

SOMALILAND: TIME FOR AFRICAN UNION LEADERSHIP

Africa Report N°110 – 23 May 2006

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SOMALILAND: TIME FOR AFRICAN UNION LEADERSHIP

EXECUTIVE SUMMARY AND RECOMMENDATIONS

On 18 May 2006, the self-declared Republic of Somaliland marked fifteen years since it proclaimed independence from Somalia. Although its sovereignty is still unrecognised by any country, the fact that it is a functioning constitutional democracy distinguishes it from the majority of entities with secessionist claims, and a small but growing number of governments in Africa and the West have shown sympathy for its cause. The territory's peace and stability stands in stark contrast to much of southern Somalia, especially the anarchic capital, Mogadishu, where clashes between rival militias have recently claimed scores of lives. But Somalia's Transitional Federal Government (TFG), which is still struggling to overcome internal divisions and establish its authority in southern Somalia, also claims sovereignty over the territory, and the issue is becoming an increasing source of tension. The African Union (AU) needs to engage in preventive diplomacy now, laying the groundwork for resolution of the dispute before it becomes a confrontation from which either side views violence as the only exit.

In December 2005 President Dahir Rayale Kahin submitted Somaliland's application for membership in the AU. The claim to statehood hinges on the territory's separate status during the colonial era from the rest of what became Somalia and its existence as a sovereign state for a brief period following independence from Great Britain in June 1960. Having voluntarily entered a union with Somalia in pursuit of the irredentist dream of Greater Somalia (including parts of Ethiopia, Kenya and Djibouti), it now seeks recognition within the borders received at that moment of independence. Despite fears that recognition would lead to the fragmentation of Somalia or other AU member states, an AU fact-finding mission in 2005 concluded the situation was sufficiently "unique and self-justified in African political history" that "the case should not be linked to the notion of 'opening a Pandora's box'". It recommended that the AU "should find a special method of dealing with this outstanding case" at the earliest possible date. On 16 May 2006, Rayale met with the AU Commission Chairperson,

Alpha Oumar Konare, to discuss Somaliland's application for membership.

Somaliland has made notable progress in building peace, security and constitutional democracy within its de facto borders. Hundreds of thousands of refugees and internally displaced people have returned home, tens of thousands of landmines have been removed and destroyed, and clan militias have been integrated into unified police and military forces. A multi-party political system and successive competitive elections have established Somaliland as a rarity in the Horn of Africa and the Muslim world. However, the TFG continues strongly to oppose Somaliland independence.

Peacemakers have so far opted to tackle the issues sequentially: first trying to establish a government for Somalia and only then addressing the Somaliland question. European diplomats warn Crisis Group that even raising the Somaliland issue at this time could destabilise the peace process in the South. This approach risks both sides becoming more entrenched and the dispute over Somali unity more intractable. If the TFG's authority expands, the dispute over Somaliland's status is likely to become an ever-increasing source of friction, involving serious danger of violent conflict. Somaliland has reacted angrily to the TFG's calls for the UN arms embargo on Somalia to be lifted so it could arm itself and has threatened to increase its own military strength if this happens. The prospect of a return to the major violence of the late 1980s is neither imminent nor inevitable but it is genuine enough to merit urgent AU attention.

For both sides, the issue of recognition is not merely political or legal – it is existential. Most southern Somalis are viscerally attached to the notion of a united Somali Republic, while many Somalilanders – scarred by the experience of civil war, flight and exile – refer to unity only in the past tense. For a generation of Somaliland's youth, which has no memories of the united Somalia to which young Southerners attach such importance, Somaliland's sovereignty is a matter of identity.

Resolving Somaliland's status is by no means a straightforward proposition. A vocal minority of Somalilanders, including some communities along the troubled border with neighbouring Puntland (North East Somalia) and a violent network of jihadi Islamists favour unity. Some observers fear that, in the absence of a negotiated separation, the relationship between the two neighbours could potentially become as ill-defined and volatile as that which prevailed between Ethiopia and Eritrea prior to their 1998-2000 border war.

There are four central and practical questions:

- should Somaliland be rewarded for creating stability and democratic governance out of a part of the chaos that is the failed state of Somalia?;
- would rewarding Somaliland with either independence or significant autonomy adversely impact the prospects for peace in Somalia or lead to territorial clashes?;
- what are the prospects for peaceful preservation of a unified Somali Republic?; and
- what would be the implications of recognition of Somaliland for separatist conflicts elsewhere on the continent?

These questions need to be addressed through firm leadership, open debate and dispassionate analysis of the issues and options – not ignored, ostrich-like, in the hope that they will disappear. “The AU cannot pretend that there is not such an issue”, a diplomat from the region told Crisis Group. “The issue cannot be allowed to drag on indefinitely. It must be addressed”. Somaliland's application to the AU offers an entry point for preventive diplomacy. The AU should respond to Somaliland's request for recognition by seizing the opportunity to engage as a neutral third party, without prejudice to the final determination of Somaliland's sovereign status.

RECOMMENDATIONS

To the African Union:

1. Appoint a Special Envoy to consult with all relevant parties and within six months:
 - (a) report on the perspectives of the parties with regard to the security and political dimensions of the dispute;
 - (b) prepare a resumé of the factual and legal bases of the dispute; and
 - (c) offer options for resolution.
2. Organise an informal consultation for members of the Peace and Security Council (PSC) – modelled on the UN Security Council's “Arria Formula” sessions – involving presentations by eminent scholars, political analysts and legal experts.
3. Pending final resolution of the dispute, grant Somaliland interim observer status so that both sides can attend sessions on Somali issues, make presentations and respond to questions from member states and generally be assured of a fair hearing.

