Africa's Colonial Boundaries' (1997) *Africa Today* 7.

The conflicts in Nigeria (Biafra),⁸ South Sudan,⁹ the Eritrea Case (then under Ethiopia),¹⁰ and the Western Sahara Case were rooted in the dissonance between territorial integrity and the right to self-determination.¹¹ The Somaliland scenario on the other hand, is ongoing and represents a case based on an agenda of self-determination.¹²

A Brief Historical Background to the Somaliland Situation

The tripartite relationship between self-determination, territorial integrity, and *uti possidetis juris* and their inherent contradictions have caused uncertainty and untold anguish to the population of Somaliland. The country had been a British protectorate for eighty years before attaining independence on 26 June 1960.¹³ After only five days of independence, Somaliland merged with Somalia, which was a former Italian protectorate.¹⁴ The latter had attained independence from Italy on 1 July 1960.¹⁵ It was hoped that the merger between the two would lead to a more feasible state premised on the principles of justice and power-sharing.¹⁶ However, this ambition failed to materialise when a military regime seized power and soon became responsible for rampant human rights abuses. Ultimately the military regime collapsed in the 1990s because the amalgamation of Somaliland and Somalia led to mass atrocities and human rights abuses and the amalgamated republic failed to function as a state. The ‘Somalilanders’ unequivocally resolved to re-establish their state within British colonial borders.¹⁷ Consequently, in 1991, Somaliland affirmed the cutting of ties with Somalia.¹⁸

The rationale for the hurried merger between Somaliland and Somalia was ‘Somali irredentism’ based on aspirations for the creation of a greater Somalia.¹⁹ The end game was to unify five territories in the horn of Africa, whose inhabitants were people of Somali descent, hence creating a Somali empire. The five regions were: Somaliland,

8 Lasse Heerten and Dirk Moses, ‘The Nigeria-Biafra War: Postcolonial Conflict and the Question of Genocide’ 16 *Journal of Genocide Research* 169.

9 Institute for Security Studies, ‘International Law and the Self Determination of South Sudan’ (2012).

10 Terrence Lyons, ‘The Ethiopia-Eritrea Conflict and the Search for Peace in the Horn of Africa’ (2009) 120 *Review of African Political Economy* 167.

11 Western Sahara Advisory Opinion (ICJ Reports, 16 October 1975) 12.

12 Michael Schoiswohl, *Status and Human Rights Obligations of Non-Recognized De Facto Regimes in International Law: The Case of Somaliland* (Brill-Nijhoff (2004) 64.

13 John Drysdale, *Stoics without Pillows: A Way Forward for the Somalilands* (Haan Pub 2000).

14 Hussein M Adam, ‘Formation and Recognition of New States: Somaliland in Contrast to Eritrea’ (1994) 21(59) *Review of African Political Economy* 21.

15 *ibid.*

16 Schoiswohl (n 12).

17 Matt Bryden, *State within a Failed State: Somaliland and the Challenge of International Recognition* (Palgrave Macmillan, New York, 2004).

18 *ibid.*

19 Carroll Antony and Balakrishnan Rajagopal, ‘The Case for the Independent Statehood of Somaliland’ (1992) 8 *American University Journal of International Law and Policy* 653.

Somalia, the French Somaliland (now Djibouti), Ogaden (the Somali region in Ethiopia), and the Northern Frontier District in Kenya.²⁰ However, it was only Somalia and Somaliland that merged after independence, becoming the Somali Republic but since the ambition of a greater Somalia never materialised, it implied that Somaliland did not wish to continue the union with Somalia. As a result of these underlying facts, one must contemplate what the options for Somaliland are, since the existing union is *prima facie* undesirable.

The Conceptual and Legal Underpinning of Self-Determination

Self-determination refers to the people's right to be at liberty to define their position and pursue their cultural, social, and economic development, regardless of any impediments.²¹ Since it was propounded in the 19th Century, self-determination has been instrumental in shaping international law.²² Arguably, the concept of self-determination existed long before its theorisation. It is plausible that the concept could be as old as the existence of humanity. It is the right of an organised group to separate themselves from a national entity to establish their own government.²³ This view catalysed both the American and French Revolutions of 1765 and 1789, respectively.²⁴

Self-determination has been utilised for the decolonisation agenda from 1917 when countries such as Russia backed the self-determination of colonies.²⁵ The UN Charter enshrined the principle aimed at fostering friendly relations among nations. Under Article 1, the Charter stipulates that among other UN goals is: 'To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.'²⁶

As a result of embedding the principle in the United Nations Charter (UNC), it was transformed from a political concept to an international law principle. It was then deployed to agitate for independence of peoples and regions that were colonised by the

20 *ibid.*

21 Kalana Senaratne. 'Internal Self Determination in International Law: A Critical Third World Perspective' (2013) 3 *Asian Journal of International Law* 305, 305.

22 UNGA 'International Covenant on Civil and Political Rights' (16 December 1966) 999 UNTS 171 (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 993 UNTS 3 (ICESCR) art 1.

23 L William, *Issues of Self-determination* (Aberdeen University Press 1991).

24 BM Uterberger, *Self-determination* (Encyclopaedia of American Foreign Policy 2002). Also see C Keitner, *Self-determination: The Legacy of the French Revolution* (Paper presented at International Studies Association Annual Meeting 2000).

25 In 1914 Lenin wrote that: 'It would be wrong to interpret the right to self-determination as meaning anything but the right to existence as a separate state.' See Vladimir Lenin, *The Right of Nations to Self Determination* (1914).

26 UN Charter, Art 1(2).

Europeans within Africa and elsewhere.²⁷ The prominence of the principle manifested with the adoption of the decolonisation resolution in 1960 by the United Nations General Assembly (UNGA) ie, Resolution 1514 (XV).²⁸ The resolution elevated the status of the principle and elucidated its implications. The resolution asserted 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.’²⁹

The resolution was mainly formulated to address the colonial situation in Africa, with an expectation that once colonisation ended, it would lose relevance. However, as the decolonisation process got underway, UNGA adopted the International Covenants on Human Rights (1966) which came into force in 1976.³⁰ Article 1.1 of the Covenants is in tandem with the UNGA Resolution XV. The UNGA Declaration on Occasion of the Fiftieth Anniversary of the United Nations,³¹ the Helsinki Final Act,³² the African Charter on Human and Peoples’ Rights (ACHPR)³³ and the Friendly Relations Declaration,³⁴ form part of the other legal instruments that mention the principle of self-determination.