Hargeysa/Addis Ababa/Brussels, 23 May 2006

SOMALILAND: TIME FOR AFRICAN UNION LEADERSHIP

I. SOMALIA, SOMALILAND AND THE AFRICAN UNION

Somaliland's application for membership presents the African Union (AU) with a peace and security challenge of a particularly thorny variety: the potential dismemberment of an existing state and the formation of a new one. The processes of state fragmentation and formation are exceptionally complex, involving elements of national identity, contested sovereignty, self-determination, politics, and secession or succession. Since the end of the Cold War, new states have emerged from the collapse of the Soviet Union and the former Yugoslavia, and Asia has witnessed the birth of East Timor. In Africa, Eritrea gained independence from Ethiopia, and the African Union has agreed in principle that southern Sudan may also become a state if its people so decide in 2011 at the end of the six-year transitional period provided for in the Comprehensive Peace Agreement reached between the Khartoum government and the Sudan People's Liberation Movement (SPLM). The issue of the Soviet successor states was adroitly and peacefully handled. Yugoslavia's disintegration was long and bloody, with aftershocks still being felt today.

Most states in Africa are less than a half century old, although their border demarcations go considerably further back. Many have known chronic instability since independence and can be characterised as weak or fragile; their multi-ethnic and often religiously pluralistic populations confront them with real or potential secessionist challenges. Not surprisingly, African governments and their multinational institutions have been profoundly reluctant to accept redrawing of national boundaries. As a result, the continent's responses to statehood claims have been largely situational and ad hoc: Eritrea's independence was only grudgingly accepted by many African states after a UN-supervised referendum was held, and Addis Ababa took the lead in opening diplomatic relations. Western Sahara was admitted as a full member of the Organisation of African Unity (OAU) in 1984, but more than a dozen African countries

continue to support Morocco's claims on the territory.¹ It remains to be seen what in fact the AU's response will be if the people of Sudan's South opt for independence in 2011.

Against this background, Somaliland's application for AU admission faces an uphill battle. Between 1991 and 2000, a period when Somalia's government had manifestly disintegrated, the OAU set Somaliland's independence claims aside. IGAD (the Intergovernmental Authority on Development), a regional body that includes all Somalia's neighbours, also chose not to deal with Somaliland's demands, even though two members – Ethiopia and Djibouti – have entertained a range of bilateral ties with it since the late 1990s. The fact-finding mission established by the AU Commission in 2005 and led by its deputy chairperson, Patrick Mazimhaka, however, appears to feel that the continental body has a present duty to become seized of the matter:

Whilst it remains a primary responsibility of the authorities and people of Somaliland to deploy efforts to acquire political recognition from the international community, the AU should be disposed to judge the case of Somaliland from an objective historical viewpoint and a moral angle vis-à-vis the aspirations of the people.²

The broader international community is largely willing to follow the AU's lead. Whether the organisation does engage, and how it chooses to do so, will have profound consequences for peace and security in the Horn of Africa.

¹ Over 80 countries have recognised the Sahrawi Arab Democratic Republic at some point, although several dozen of these have since either frozen relations pending a UN-supervised referendum on the territory's future status or cancelled relations altogether. No country has actually recognised Rabat's sovereignty over Western Sahara. See "Report of the Secretary-General on the situation concerning Western Sahara" (S/2006/249), United Nations Security Council, 19 April 2006.

² "Resume: AU Fact-Finding Mission to Somaliland (30 April to 4 May 2005)", African Union Commission, paragraph 10.

A. SOMALILAND'S APPLICATION

In 2002, the Somaliland government first wrote to the Chairman of the AU inviting the organisation to send a fact-finding mission to assess the situation in the territory. It was nearly two years before a mission was finally dispatched. It reported favourably in 2005, on both the situation in Somaliland and the territory's claim to sovereign status. Encouraged by these signs, President Rayale followed up in December 2005 with a direct application for admission to the African Union. "Seeking justice for my people", he reiterated his government's arguments for international recognition, and continued:

Your Excellency, Somaliland, today is literally a nation in prison. I appeal to you, "get us out of this prison, so that we become able to better the lives of our people".... I have in the past made a plea to H.E. Alpha Oumar Konare, the Chairperson of the African Union, that Somaliland be recognised as an independent and sovereign Country, within the colonial borders that existed on 26 June 1960, when Somaliland acceded to independence from Britain. I do make the same plea to you.³

Somaliland has also argued that there should be a direct link between good governance and the legitimacy of its claims. From the AU's perspective, however, certain aspects of the claim are more relevant than others, namely the legal dimensions, whether it sets a precedent for other African cases, and its impact on the organisation's own internal politics. The AU has a direct role in promoting peace and security across the African continent, and resolving Somaliland's status in a peaceful fashion would be a major accomplishment. Between 1983 and 1991, Somaliland's separatist struggle cost over 50,000 lives – the vast majority of them civilian, spawned nearly one million refugees and internally displaced persons, and left it with one of the densest concentrations of land mines in the world. Today, after a decade of uninterrupted peace, its armed forces are the largest and best equipped in Somali territory, and its separatists have made clear their determination to protect their hard-won achievements.

Like other international actors, the AU has extended support and recognition to state-building efforts in the Somali south; the organisation has opened a liaison office in Jowhar, where the TFG president,

³ Dahir Rayale Kahin, "Somaliland's Request for Membership of the African Union", 13 December 2005.

prime minister and their allies established themselves.⁴ Progress toward restoration of functional government to Somalia, slow and fitful though it may be, is welcome. It is also bringing the dispute over Somaliland's sovereignty into increasingly sharper focus. The question is whether the AU can foster a political environment conducive to mutual understanding and avoid a return to conflict in the Horn by engaging in timely preventive diplomacy.

B. CONTESTED SOVEREIGNTY

Somaliland's sovereignty has been contested ever since its declaration of independence on 18 May 1991 but for most of that time the dispute has been more hypothetical than real. Even the United Nations Operation in Somalia (UNOSOM), the massive international intervention from 1992 to 1995, acquiesced in Somaliland's refusal to accept foreign troops on its territory, acknowledging that "the peaceful reconciliation process has moved forward impressively" and noting "the formation of a functioning administration under the leadership of Mr Egal".⁵ No previous Somali transitional government has come close to achieving de facto authority across even southern Somalia, and none have encroached on Somaliland's jurisdiction.

A number of countries have already established bilateral ties to Somaliland that are important but short of formal recognition. Djibouti and Ethiopia have permitted Somaliland to open liaison offices. Several governments have entered into formal cooperative arrangements. Ethiopia has opened a trade office in Hargeysa and expects as much as 20 per cent of its trade to flow through Somaliland's principal port at Berbera. A number of European countries have signed agreements with Hargeysa permitting the refoulement of illegal immigrants from Somaliland. The European Commission, the UN and various donors maintain larger aid programs in Somaliland than elsewhere in Somalia and have entered into direct agreements with the authorities. Foreign investment has also been on the rise, including ambitious projects either underway or under consideration by companies from South Africa,

⁴ The Somali Transitional Federal Government (TFG), headed by President Abdillahi Yusuf Ahmed, was formed in October 2004 after two years of peace talks in Kenya. The TFG was initially divided between the towns of Mogadishu and Jowhar, but since March 2006 has established itself in Baydhowa. The TFG's progress and the challenges it faces will be the subject of a forthcoming Crisis Group report.

⁵ Letter to Mr Egal from Jonathan T. Howe, Special Representative of the Secretary General, 1 October 1993.

Ethiopia, Switzerland, Germany and the United Arab Emirates.

The TFG is struggling to overcome internal divisions and assert its control in the South: friction between local militia and forces aligned with the president has generated tension and occasional violence in Baydhowa, where the parliament is currently in session. Clashes in Mogadishu between the Islamic courts and members of a newly established counter terrorism alliance, including several members of the government, have killed scores of people and displaced thousands since January. Nevertheless, the unprecedented level of international recognition and support the TFG has received suggest it may have a better chance of success than its predecessors. Like previous interim governments, it claims sovereignty and jurisdiction across all of Somalia but its authority remains limited, and it is under some diplomatic pressure not to interfere in Somaliland's affairs. "We must protect whatever has been achieved in terms of peace", Kenya's Special Envoy to the Somali peace process, Ambassador Bethuel Kiplagat, told Crisis Group. "Areas of tranquility, where there is administration, should not be disturbed. Nor should we punish those regions in terms of development aid".⁶ Nevertheless, friction is already growing as a result of the progressive recognition of the TFG, which is increasingly treated as a national counterpart by donors and aid agencies and exerts growing influence over foreign assistance programming.

Control of external assistance is just one potential source of tension. The TFG has been permitted to occupy Somalia's seats in IGAD, the AU, UN and League of Arab States, as well as other international bodies, and in May 2006, the Transitional Federal Parliament was admitted to the Inter-Parliamentary Union. Unionist political leaders thus enjoy the use of various international pulpits from which Somaliland is barred. Even greater frictions are likely to emerge if a Somali national government eventually succeeds in building a national army and civil service, issuing a new passport, minting a new currency and initiating a post-conflict reconstruction boom. A unionist government would no doubt employ such assets to exert pressure on Somaliland, seeking to woo its supporters and isolate it internationally. Such tactics would inevitably raise the dispute between the two camps to the boiling point.

Some peacemakers would like to establish a government for Somalia first and only then address the Somaliland question. "This is a critical period", a senior UN political officer told Crisis Group. "Better to work first to establish a new Somalia".⁷ But a senior African Union official told Crisis Group that further delay would be unacceptable: "For fifteen years Somaliland has been told to wait until a stable government is established in the South. They should not have to wait any longer....Somaliland has a right to have its case heard, and as African leaders we have a duty to listen to what they have to say".⁸

The main problem with this approach is that it may encourage a hardening of positions on both sides, with unionists becoming less inclined to compromise as their government acquires greater authority and international recognition and separatists becoming increasingly militant in their determination to defend Somaliland's gains. TFG calls for the lifting of the UN arms embargo on Somalia, in order to permit the arming and equipping of its security forces, have already drawn a heated reaction from Somaliland, which has threatened to arm itself.⁹ Major fighting like that which was common in the late 1980s and early 1990s is not an immediate prospect but it is a real enough potential danger that the AU should engage urgently. Somaliland's request for admission is an opportunity to establish the continental body as an honest broker in the quest for a peaceful settlement.