The early formulation of the concept of self-determination was premised on historical foundations and became embedded in international history, following events such as the French and American revolutions,³⁵ Serbia, Yugoslavia and the Baltic States and their quest for self-rule after the dissolution of the Soviet Union.³⁶ The concept remained relatively dormant, but the implementation of the right to self-determination in the post-independence context has sparked heated debate.

Nationals in the Baltic States were eventually permitted to exercise the right to self-determination, subsequently securing their independence. However, not all regions were so fortunate. For instance, the current political structures in Africa are composed of states that compel their citizens to subscribe to political entities that completely ignore the reality and civilisations that existed before the advent of colonialism. Theoretically,

27 M Pomerance, *Self-Determination in Law and Practice: The New Doctrine in the United Nations* (Martinus Nijhoff Publishers 1982).

28 UNGA ‘Declaration on the Granting of Independence to Colonial Countries and Peoples’ UNGA Res1514 (XV) (14 December 1960).

29 M Shaw, *International Law* (8th edn, Cambridge University Press 2017) 178.

30 UNGA ‘International Covenant on Civil and Political Rights (ICCPR)’ and UNGA ‘International Covenant on Economic, Social and Cultural Rights (ICESCR).

31 UNGA Res 50/6 (9 November 1995).

32 Conference on Security and Co-operation in Europe (Helsinki Final Act 1975) 14 I.L.M 1292 (1975).

33 Article 20.1 ACHPR.

34 Principle 5 on Equal Rights and Self-determination of Peoples, quoted by HJ Richardson, ‘Rights of Self-Determination of Peoples in Established States: Southern Africa and the Middle East’ (1991) 85 American Society International Law Proceedings 541.

35 Uterberger (n 24).

36 Philip Cohen, ‘Ending the War and Securing Peace in Former Yugoslavia’ (1994) 6(1) Pace International Law Review 19.

if the principle were applied to the fullest extent in Africa, it would imply the dissolution of African states into numerous ethno-political outfits and pre-colonial units. Clearly, it is the fear of the disruption that would be caused by this, which saw the adoption of the *uti possidetis juris* principle,³⁷ a principle that advocates for the preservation of the status quo with respect to colonial boundaries.³⁸ In furtherance of the principle, the ICJ elevated hitherto colonial administrative territories into international boundaries as in the case of *Burkina Faso v Republic of Mali*.³⁹

At present, the exact meaning of self-determination is vague.⁴⁰ The fifth principle of the United Nations Declaration on Friendly Relations provides that self-determination can entail: the creation of a sovereign, the free integration with an existing sovereign state or getting into whichever other political status determined freely by a people.⁴¹ In essence, self-determination reflects the natural tendencies in civilisation and the urge to be part of a larger community, provided that a common goal is being pursued. However, once the common goal is attained, the larger community tends to disintegrate into smaller communities.⁴² This could explain the apparent solidarity of African peoples during the struggle for liberation from colonialism and the fact that after independence was attained, there were numerous separatist demands of smaller communities from the larger community.⁴³

This outcome is the basis of the threat that self-determination poses to the stability of the international order. Consequently, the principle had to be qualified so as to restrain the initial application of the principle. The question then became, to what extent and under what conditions are people entitled to use their right to self-determination?

The Concept of Peoples

The key challenge pertaining to self-determination is to define which cluster of people can legitimately make a claim for self-determination.⁴⁴ Schoiswohl contends that ‘self’ is not demarcated explicitly in the UN Charter, the Covenants (both ICCPR and ICESCR) and Resolutions leaving only recourse to indirect determination based on scope and nature of the right.⁴⁵ Cassese poses a plethora of questions in a bid to establish the

37 Stephen R Ratner, ‘Drawing A Better Line: *Uti Possidetis* and the Borders of New States’ (1996) 90 *American Journal of International Law* 590.

38 OAU Charter African Unity (OAU Charter), Article 3.3., Article 2.11; *Burkina Faso v Republic of Mali* ICJ Rep (1986) 554.

39 *Burkina Faso v Republic of Mali* (n 38) para 23.

40 Alain Pellet, ‘The Opinions of the Badinter Arbitration Committee a Second Breath for The Self-Determination of Peoples’ (1992) 3 *European Journal of International Law* 178.

41 UNGA Res 2625 (XXV) (24 October 1970).

42 Diakonia International Humanitarian Law Centre, *International Law and Self Determination* (2020).

43 For instance, the demands of Katanga and Biafra for secession from DRC and Nigeria respectively; the secession of the Baltic States in 1991 and Bangladesh from West Pakistan in 1971.

44 Diakonia International Humanitarian Law Centre (n 42).

45 Schoiswohl (n 12).

‘owners’ of this right. The questions include whether self-determination belongs to the population of a sovereign state, people belonging to a specific group in society, or the colonised peoples only. He asserts that all three groups can make a claim to the right classifying it into two types; internal and external self-determination.⁴⁶ While external self-determination is ascribed to people under foreign colonialism, internal self-determination involves a society within a sovereign state which can be ‘indigenous peoples, ethnic groupings, linguistic minorities, and peoples living within a federal state of a sovereign.’⁴⁷ Equally, Crawford explicates the challenges inherent in identifying the group that is justified to make self-determination claims.⁴⁸ However, both Crawford and Cassese concur that in order to practically address the identification of groups, political context should be considered in ascertaining the rationale for claims by peoples to the right of self-determination.⁴⁹ It would also be prudent to establish if the entitlement to the right is external or internal. The concept of ‘people’ becomes controversial outside the colonial context. For instance, the case of Kosovo (ICJ opinion), Gunme people, and Katangese people illustrate the complexity inherent in the concept outside the colonial context.⁵⁰

In a bid to address the concept of ‘peoples’, international legal scholars commissioned by UNESCO returned a verdict that a cluster of people that has religious and linguistic unity, ethnic or racial identity, shared economic life, territorial association, cultural homogeneity and ideological linkages are regarded as ‘peoples’ with respect to self-determination.⁵¹ Equally, the awareness of a group of people that they are ‘peoples’ plays a significant role.