⁶ Crisis Group interview, Nairobi, February 2006. Ambassador Kiplagat is a member of International Crisis Group's Board of Trustees.

⁷ Crisis Group interview, Nairobi, February 2006.

⁸ Crisis Group interview, April 2006.

⁹ "Somaliland opposes Africa call to ease U.N. embargo", Reuters, 31 January 2006.

II. THE INDEPENDENCE CLAIM

International peacemaking efforts for Somalia have approached restoration of functional central government on the assumption that the Somali Republic will ultimately be reconstituted as a single state. But Somaliland's parallel development as the largest, wealthiest and best-armed authority within the Somali Republic mean that unity can no longer be taken for granted. At best, it might be achieved through intensive negotiations and painful mutual concessions; at worst it could involve a return to conflict on a scale not witnessed since the peak of the civil war in the late 1980s and early 1990s. The prospects for peace and security in the Somali peninsula – perhaps in much of the Horn of Africa – are closely linked to how the status issue is resolved.

The present day Republic of Somaliland constitutes slightly over one fifth of the territory of the Somali Republic and is home to between one quarter and one third of its population.¹⁰ As much as half of the population practises some form of pastoralism, herding camels, sheep and goats; only a few areas receive sufficient precipitation to permit rain-fed cultivation. Consequently, livestock are Somaliland's principal export, although the largest market – Saudi Arabia – has been closed to it since 2000 because of a health-related ban. Somaliland's other natural resources include fish, frankincense, minerals, semi-precious stones and uncertain reserves of oil and natural gas. Like neighbouring Djibouti, most government revenue derives from transit trade with Ethiopia along the Berbera-Dire Dawa transport corridor. Berbera's proximity to central Ethiopia means that it is the most advantageously positioned of Somali ports for cross-border trade. Although many unionists believe Somaliland is too small and poor to survive independently of Somalia, its remarkable record of self-reliance over the past fifteen years suggests that view is exaggerated.

An understanding of the chronology of union and separation and of the main elements surrounding Somaliland's claims for international recognition is useful.¹¹

¹⁰ There is no precise census data available on Somalia or Somaliland. Somaliland's population is generally estimated at 2.5-3.5 million. The UN estimates Somalia's population in 2005 at 8,228,000. Encyclopaedia Britannica, 2006 *Book of the Year*, p. 697.

¹¹ The Somaliland government has made its case in successive publications, including "Somaliland: Demand for International Recognition", Hargeysa, 2001, and the briefing paper, "The Case

A. FROM SEPARATE STATEHOOD TO DYSFUNCTIONAL UNITY

Somaliland dates its genesis as a political entity from the establishment of the British Somaliland Protectorate in 1884. Except for a brief period of Italian occupation (1940-1941), the territory remained under British control until 26 June 1960, when it received independence as the State of Somaliland. Notification of that independence was duly registered with the UN, and some 35 governments reportedly recognised the new state.¹²

Several days later, on 1 July 1960, the UN Trust Territory of Somalia (administered by Italy, the former colonial power) also achieved independence and united with the State of Somaliland to form the united Somali Republic. Although unification had been under discussion by the leaders of the respective territories for some months, the merger was poorly prepared, and the two parliaments approved different Acts of Union. Some legal scholars and the Somaliland government have argued that this invalidated the union; unionists dispute this interpretation.¹³

Despite shared ethnicity, language and religion, the colonial legacies of the two territories – subsequently

for Somaliland's International Recognition as an Independent State", Hargeysa, August 2002. For independent sources, see Crisis Group Africa Report N°66, *Somaliland: Democratisation and Its Discontents*, 28 July 2003; WSP-International, *Rebuilding Somaliland: Issues and Possibilities* (Red Sea Press, 2005); John Drysdale, *Whatever Happened to Somalia?* (London, 1995). Peggy Hoyle addresses arguments for and against recognition in "Somaliland: Passing the Statehood Test", *IBRU Boundary and Security Bulletin*, August 2000. Ronald K. McMullen concludes that Somaliland's case is significantly weaker than Eritrea's in "Somaliland: The Next Eritrea?", *Low Intensity Conflict and Law Enforcement*, vol. 2, no.3, London, Winter 1993.

¹² The generally recognised figure is 35. Crisis Group was unable to find more precise records at the UN archives, however, and Somaliland's own records were destroyed during the fighting of the 1980s and 1990s. See also David H. Shinn, "The Horn Of Africa: Where Does Somaliland Fit?", paper presented at a discussion seminar on Somaliland in Umea, Sweden, 8 March 2003. The Somaliland government claims that all five permanent members of the Security Council recognised the new state. Shinn states that the U.S. Secretary of State, Christian Herter, sent a congratulatory message and that the UK signed several bilateral agreements with Somaliland in Hargeysa on 26 June 1960.