Secession, defined under international law as an act of intentionally relinquishing allegiance by people occupying a sovereign state’s territory with the goal of founding a different sovereign state, is one of the most significant acts by a group of humans recognised as peoples.⁵² The Canadian Supreme Court posited that secession is:

the effort of a group or section of a state to withdraw itself from the political and constitutional authority of that state, with a view to achieving statehood for a new

46 Antonio Cassese, *Self-determination of Peoples: A Legal Reappraisal* (Cambridge University Press 1995).

47 *ibid.*

48 James R Crawford, *The Creation of States in International Law* (Oxford University Press 2007).

49 *ibid.*

50 *ibid.*

51 Final Report and Recommendations on the International Meeting of Experts on Further Study of the Concept of the Rights of Peoples (Paris, 1989). Also see Thierry Madies and others, ‘The Economics of Secession: A Review of Legal, Theoretical and Empirical Aspects’ 154 (2018) *Swiss Journal of Economics and Statistics*.

52 Aleksander Pavkovic, ‘Secession: A Much-contested Concept’ in Damien Kingsbury and Costas Laoutides (eds), *Territorial Separatism in Global Politics: Causes, Outcomes and Resolution* (Routledge 2015). Also see Peter Radan, ‘Secession: A Word in Search of a Meaning’ in Peter Radan and Aleksander Pavkovic (eds), *On the Way to Statehood: Secession and Globalization* (Routledge 2017).

territorial unit on the international plane Secession is a legal act as much as a political one.⁵³

In essence, secession involves withdrawal of sovereignty from a dominant central state power that was initially entrusted by the population involved in the act of secession using either diplomatic means or force.⁵⁴ Secession, if successful, will lead to boundary adjustments due to the original state losing justification for authority over the territory occupied by the secessionist population.

The Doctrine of Territorial Integrity and *Uti Possidetis Juris* in International Law

Contrary to the ideals of secession and the attainment of self-determination, is the concept of territorial integrity, which asserts that a sovereign state should not support secessionist agendas and alterations of the borders of other states.⁵⁵ The principle came into the international lexicon first through the 1948 Peace of Westphalia, the genesis of the modern state system. It was however practiced after World War II with the impetus emanating from the formation of the UN and other international, regional, and sub-regional organisations. The UN Charter under Article 2(4), captures the principle of territorial integrity by providing that states shall abstain from ‘the threat or use of force against other states.’ However, the Charter is silent on the role of territorial integrity in post-independence claims which do not involve inter-state use of aggression. The UN position has been reiterated in a plethora of other declarations and resolutions by the UN and several states.⁵⁶ Territorial integrity and *uti possidetis juris* have been deployed in practice to entrench the colonial borders of Africa in the post-colonial dispensation.⁵⁷

Within the African context, the principle of territorial integrity was enshrined in Article 3 of the OAU Charter (now AU).⁵⁸ The cardinal role of the principle, according to both the UN and OAU/AU was to maintain international order. However, both the UN and AU Charter do not provide an express definition of territorial integrity. Consequently, scholars have attempted to proffer a definition as to it. According to El Ouali, territorial integrity is ‘the character associated to every state’s territory, which should not be subjected to any form of grip aimed at subtracting it, either permanently or temporarily,

53 Reference re Secession of Quebec, 1998 CanLII 793 (SCC), [1998] 2 SCR 217, citing Declaration on the Principles of International Law Governing Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (24 October 1970).

54 Allen Buchanan, ‘Theories of Secession’ (1997) 26(1) *Philosophy and Public Affairs* 31.

55 UN Charter, Article 2.4.

56 UNGA ‘Declaration on the Occasion of the Fiftieth Anniversary of the United Nations’ UNGA Res 50/6 (9 November 1995); Vienna Declaration and Program of Action, A/CONF 157/24 (25 June 1993); and the Friendly Relations Declaration.

57 Adolph Ulaya, ‘The Doctrine of Uti Possidetis and Its Application in Resolution of International Boundary Disputes in Africa’ (LLM thesis, Mzumbe University 2015).

58 Currently Article 3 (b) of the AU Constitutive Act.

from the state's authority.⁵⁹ On the other hand, Hensel, Allison and Khanani, assert that territorial integrity refers to the 'growing respect for the prohibition against using force to change interstate borders.'⁶⁰ Other scholars have opined that territorial integrity aims at frustrating secessionist movements since the movements ordinarily demand the redrawing of political boundaries.⁶¹ Therefore, whereas secession is premised legitimately on self-determination, it conflicts with the territorial integrity principle. As a political tool, it is evident that territorial integrity compels states to observe and not disrupt established world order.

The *uti possidetis juris* principle has its origins in the Roman civil law, where a praetor could temporarily allocate property ownership to the person who had its actual possession until the true owner was found.⁶² Over time, international legal scholars modified the concept two-fold: first, they shifted the focus from private property ownership to the state's territorial sovereignty; second, they made the temporary status a permanent one.⁶³ Though the doctrine has been used since 1810, modern conceptions of the principle can be traced to the early 19th Century Creole decolonisation process from the Spanish in Latin America.⁶⁴ At independence, the Creole sought to occupy the lands inhabited by the colonialists, solely to avoid them being regarded as *terra nullius*. Consequently, they resolved to adopt the colonial borders of the European colonies.⁶⁵

Debates abound on the exact nature of *uti possidetis juris*. Evison argues that *uti possidetis juris* points to a slow paradigm shift from territorial division that is ethno-centric to a 'photograph of territory' post-colonial scheme.⁶⁶ Nesi asserts that its historical evolution cements its status as an International law norm, though not a peremptory norm, concerned with territorial delimitations.⁶⁷ However, Ratner counters this and contends that *uti possidetis* is merely a policy decision meant to avoid

59 A El Ouali, 'Territorial integrity: Rethinking the Territorial Sovereign Right of the Existence of States' (2006) 11 *Geopolitics* 630.

60 PR Hensel, M Allison and A Khanani, 'Territorial Integrity Treaties, Uti Possidetis and Armed Conflict Over Territory' (2001) 26(2) *Conflict Management and Peace Science* 120.

61 L Brilmayer 'Secession and Self-determination: A Territorial Interpretation' (1991) 16 *Yale Journal of International Law* 178.

62 Daniel Luker, 'On the Borders of Justice: An Examination and Possible Solution to the Doctrine of Uti Possidetis' in Russell Miller and Rebecca Bratspies (eds) *Progress in International Law* (Brill 2008).

63 John Bassett Moore, *Costa Rica-Panama Arbitration: Memorandum on Uti Possidetis* (1913).

64 Sharma Surya Prakash, *Territorial Acquisition, Disputes, and International Law* (Martinus Nijhoff Publishers 1997).

65 Suzanne Lalonde, *Determining Boundaries in a Conflicted World: The Role of Uti Possidetis* (McGill-Queen's Press-MQUP 2002).

66 Justin Evison, 'Migs and Monks in Crimea: Russia Flexes Cultural and Military Muscles, Revealing Dire Need for Balance of Uti Possidetis and Internationally Recognised Self-Determination' (2014) 220 *Military Law Review* 90, 93.

67 Guiseppe Nesi, 'Uti Possidetis Doctrine' *Max Planck Encyclopaedia of Public International Law* (2011).

decolonisation conflicts.⁶⁸ Nevertheless, there is latitude to have *uti possidetis* considered as a general principle of international law. In applying the principle, it is key to establish a deprecatory date when the ‘territory’s photograph’ is made. This is ordinarily the independence date. From the *Burkina Faso/Mali* case, Luker isolates two steps of application: first, determination of the independence dates and determination of the state or administrative boundaries at these dates.⁶⁹ However, it's noteworthy that, by consent, borders can be changed either during or after the post-independence period.

Rosen asserts that *uti possidetis* has limited application and derives its relevance from its link to self-determination.⁷⁰ This assertion has merit, as *uti possidetis* acts as a mechanism to balance self-determination and territorial integrity as held by the ICJ in the *Corfu Channel* case.⁷¹ The tripartite relationship linking self-determination, territorial integrity and *uti possidetis* is appreciated by Shaw who asserts that once a new state is established (external self-determination), the principle of territorial integrity protects its territory as an independent state while *uti possidetis* principle explains how the territorial definition of the state arose in given circumstances.⁷² Therefore, *uti possidetis* is a transitional principle associated with transmitting sovereignty from one entity to another.⁷³

Indeed, *uti possidetis* has a transitory character which ensures co-existence of territorial integrity and self-determination even during state secession when the two seem irreconcilable. However, as much as *uti possidetis* helps in striking that delicate balance between the two principles, it tends to lean towards territorial integrity. As Shaw observes, the ICJ in the *Burkina Faso/Mali* case implied that a conflict between the two principles will see *uti possidetis* prevailing largely because of ensuring stability in the international order.⁷⁴ Here, *uti possidetis* is labelled as ‘a general principle’ by the ICJ.⁷⁵ Since general principles form part of international law under Article 38(1)(c) of the ICJ statute, this is the strongest authority regarding its nature. General principles originally served a gap-filling function since the ICJ statute drafters recognised that some scenarios would not fall under the scope of both treaty provisions and by customary law. At that point in time, there was no means to establish implicit state consensus. However, there are ways to generate implicit consensus today, such as using analogies for national

68 Steven Ratner (n 37).

69 Daniel Luker (n 62).

70 Andrew Rosen, ‘Economic and Cooperative Post-Colonial Borders: How Two Interpretations of Borders by The ICJ May Undermine the Relationship Between *Uti Possidetis Juris* and Democracy’ (2006) 25 Penn State International Law Review 207.

71 *Corfu Channel* case (*UK v Albania*) (Merits) [1949] ICJ Rep 4, 35.

72 Malcolm Shaw, ‘The Heritage of States: The Principle of *Uti Possidetis Juris* Today’ (1997) 67 British Yearbook of International Law 75.

73 *ibid.*

74 *Frontier Dispute* Case (*Burkina Faso/Mali*) [1986] ICJ Rep 554.

75 *ibid* 565.

legal systems or referring to UNGA or other international institutions resolutions that have a large majority of the world community's support.⁷⁶

Therefore, the ICJ's assertion that *uti possidetis* is a general principle in the *Burkina Faso/Mali* case has merit. It is derived from international institutions and international community practices. Equally, the classification implies a gap-filling function, which is in tandem with the fact that the principle fills a potential gap as to the realisation of external self-determination, by establishing a border demarcation assumption, avoiding any possible *terra nullius*, and therefore protecting state territorial integrity.

‘Between a Rock and a Hard Place: The Right to Self-determination versus *Uti Possidetis* in Africa’

The tension that exists between self-determination and territorial integrity is evidence of the existence of tension in international law as a legal system. International law seeks to govern states to ensure global peace and security. The principles in place to achieve this have often resulted in tension between the realisation of the right to self-determination and the practice of territorial integrity. States in Africa were able to attain independence by their asserting to the right to self-determination.⁷⁷ Self-determination is versatile, it can be cultural, political, economic and socio-economic.⁷⁸ The international community has no objection to people and states exercising their right to self-determination.⁷⁹ The problem arises when the exercise of the right leads to secession. International organisations like the United Nations and the OAU encourage the practice of the right of self-determination but seem to have a problem when this results in session.⁸⁰ Territorial boundaries are significant insofar as they demonstrate the extent of governance of the leading political body. Thus, when a state makes a declaration to secede and the governing body resists the claim, the consequences may be a civil war. Secession attempts were the cause of several deaths in Africa. Secession is not a right,⁸¹ although the practice is not prohibited.⁸² There are no clear guidelines in international law that clearly define situations that are justifiable for session. State practice has shown that in the event of a claim of session the preference is to protect

76 Niels Petersen, ‘Customary Law without Custom-Rules, Principles, and the Role of State Practice in International Norm Creation’ (2007) 23 *American University International Law Review* 307.

77 Freddy D Mnyongani, ‘Between a Rock and a Hard Place: The Right to Self-Determination versus *Uti Possidetis* in Africa’ (2008) 41 *CILSA* 463.

78 *ibid.*

79 Malcolm N Shawt, ‘The Heritage of States: The Principle of *Uti Possidetis Juris* Today’ (1997) 67 *The British Yearbook of International Law* 75.

80 Mnyongani (n 77).

81 John Dugard, ‘Secession: Is the Case of Yugoslavia a Precedent for Africa’ (1993) 5 *Afr J Int'l & Comp L* 163.

82 *ibid.*

territorial integrity at the expense of exercising the right to self-determination.⁸³ The principle of *uti possidetis juris* is applied here to protect the colonial boundaries of a state.⁸⁴ Thus, the tension exists between the exercise of the right of self-determination versus preserving the principle of territorial integrity.

United Nations and African Union Practice

Legally, secession disputes are classified as internal affairs implying that they are subjected to sovereignty and territorial integrity of states. The UN practice has been restricted largely to reactive peacekeeping operations after the attendant violence was classified as a threat to international peace and security.⁸⁵ Otherwise, the UN does not have a legal mandate to intervene.⁸⁶ The position of the UN is informed by the fact that secession is not allowed under international law, due to its destabilising effect on international order as well as the fact that, though not explicitly stated, territorial integrity ranks higher than self-determination under international law. Despite this, it can be argued that the UN stance is not logical since it pretentiously allows the authority being contested to make a decision regarding secession claims. Indeed, the UN would be better placed as a neutral arbiter to intervene.