¹³ Anthony J. Carroll and B. Rajagopal, "The Case for an Independent Somaliland", *American University Journal of Law and Politics*, vol. 8, no. 653 (1993), p. 662. The authors argue that the Act of Union falls short of the standards set for a valid international treaty by the Vienna Convention on the Law of Treaties.

known as the Northern and Southern Regions – had produced largely incompatible administrative, economic and legal systems as well as divergent orientations and interests of their political elites. By embracing the merger unconditionally, Somaliland entered the union at a distinct disadvantage: Somalia retained the capital city and obtained two-thirds of the seats in parliament, while Southern leaders (including the president and prime minister) dominated the first unitary cabinet. Early dissatisfaction with the arrangements negotiated by Somaliland's leaders led Northern voters to reject the unitary constitution in a June 1961 referendum, and in December of that year Northern officers launched an unsuccessful coup in Hargeysa, with the aim of reasserting Somaliland's independence. Although the union remained intact, Northern dissatisfaction persisted. In October 1962, Northern ministers resigned from the government, and several days later Northern deputies walked out of the National Assembly and threatened to boycott it.¹⁴ These events have led one legal scholar to conclude that:

Northerners can in no way claim that the 1960 merger with the South was a shotgun wedding – by all accounts unification was wildly popular. Northerners could argue, however, that they asked for an annulment of the union prior to the honeymoon and that their request was unjustly denied.¹⁵

The survival of the union in the face of such challenges reflected the widespread perception within Somaliland that unity was essentially a means to an end: the unification of all Somali territories under a single flag – including the Haud grazing lands and “Reserve Area”, which Great Britain had transferred to Ethiopian control in 1955.¹⁶ The pursuit of this irredentist vision persuaded many Somalilanders that unity could – and must – be made to work, as a stepping stone to a “Greater Somalia”. Meanwhile, a process of administrative annexation gradually superseded the shaky political union. Notwithstanding the Northerners' rejection of the new constitutional arrangements, the territory's embryonic institutions were incrementally supplanted by the political and bureaucratic machinery of a unitary state.

B. DICTATORSHIP, HUMAN RIGHTS AND REBELLION

The centralisation of state authority continued under the dictatorship of General Mohamed Siyaad Barre, who seized power in October 1969. The military government initially attracted a measure of support from Northerners, in part because of its progressive “Scientific Socialist” ideology, and in part because of its revival of the Greater Somali dream, which had been abandoned by the civilian government in 1967.

Barre's expansionist ambitions, however, ended with Somalia's catastrophic defeat by Ethiopia (with significant Soviet and Cuban assistance) in the 1977-1978 Ogaden War. Its popularity and economy in tatters, the government began to cultivate support among certain sections of the president's Darod clan, including 250,000 mainly Ogadeni refugees, who had fled eastern Ethiopia and settled in primarily Isaaq populated areas of the North. During the early 1980s, it became increasingly clear that the Barre regime was systematically discriminating against the Isaaq. That clan's discontent gave rise to student demonstrations in 1981 and formation of the rebel Somali National Movement (SNM) in 1982. Between 1983 and 1988, the government responded to the SNM threat with reprisals against civilians, including extra-judicial executions, disappearances, arbitrary arrest and detention, torture and harassment.

In May 1988, the low-intensity conflict in the North erupted into full-scale civil war. Successful assaults by the SNM against Hargeysa and Bur'oo were answered with indiscriminate bombardment, deliberate targeting of Isaaq civilians and mass executions, which cost over 50,000 lives and prompted an exodus of over half a million refugees to Ethiopia and internal displacement of a similar number.¹⁷ Hargeysa, the Northern capital was about 90 per cent destroyed and Bur'oo 70 per cent. The government's simultaneous practice of repopulating Isaaq communities with refugees from other clans was analogous to ethnic cleansing, and there were widespread and credible reports of war

¹⁴ Saadi Touval, *Somali Nationalism* (Cambridge, Massachusetts, 1963), p. 121.

¹⁵ McMullen, “Somaliland”, *op. cit.*, p. 427.

¹⁶ See *ibid.*, p. 423, and Touval, *op. cit.*, pp. 106-107.

¹⁷ These episodes have been extensively documented in “Somalia: A Government at War with its Own People”, *Africa Watch*, Washington D.C., January 1990, and Robert Gersony, “Why Somalis Flee: Synthesis of Accounts of Conflict Experience in Northern Somalia by Somali Refugees, Displaced Persons and Others”, August 1989, a report commissioned by the U.S. State Department. Gersony also assigns the SNM responsibility for a number of abuses, including attacks on refugee camps and summary executions, accounting for the deaths of some 400 people.

crimes.¹⁸ Although the Barre government also targeted other rebel groups and their supporters at different times between 1978 and 1991, no other Somali community faced such sustained and intense state-sponsored violence.

In early 1991, while SNM fighters rolled up the last government resistance in the North, Southern rebel groups battled their way into Mogadishu, and the Somali government, for all intents and purposes, ceased to exist.

C. SOMALILAND NATIONALISM: FROM PLATFORM TO IDENTITY

The SNM did not launch its campaign with independence as its goal; on the contrary, it sought to project itself as national in character and discussed with its Southern allies a plan to introduce a form of federalism. However, the brutality of the government's campaign and the declaration in January 1991 of a new national government in Mogadishu without SNM representation contributed to a shift in public attitudes in the North. In May 1991, as SNM leaders and Northern traditional elders gathered in Bur'oo to consolidate peace and agree on an interim form of administration, mass public rallies against the new Southern leadership prompted a precipitous change of plan: on 18 May 1991 the SNM unexpectedly declared Somaliland's independence within the borders of the former State of Somaliland.