An example of UN practice is evident in the secession claims in Sudan which, as a result, led to the creation of the South Sudan state. The Comprehensive Peace Agreement⁸⁷ was signed in 2005 and: acknowledged free will as the basis of the unity of Sudan; granted Southern Sudanese not only autonomy to control their affairs but also participation on equitable basis in the affairs of the Sudan government; and asserted that Southern Sudanese could exercise their right of self-determination through a referendum. The UN Security Council by way of Resolution 1590/140 launched the UN Mission in Sudan (UNMIS) mandated to support the implementation of the CPA. The support included technical support, institution of a semi-autonomous Government of Southern Sudan (GOSS), and overseeing the 2011 referendum.

On the other hand, the OAU, now AU, justifiably embraced *uti possidetis juris* hence quashing any right to self-determination in the post-independence dispensation. The OAU Charter recognised the concept and installed it as the basis for determination of all territorial disputes in the newly independent African states.⁸⁸ This was reinforced by

83 Lawrence M Frankel, 'International Law of Secession: New Rules for a New Era' (1991) 14 *Hous JIL* 521.

84 Malcolm N Shaw, 'Peoples, Territorialism and Boundaries' (1997) 8 *EJIL* 478.

85 UN Charter, Art 1.1.

86 *ibid* Art 2.7.

87 Signed by the Government of the Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) on 9th January, 2005; Report of the UN Secretary General on the Sudan, 31st January, 2005.

88 OAU Charter, Art 3.

the Cairo Resolution which reiterated the same stance.⁸⁹ Clearly, African states gave dominance to territorial integrity at the expense of self-determination. However, inconsistency mars the OAU/AU practice from a case law perspective. The Katangese, the Gunme, and Biafra cases saw the OAU dismiss secession claims,⁹⁰ while the same organisation largely remained silent during the secession of Eritrea,⁹¹ while endorsing the Western Sahara⁹² and the South Sudan cases.⁹³ In sum, the OAU Charter prioritised territorial integrity over self-determination, perhaps due to an assumption by its drafters that there would be no need for liberation struggles after attainment of independence from the colonial powers. Despite this stance, the OAU (now AU) has applied the principle of self-determination that disenfranchises the territorial integrity of a state, as demonstrated in the Western Sahara and Eritrea cases.

The Latitude of Somaliland's Right to Exercise Self-Determination

Advocates of an independent Somaliland posit that the right to self-determination needs to be broadly constructed. The first argument rests on Somaliland's history as a British colony. Any colony can legally exercise self-determination to free itself.⁹⁴ They argue that despite attaining independence in 1960, Somaliland has not exercised self-determination.⁹⁵ This is premised on the fact that when it joined Somalia, five days after independence, in a bid to form a 'Greater Somalia', no referendum on the matter was held, hence rendering the unification invalid.⁹⁶ Consequently, if the union does not hold in law and practice, the implication is that Somaliland exists as an independent entity thereby making the secession debate wholly inconsequential in the present instance.

However, the foregoing argument is blind to the reality that Somaliland and Somalia formally united in 1960. Although no legitimate referendum was conducted, it democratically installed leaders of the two sides during the unification process.⁹⁷ These leaders were motivated by a surge in Somali nationalism and anti-colonial sentiments. The argument also negates that a decade after unification, the entities co-existed in a vibrant democracy, enjoying relative stability. The later despotic and oppressive rule of Siad Barre affected the entire country, and not just Somaliland.⁹⁸ Consequently, the

89 Cairo Resolution, Art 1.

90 Schoiswohl (n 12).

91 Tekeste Negash, *Eritrea and Ethiopia: The Federal Experience* (Nordic Africa Institute 1997).

92 OAU Res 92 (XV).

93 The International Crisis Report.

94 The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, 1970.

95 Brad Poore, 'Somaliland: Shackled to a Failed State' (2009) *Stanford Journal of International Law* 117.

96 *ibid.*

97 Helen Chapin, *Somalia: A Country Study* (Library of Congress, Federal Research Division and Thomas Leiper Kane Collection 1993).

98 Aaron Kreuter, 'Self-Determination, Sovereignty, and the Failure of States: Somaliland and the Case for Justified Secession' (2010) *19 Minnesota Journal of International Law* 386.

assertion that Somaliland retains the right to exercise self-determination under this lens is not viable.

The second argument rests on Somaliland's exercising self-determination by the internal use of Somalia's established self-rule mechanisms. However, Somalia's failed state status makes it hard to use this route to self-determination. The lack of a stable and effective government to seek self-determination frustrates such efforts.⁹⁹ Some analysts argue that the mere fact that Somaliland cannot exercise internal self-determination can be a basis for it to claim the right to separate from Somalia to become independent. However, under the confines of the current international legal norms, this is a defective argument since a distinction exists between a right to self-determination and a wider right to independence.¹⁰⁰

Finally, 'Somalilanders' can take the route of secession from Somalia in a bid to exercise their right to self-determination. Here, the three theories of secession: bilateral, unilateral, and de facto secession may apply. The theory of bilateral secession is premised on cooperation between the secessionist party and the parent state.¹⁰¹ For operation of bilateral secession there are two prerequisites to be met. First, Somali municipal law has to provide for secession. Second, Somaliland has to negotiate its secession formally with the Somalia government. However, two barriers exist currently to using the bilateral secession route. First, Somalia is largely in a lawlessness state making such political or legislative endeavours difficult. Second, the Somali government in Mogadishu is not amenable to the prospect of the breakup of the greater Somalia Republic.¹⁰²

The theory of unilateral secession has three prerequisites: 'Somalilanders' have to constitute a 'people', they ought to have been subjected to grievous human rights violations by the Somali government and no other feasible alternatives exist.¹⁰³ On the requirement of the citizens of Somaliland being a 'people', the Somaliland population comprises largely members of the Isaaq clan. However, the Isaaq is one of the large Somalia clans and cannot therefore be regarded as an ethnic or cultural minority. Equally, they are not adequately distinct ethnically, religiously, and culturally as they form the wider Somali population. Yet virtually in all successful secessions (and unsuccessful ones too), it is ethnic minorities who sought independence. For instance, in Kosovo the Albanians who were an ethnic minority in Serbia are the ones who seceded.¹⁰⁴

99 Poore (n 95).

100 Nicola Bunick, 'Chechnya: Access Denied' (2008) 40 *Georgetown Journal of International Law* 985.

101 Jean-François Gaudreault-DesBiens, 'The Quebec Secession Reference and the Judicial Arbitration of Conflicting Narratives about Law, Democracy and Identity' (1998) 23 *Vermont Law Review* 793.