Somaliland has repeatedly, and unilaterally, proclaimed that independence: in May 1993 a second grand conference of northern clans at Borama – arguably the broadest and most representative of its kind – approved a new transitional charter that maintained the territory's independence. In early 1997, a third “national conference” – this time comprised half of parliamentarians and half of clan elders – replaced the transitional charter with a provisional constitution that reiterated Somaliland's independent status. In May 2001, after years of wrangling, this was approved by 97 per cent of ballots cast in a “national” referendum – a result that most observers interpreted as “an endorsement

of Somaliland's independence and a rejection of rule from Mogadishu and Somalia”.¹⁹

Some unionist critics claim Somaliland is simply a platform for a “few self-interest groups belonging to one single clan”,²⁰ and its leaders are “sectarian entrepreneurs”.²¹ From this perspective, Somaliland's independence is the agenda of political elites within the Isaaq clan but does not enjoy the support of other clans and is even opposed by some sections of the Isaaq.²² They assert that leaders of non-Isaaq clans assented to the May 1991 declaration of independence in order to forestall further aggression by a victorious SNM, rather than out of a genuine commitment to separation. The inability of the Hargeysa administration to assert effective authority in the disputed eastern districts, where community loyalties are divided, lends credence to this argument. Likewise, some observers believe that support for independence among the western Gadabursi is directly linked to Rayale's presidency, and that Gadabursi loyalties will shift southwards when the leadership rotates to a member of another clan.

Unionists allege that Somaliland's democracy is in effect restricted to separatists. “You are not allowed to discuss your view in public”, a senior TFG figure from Somaliland asserted in a recent interview. “If I go to Hargeysa and voice my opinion on this issue, people will tell me that my opinion will cause a conflict and disintegration”.²³ If true, such charges would tarnish

¹⁸ Evidence of war crimes in Somaliland has been documented by the United Nations Special Rapporteur for Human Rights and a forensic team from Physicians for Human Rights, as well as the Somaliland War Crimes Commission. See also, “A Decent Burial: Somalis Yearn for Justice”, IRIN Webspécial, May 2001, at <http://www.irinnews.org/webspecials/somalijustice/default.asp>.

¹⁹ “Final Report of the Initiative and Referendum Institute's (IRI) Election Monitoring Team, Somaliland National Referendum – May 31 2001”, Initiative and Referendum Institute (IRI), Washington, D.C., 27 July 2001, p.2. This improbably favourable result likely indicates that voters opposed to independence – especially in Sool region, where turnout was far below average – simply boycotted the poll. If so, the results still suggest that at least two thirds of Somalilanders support independence.

²⁰ Dr Ali Ismael Barud, “Somaliland: The Myth of Clan Based Statehood”, undated article, c.2002, available at <http://www.somaliawatch.org/archivedec02/021207202.htm>.

²¹ Abdi Ismail Samatar, “I.M. Lewis's Retired Ideas and Somalia”, 3 February 2001, available at <http://www.somaliawatch.org/archivefeb01/010203202.htm>.

²² Several prominent Isaaq political figures have declared their support for federalism. These include the late Abdirahman Ahmed Ali “Tuur” (Somaliland's first president), Ismail Mohamud Hurre “Buubaa” (a minister in Somaliland's first post-war cabinet, now serving as a deputy prime minister in the TFG), General Jama Mohamed Qaalib “Yare” (an author and civil society activist) and Mohamud Jama “Sifir” (first deputy prime minister in the TFG).

²³ Ismail Buubaa, “The division of Somali TFG is media hype and Somaliland's recognition is fantasy”, Awdalnews,

Somaliland's democratic credentials. "What about those who do not favour independence?", a Somali political analyst asked Crisis Group. "Are they free to lobby? Free to express themselves? If not, that delegitimises Somaliland because it is not a democratic entity".²⁴

Assessing with precision the true extent of support for Somaliland's independence is complicated by lack of census or even voter registration data.²⁵ Such support has historically been strongest within the Isaaq clan. Within the western Gadabursi clan, opinion has shifted perceptibly from pro-unity in the early 1990s toward greater support for a sovereign Somaliland. Acceptance of the separatist agenda has long been weakest in the east, where the attitudes of the Warsengeli and Dhulbahante clans have been divided. The elected president is a Gadabursi, parliament and the civil service are heterogeneous, and district council representatives are locally elected.

The passage of time seems likely to entrench separatist attitudes even more deeply. A growing proportion of Somaliland youth at home and abroad have no meaningful recollection of a united Somalia; many with longer memories associate Somalia with violence, fear and flight. This age set now includes those young men most likely to be called to their homeland's defence in the event of conflict.

Despite continuing ethnic, linguistic and commercial linkages with Somalia, the idea of an independent Somaliland, complete with the symbolic trappings of statehood such as a flag, currency and passport, appears to command the loyalties of a growing proportion of the territory's population. The idea of a sovereign Somaliland is no longer the political platform of an armed faction so much as it is the reflection of an incipient national identity.

D. CONSTITUTIONAL DEMOCRACY

Somaliland's moral, if not legal, case for recognition is lent additional weight by the territory's credentials

as one of the most active democracies in the region.²⁶ It is one of a handful of functioning constitutional democracies in the Muslim world, and from an African perspective, it is distinguished by the unusual feature of a parliament controlled by opposition parties. Although the government continues to deny licenses to independent radio and television stations, the print media is among the freest in the region. Despite occasional, troubling episodes, human rights organisations are generally positive about Somaliland's record.

Only two years after its victory against the Barre regime, the SNM – unusually for a former rebel movement – handed over power to a civilian administration. The new government had two important strengths: the leadership of Mohamed Haji Ibrahim Egal – a veteran politician and former Somali prime minister (1967-1969) – and the establishment of an upper house of parliament comprising traditional elders, the Guurti, which has proved critical in resolving crises and legitimising the government during difficult periods.