102 Kreuter (n 98).

103 See James Crawford, *State Practice and International Law in Relation to Unilateral Secession* (1997).

104 Kreuter (n 98).

Second, is the matter of human rights violations under the Siad Barre regime. Although the Isaaq clan suffered abuses through their land and cities being destroyed, and facing rampant murders and rapes, the same was also experienced by the Hawiye and Majeerteen clans. The three clans vehemently opposed the Siad Barre regime.¹⁰⁵ Unlike the Serbian atrocities that bordered on targeted ethnic cleansing, the abuses meted on the Isaaq may not have met such a threshold that can justify unilateral secession. Third, is that if there exist any other options, then Somaliland must exhaust them before attempting secession. Somaliland may not foster peace in the south, bearing in mind its own precarious nature. The region can therefore seek to separate through a referendum, push for a federal system that guarantees its autonomy.

The theory of *de facto* secession could posit that Somaliland has been independent courtesy of *de facto* secession since 1991. However, *de facto* secession is not legally adequate on its own without being buttressed by recognition by other states, which in the present case has not happened. However, recognition by foreign powers as a basis for self-determination is tenuous. This is because, secession's legitimacy stresses people's autonomy, but if secession movements rely on other governments' recognition, the basis for self-determination is undermined.¹⁰⁶ Therefore *de facto* secession based on recognition may not provide a legal standard since such recognition is not based on the merits of the secessionists' claim but on the recognizing state which in itself is an arbitrary rationale. Such legal reasoning also contravenes the parent state's right to both state sovereignty and territorial integrity. In other nations, through recognition, it can withhold or give the right to secession to a group within the parent state.

In sum, the prospects of Somaliland's efforts at secession seem doomed. Although it is relatively stable, it has not received international recognition and the current international law provisions that address the Somaliland scenario are not particularly helpful—the right to self-determination, the legal basis for statehood, justifications for secession, the respect for territorial integrity—since they entrench a very high threshold for secession.¹⁰⁷ Consequently, in international law, Somaliland can hardly exercise secession. There is therefore a need to review international law provisions on secession to provide for regions that are denied self-determination courtesy of the failed status of their parent states like Somaliland and Somalia, respectively.

The review of the law on secession should address two issues: protection of both state sovereignty and the right of people to self-determination.¹⁰⁸ As matters stand, people in failed states have no legal avenue available to them to exercise self-determination. International law ought to remedy this situation by having a provision that meets two requirements. First, that the parent state must have failed and the criteria for failure of a

105 *ibid.*

106 *ibid.*

107 Robert Draper, 'Shattered Somalia' (2009) 216(3) National Geographic 70.

108 Daryl Glaser, 'The Right to Secession: An Anti-secessionist Defence' (2003) 51(2) Political Studies 369.

state be an objective one. Second, that group claiming the right to secede must demonstrate the ability for self-governance unlike the parent state.¹⁰⁹ The metrics for state failure stress the significance of three elements: security, basic civil services, and political participation.¹¹⁰

However, Tancredi differs with the foregoing arguments on the prospects of secession of Somaliland. He argues that three criteria ought to be met to justify secession in international law. First, secession should happen without the military intervention of foreign states. Second, secession should be democratically approved by the affected population. Third, secession should be in tandem with the *uti possidetis juris* principle.¹¹¹ He contends that the three criteria are fulfilled with respect to secession of Somaliland since the Somali National Movement (SNM) overthrew the Siad Barre regime in collaboration with other rebel groups within Somali, not foreign entities. The declaration of independence that followed the deposing of Barre got a democratic endorsement through the 2001 referendum. Equally, the secession is in consonance with the *uti possidetis juris* principle since Somaliland had its own boundaries, as a British protectorate, before its unification with Italian Somalia in 1960.

The Jurisprudence of the African Commission on Katangese People's Conference

Gerard Moke, president of the Katangese People's Congress made a communication to the African Commission on Human and People's Rights in 1992.¹¹² The communication was made to request the commission to recognise the Katangese Peoples' Congress as a liberation movement entitled to support in the achievement of independence for Katanga; recognise the independence of Katanga; help secure the evacuation of Zaire from Katanga.¹¹³ The claim relied on Article 20(1) of the African Charter that provides the right to self-determination. In determining the case, the African Commission delved into the scope of the right to self-determination. In this case, the claim was seeking recognition of independence for the Katangese people only and not all Zaireoise people. According to the African Commission, self-determination may be exercised in the following ways: independence, sovereignty, self-government, territorial independence,

109 Jeffrey Dunoff and others, *International Law: Norms, Actors, Process* (Wolters Kluwer Law & Business 2015).

110 Robert Rotberg, 'Failed States, Collapsed States, Weak States: Causes and Indicators' (2003) 1 *State Failure and State Weakness in A Time of Terror* 25.

111 Antonello Tancredi, 'A Normative "Due Process" in the Creation of States through Secession' in M Kohen (ed), *Secession: International Law Perspectives* (Cambridge 2006).

112 'African Commission on Human and Peoples' Rights Sessions' <<https://www.achpr.org/sessions/descions?id=63>> accessed 15 February 2022.

113 *ibid.*

local government, federalism, confederalism, unitarism and any other form of governance that is in line with the principles of international law.¹¹⁴

In determining the claim, the African Commission recognised that it had a duty to uphold the sovereignty and territorial integrity of Zaire as a party State to the African Charter and a member of the Organisation of African Unity (OAU).¹¹⁵ The claimants failed to prove that there were human rights violations that compromised the territorial integrity of Zaire.¹¹⁶ It also failed to show and prove that the people of Katanga had been denied the right to participate in their government, a right provided under Article 13(1) of the African Charter.¹¹⁷ Thus the Commission held that the Katanga People's Congress was to exercise a variant of self-determination in a way that it could be compatible with the government of Zaire and therefore do not need to be made independent from Zaire.¹¹⁸

Conclusion

The law around secession is not clear and the fact that secession is not prohibited under the law gives hope to disputing groups who feel that they can secede as a way of expressing their right to self-determination. International laws and rules do not give guidelines on which practices are justified for secession. The reasoning employed is that the self-determination principle, construed as secession, is inferior to the principle of territorial integrity. In prohibiting state secession, international law ignores the realities of contemporary global political structures. It is therefore prudent that the legal provisions on the two principles ie, self-determination and territorial integrity are improved to clearly delineate the rights of both the secessionists and the parent state. This will ensure that international law is in tandem with the realities of an international order that is littered with secessionist demands.