Many Somalilanders perceived the referendum on the constitution that, after years of haggling between the parliament and executive, was finally held in 2001 as a vote on independence, since Article 1 proclaimed Somaliland's existence as "a sovereign and independent country".²⁷ More concretely, the constitution affirmed a presidential system of government and a multi-party electoral democracy; borrowing from the Nigerian example, it limited the number of official parties to three. It maintained the Guurti as an upper house of parliament with central responsibility for peace and stability in the republic.²⁸

The new constitution was put to its first serious test in May 2002 when President Egal died on a visit to South Africa. Power passed to Vice President Dahir Rayale Kahin for the remainder of the presidential term. The transition was notable not only because it was uncontested and proceeded in accordance with the law, but also because Rayale is a member of the Gadabursi clan, which had largely sided with the Barre government against the SNM, and Rayale himself had been a regime security officer.

16 September 2005, at <http://www.awdalnews.com/wmview.php?ArtID=6147>.

²⁴ Crisis Group interview, Nairobi, 23 February 2006.

²⁵ According to British government figures from 1961, the Isaaq were estimated at 66 per cent of the Somaliland population, the Dir (Gadabursi and Issa) at 15 per cent and the Darood (Warsengeli and Dhulbahante) at 19 per cent. The September 2005 election distributed seats in the House of Representatives as follows: Isaaq, 70 per cent; Dir, 17 percent; and Darood, 12 per cent.

²⁶ For a detailed description of Somaliland's democratic transition, see Crisis Group Report, *Somaliland: Democratization and Its Discontents*, op. cit.

²⁷ Constitution of the Republic of Somaliland, Article 1.1.

²⁸ Article 61 of the Somaliland Constitution states that the Guurti, membership of which is made up of "elders", has the power to pass legislation and assist the government on matters relating to religion, security, defence, tradition, culture, economy and society.

In December of the same year, Somaliland held elections for 379 seats on 26 district councils. Six political organisations contested the elections, with the top three qualifying for registration as national political parties. Although the National Electoral Commission's decision not to proceed with voting in the disputed eastern districts marred an otherwise successful exercise,

[t]he formation of elected district councils that recognise the authority of the government in Hargeisa, and pay taxes to it, reinforced the internal legitimacy of Somaliland's political institutions and leaders and helped to consolidate the boundaries of Somaliland. The election of a non-Isaaq president gave credence to the claim that Somaliland was a multi-clan polity.²⁹

The second phase in the transition, a presidential election, was probably the most closely fought of its kind ever on the continent, with Rayale retaining his office by just 80 votes out of nearly half a million cast.³⁰ The opposition initially cried foul but after exhausting its appeals accepted the result.

Elections to the House of Representatives on 29 September 2005 – the first on Somali territory since 1969 – were a critical step in the formal transition from a system based on clan representation to a modern electoral democracy.³¹ Despite the extremely sensitive nature of regional representation and a plot by jihadi Islamists from Mogadishu to disrupt them, the elections were impressive: under the auspices of Somaliland's National Electoral Commission (NEC), 246 candidates contested 82 seats in an endeavour involving 982 polling stations; 1,500 ballot boxes (bags); 1.3 million ballot papers; 4,000 polling station staff; 6,000 party agents; 3,000 police; 700 domestic observers and 76 international observers. Although the elections benefited from nearly \$2 million of donor support (mainly from the European Commission), as well as technical assistance, their peaceful, orderly and transparent conduct was no small achievement.

The final stage of Somaliland's democratic transition, and perhaps the most complex, will be the introduction of a process of election or appointment to the House of Elders, the Guurti. The mandate of the current Guurti

was to have expired in August 2006, but with only months remaining the parliament had been unable to agree upon how the successor body should be chosen. Options included indirect election by regional or clan-based electoral colleges, nomination by traditional titled elders or appointment by the political parties. In May 2006, claiming that the country could not afford another election and seeking to avoid a confrontation with an opposition-controlled parliament, President Rayale proposed an extension of the Guurti's term by four and a half years; the Supreme Court endorsed the proposal, and the Guurti passed it without reference to the Lower House. Critics have argued that this unusual process has marred Somaliland's democratic credentials but many Somalilanders are relieved that the current Guurti will continue to play a stabilising role for some time to come.

E. THE DISPUTED TERRITORIES

The disputed territories of Sool and eastern Sanaag regions are among the greatest challenges in the status issue. Although they fall squarely within Somaliland's post-independence boundaries, and their representatives participated in successive decisions establishing and reaffirming that independence, a large proportion of the inhabitants of the regions tends to identify with Somalia.

Between 1991 and 1998, Somaliland enjoyed a significant level of support within these areas and made some progress towards establishing its authority there, despite widespread unionist sentiments. But in 1998 the formation of the "Puntland State of Somalia" posed a direct challenge to its influence. Unlike Somaliland, Puntland's interim constitution states that it "is a part of an anticipated Federal State of Somalia [and] is striving for the unity of the Somali people and the creation of a Somali government based on a federal system".³² Puntland was also established as the homeland for the Harti community, a sub-group of the large Darod clan. The largest Harti sub-clan, the Majeerteen, inhabits north eastern Somalia, while two smaller groups, the Dhulbahante and Warsengeli, are mainly within the colonial borders of Somaliland. Members of the Harti clans also inhabit the southern coastal town of Kismayo and its environs (although their numbers there have thinned since the area came under the control of hostile militia groups). Their links with Puntland make it unlikely a strong secessionist movement could find purchase among the Harti.