Within the confines of international law, Somaliland is joined at the hip to Somalia. Internal self-determination is not feasible since the Somali state has failed and the Somaliland people cannot assert their political rights. Equally, the current international law position is that secession is reserved for specific situations not necessarily available in the Somaliland situation—that secession can be justified under municipal law through cooperation with the parent state, unilaterally in instances of human rights violations or, debatably, via recognition by other states. However, the law on secession has a *lacuna* with reference to secession from a failed state like Somalia. International law therefore

114 Jacqueline Nolan-Haley, 'Self-Determination in International Mediation: Some Preliminary Reflections' (2005) 7 *Cardozo J Conflict Resol* 277.

115 Solomon A Dersso, 'The Jurisprudence of the African Commission on Human and Peoples' Rights with Respect to Peoples' Rights' (2006) 6 *African Human Rights Law Journal* 358.

116 *Mpaka-Nsusu v Zaire*, 'Democratic Republic of Congo (formerly Zaire)'.

117 *ibid.*

118 Solomon A Dersso, 'International Law and the Self-Determination of South Sudan' (2012) *Institute for Security Studies Papers* 12.

ought to develop in this regard to assist people who desire self-determination in the context of an objectively failed state.

References

- Adam HM, 'Formation and Recognition of New States: Somaliland in Contrast to Eritrea' (1994) 21(59) *Review of African Political Economy*
<<https://doi.org/10.1080/03056249408704034>>
- 'African Commission on Human and Peoples' Rights Sessions'
<<https://www.achpr.org/sessions/descions?id=63>> accessed 15 February 2022.
- Antony C and Rajagopal B, 'The Case for the Independent Statehood of Somaliland' (1992) 8 *American University Journal of International Law and Policy*.
- Bell A and Kontorovich E, 'Palestine, Uti Possidetis Juris and the Borders of Israel' 58 *Arizona Law Review*.
- Brilmayer L 'Secession and Self-determination: A Territorial Interpretation' (1991) 16 *Yale Journal of International Law*.
- Bryden M, *State within a Failed State: Somaliland and the Challenge of International Recognition* (Palgrave Macmillan, New York 2004).
<https://doi.org/10.1057/9781403981011_11>
- Buchanan A, 'Theories of Secession' (1997) 26(1) *Philosophy and Public Affairs*
<<https://doi.org/10.1111/j.1088-4963.1997.tb00049.x>>
- Bunick N, 'Chechnya: Access Denied' (2008) 40 *Georgetown Journal of International Law*.
- Cassese A, *Self-determination of Peoples: A Legal Reappraisal* (Cambridge University Press 1995).
- Chapin H, *Somalia: A Country Study* (Library of Congress, Federal Research Division and Thomas Leiper Kane Collection 1993).
- Cohen P, 'Ending the War and Securing Peace in Former Yugoslavia' (1994) 6(1) *Pace International Law Review*.
- Crawford J, *State Practice and International Law in Relation to Unilateral Secession* (1997).
- Crawford J, *The Creation of States in International Law* (Oxford University Press 2007)
<<https://doi.org/10.1093/law/9780199228423.001.0001>>
- Deci E and Ryan R, 'Self-determination Theory' in P van Lange, A Kruglanski and Higgins (eds.), *Handbook of Theories of Social Psychology* (Sage 2012)
<<https://doi.org/10.4135/9781446249215.n21>>

- Dersso SA, 'International Law and the Self-Determination of South Sudan' (2012) 2012 Institute for Security Studies Papers.
- Dersso SA, 'The Jurisprudence of the African Commission on Human and Peoples' Rights with Respect to Peoples' Rights' (2006) 6 African Human Rights Law Journal.
- Diakonia International Humanitarian Law Centre, *International Law and Self Determination* (2020).
- Draper R, 'Shattered Somalia' (2009) 216(3) National Geographic.
- Drysdale J, *Stoics Without Pillows: A Way Forward for the Somalilands* (Haan Pub 2000).
- Dunoff J, Ratner S and Wippman D, *International Law: Norms, Actors, Process* (Wolters Kluwer Law & Business 2015).
- Dugard J, 'Secession: Is the Case of Yugoslavia a Precedent for Africa' (1993) 5 African Journal of International & Comparative Law.
- El Ouali A, 'Territorial integrity: Rethinking the Territorial Sovereign Right of the Existence of States' (2006) 11 Geopolitics <<https://doi.org/10.1080/14650040600890792>>
- Evison J, 'Migs and Monks in Crimea: Russia Flexes Cultural and Military Muscles, Revealing Dire Need for Balance of *Uti Possidetis* and Internationally Recognised Self-Determination' (2014) 220 Military Law Review.
- Final Report and Recommendations on the International Meeting of Experts on Further Study of the Concept of the Rights of Peoples (Paris 1989).
- Frankel LM, 'International Law of Secession: New Rules for a New Era' (1991) 14 Houston Journal of International Law.
- Gaudreault-DesBiens JF, 'The Quebec Secession Reference and the Judicial Arbitration of Conflicting Narratives About Law, Democracy and Identity' (1998) 23 Vermont Law Review.
- Glaser D, 'The Right to Secession: An Anti-secessionist Defence' (2003) 51(2) Political Studies <<https://doi.org/10.1111/1467-9248.00429>>
- Heerten L and Moses D, 'The Nigeria-Biafra War: Postcolonial Conflict and the Question of Genocide' 16 Journal of Genocide Research <<https://doi.org/10.1080/14623528.2014.936700>>
- Hensel P, Allison M and Khanani A, 'Territorial Integrity Treaties, Uti Possidetis and Armed Conflict Over Territory' (2001) 26(2) Conflict Management and Peace Science <<https://doi.org/10.1177/0738894208101126>>

Keitner C, Self-determination: The Legacy of the French Revolution (International Studies Association Annual Meeting 2000).

Kreuter A, 'Self-Determination, Sovereignty, and the Failure of States: Somaliland and the Case for Justified Secession' (2010) 19 Minnesota Journal of International Law.

Lalonde S, *Determining Boundaries in a Conflicted World: The Role of Uti Possidetis* (McGill-Queen's Press-MQUP 2002).

Lenin V, *The Right of Nations to Self Determination* (1914).

Luker D, 'On the Borders of Justice: An Examination and Possible Solution to the Doctrine of *Uti Possidetis*' in R Miller and R Bratspies (eds), *Progress in International Law* (Brill 2008).

Lyons T, 'The Ethiopia-Eritrea Conflict and the Search for Peace in the Horn of Africa' (2009) 120 Review of African Political Economy <<https://doi.org/10.1080/03056240903068053>>

Madies T, Rota-Grasiozi G, Tranchant J P and Trepier C, 'The Economics of Secession: A Review of Legal, Theoretical and Empirical Aspects' 154 (2018) Swiss Journal of Economics and Statistics <<https://doi.org/10.1186/s41937-017-0015-6>>

Marxsen C, 'The Concept of Territorial Integrity in International Law: What are the Implications for Crimea?' (2015) Heidelberg Journal of International Law.

Mnyongani FD, 'Between a Rock and a Hard Place: The Right to Self-Determination versus *Uti Possidetis* in Africa' (2008) 41 Comparative and International Law Journal of Southern Africa.

Moore J B, *Costa Rica-Panama Arbitration: Memorandum on Uti Possidetis* (1913).

Mukisa R, 'Toward a Peaceful Resolution of Africa's Colonial Boundaries' (1997) Africa Today.

Mutua M, 'Why Redraw the Map of Africa: A Moral and Legal Inquiry' (1994) 16 Michigan Journal of International Law.

Negash T, *Eritrea and Ethiopia: The Federal Experience* (Nordic Africa Institute 1997).

Nesi G, 'Uti Possidetis Doctrine' Max Planck Encyclopaedia of Public International Law (2011).

Nolan-Haley J, 'Self-Determination in International Mediation: Some Preliminary Reflections' (2005) 7 Cardozo Journal of Conflict Resolution.

Pavkovic A, 'Secession: A Much-Contested Concept' in D Kingsbury and C Laoutides (Eds), *Territorial Separatism in Global Politics: Causes, Outcomes and Resolution* (Routledge 2015).

- Pellet A, 'The Opinions of the Badinter Arbitration Committee a Second Breath for The Self-Determination of Peoples' (1992) 3 *European Journal of International Law* <<https://doi.org/10.1093/oxfordjournals.ejil.a035802>>
- Petersen N, 'Customary Law without Custom-Rules, Principles, and the Role of State Practice in International Norm Creation' (2007) 23 *American University International Law Review*.
- Pomerance M, *Self-Determination in Law and Practice: The New Doctrine in the United Nations* (Martinus Nijhoff 1982).
- Poore B, 'Somaliland: Shackled to a Failed State' (2009) *Stanford Journal of International Law*.
- Prakash S, *Territorial Acquisition, Disputes and International Law* (Martinus Nijhoff 1997).
- Radan P, 'Secession: A Word in Search of a Meaning' in P Radan and A Pavkovic (eds), *On the Way to Statehood: Secession and Globalization* (Routledge 2017) <<https://doi.org/10.4324/9781315247656>>
- Ratner S, 'Drawing A Better Line: Uti Possidetis and the Borders of New States' (1996) 90 *American Journal of International Law* <<https://doi.org/10.2307/2203988>>
- Richardson HJ, 'Rights of Self-Determination of Peoples in Established States: Southern Africa and the Middle East' (1991) 85 *American Society International Law Proceedings*.
- Rosen A, 'Economic and Cooperative Post-Colonial Borders: How Two Interpretations of Borders by The ICJ May Undermine the Relationship Between Uti Possidetis Juris and Democracy' (2006) 25 *Penn State International Law Review*.
- Rotberg R, 'Failed States, Collapsed States, Weak States: Causes and Indicators' (2003) 1 *State Failure and State Weakness in A Time of Terror*.
- Schoiswohl M, *Status and Human Rights Obligations of Non-Recognized De Facto Regimes in International Law: The Case of 'Somaliland'* (Brill-Nijhoff 2004) <<https://doi.org/10.1163/9789047413561>>
- Senaratne L. 'Internal Self Determination in International Law: A Critical Third World Perspective' (2013) 3 *Asian Journal of International Law* <<https://doi.org/10.1017/S2044251313000209>>
- Shaw M, *International Law* (8th edn, Cambridge University Press 2017).
- Shaw M, 'The Heritage of States: The Principle of *Uti Possidetis Juris* Today' (1997) 67 *British Yearbook of International Law* <<https://doi.org/10.1093/bybil/67.1.75>>
- Shaw MN, 'Peoples, Territorialism and Boundaries' (1997) 8 *European Journal of International Law* <<https://doi.org/10.1093/oxfordjournals.ejil.a015594>>

Summers J, *Peoples and International Law* (2nd edn, Martinus Nijhoff 2014).

Tancredi A, 'A Normative "Due Process" in the Creation of States through Secession' in M Kohen (ed), *Secession: International Law Perspectives* (Cambridge 2006)
<<https://doi.org/10.1017/CBO9780511494215.008>>

Ulaya A, 'The Doctrine of *Uti Possidetis* and Its Application in Resolution of International Boundary Disputes in Africa' (LLM thesis, Mzumbe University 2015).

Uterberger BM, *Self-determination* (Encyclopaedia of American Foreign Policy 2002).

William L, *Issues of Self-determination* (Aberdeen University Press 1991).

Cases

Burkina Faso v Republic of Mali ICJ Rep (1986) para 23.

Frontier Dispute Case (Burkina Faso/Mali) [1986] ICJ Rep 554.

Mpaka-Nsusu v Zaire, 'Democratic Republic of Congo (formerly Zaire)'.

Legal Instruments

African Charter on Human and People's Rights, 1981.

AU Charter, 2000.

Cairo Resolution, 1990.

OAU Charter African Unity (OAU Charter), 1963.

The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, 1970.

UN Charter, 1945.

UNGA 'Declaration on the Occasion of the Fiftieth Anniversary of the United Nations' UNGA Res 50/6 (9 November 1995).

UNGA 'International Covenant on Civil and Political Rights (ICCPR)' (16 December 1966) 999 UNTS 171 (ICCPR).

UNGA 'International Covenant on Economic, Social and Cultural Rights (ICESCR).

UNGA Res 50/6 (9 November 1995).

UNGA Res1514 (XV) (14 December 1960).

Vienna Declaration and Program of Action, A/CONF 157/24, 25 June 1993

Western Sahara Advisory Opinion (ICJ Reports, 16 October 1975) 12.