²⁹ Adan Yusuf Abokor, Steve Kibble et al., *Further Steps to Democracy: The Somaliland Parliamentary Elections, September 2005* (London), p. 8.

³⁰ The Supreme Court later ruled that Rayale's margin of victory was 217 votes but did not explain how it reached this result.

³¹ *Further Steps*, op. cit, p. 4.

³² "Puntland Facts and Figures", Ministry of Planning and Statistics, Puntland State of Somalia, 2003, p. 9.

Since Puntland defines its boundaries in terms of the distribution of the Harti clans, it lays claim to parts of eastern Somaliland inhabited by the Dhulbahante and Warsengeli communities, irrespective of whether members of those communities identify with Puntland or not. Loyalties in these disputed territories are divided, administrative authority (of either administration) is comparatively weak, and tensions occasionally flare into armed conflict.

Insensitivity on the part of Somaliland's government in recent years has deepened the divisions, strengthening the conviction among many Dhulbahante and Warsengeli that their interests are better served by southern authorities like the Puntland administration and the TFG. Since President Rayale's disastrous visit to Laas 'Aanood in December 2002, for example, the Puntland administration has maintained a more assertive presence in the town than the Somaliland government.³³ The results of Somaliland's September 2005 parliamentary elections, in which the Dhulbahante clan lost three seats, compounded this alienation. A Warsengeli intellectual told Crisis Group: "Dhulbahante rejectionists now argue that this is what they had said all along – they can expect no justice from Somaliland".³⁴

Relations between the Dhulbahante and the Puntland administration have not been without difficulties either. Senior Dhulbahante elders have at times accused the Puntland leadership of promoting disunity and violence within the clan,³⁵ and in late February 2006 residents of Laas 'Aanood demonstrated angrily against a visit to the town by Puntland president 'Adde Musa.

Many Dhulbahante and Warsengeli feel they are inadequately represented by Somaliland, Puntland or the TFG. "Some of them want to declare a state of their own, independently of the others", a Somali analyst told Crisis Group.³⁶ This underscores some of the concerns that will be raised in any review of Somaliland's status and the potential redrawing of national boundaries. While the AU would likely only accept either a unified Somali Republic, including Somaliland, or an independent Somaliland within the

boundaries received from the British, some groups would be unhappy with either arrangement.³⁷

If the disputed territories emerge as a principal obstacle to separatist aspirations, Hargeysa might be tempted to impose its authority on the contested areas by force. Pro-unity minorities would be obvious targets for separatist reprisals. Such actions could draw in forces from elsewhere in Somalia and become a festering source of long-term instability. On the other hand, if Somaliland moves towards recognition, it may inherit an angry, pro-unity lobby with a range of unresolved grievances, both imagined and real, and supporters across the border in Somalia.

Some unionists argue that if Somaliland has the right to secede from Somalia, the inhabitants of Sool and eastern Sanaag regions should have the option to secede from Somaliland. An open letter to the chairperson of the AU Commission states that if the AU encourages "clan-based secession" in Somaliland, "this will give no choice to the other clans in the north west region, namely in Sool, Sanaag and Cayn, but to equally secede and ask for recognition from the AU in their own right as the state of 'True Somaliland'".³⁸ An author of the letter elaborated to Crisis Group:

The Darood clans whose territory is almost half of "Somaliland" have nothing to do with this secession. Today they are part of Puntland. So is the Issa clan against secession. And so are the silent majority of the Gadabuursi in the Awdal region who are for the time being keeping a low profile first because they would like the president, their fellow clansman to finish his term, and more importantly because they do not want to incur reprisals from the Isaaq, mindful of the atrocities committed against them in 1991 by the SNM....The question is whether the Issaq clan renounce secession peacefully or risk the same fate as that which befell another secessionists in Eastern Nigeria in the 1960s. Remember Biafra?

Some observers feel that such threats are overblown: "These negative consequences [of recognition] simply won't happen," a regional diplomat told Crisis Group. "Somaliland will not simply impose its control over these territories....It will be forced to take into account

³³ Rayale's visit ended in a shoot-out between his bodyguard and militia sent by Puntland leader Abdillahi Yusuf to assassinate him. It also terminated a quiet dialogue between community leaders in Hargeysa and Laas 'Aanood. See Crisis Group Report, *Somaliland: Democratisation and Its Discontents*, op. cit., p. 29.

³⁴ Crisis Group interview, Hargeysa, January 2006.

³⁵ See Crisis Group Report, *Somaliland: Democratisation and Its Discontents*, op. cit., p. 29.

³⁶ Crisis Group interview, Nairobi, March 2006.

³⁷ There is, however, nothing to prevent neighbouring states from adjusting their common border by mutual consent.

³⁸ Mohsin Mahad, Mohamed Ali Mirreh, Mohamoud Hassan and Abdullahi Guleid, "Open Letter to His Excellency Prof. Alpha Oumar, Chairperson, Commission of the African Union", 16 February 2006.

the concerns of the people in those regions. And if the international community recognises [Somaliland], then [the inhabitants of those regions] will try to live with it".³⁹ In an interview on 18 May 2006, Puntland President Ádde Musa was also careful to play down the likelihood of conflict, stating that despite its commitment to unity and federalism, Puntland would not interfere with Somaliland's aspirations for independence. "We hope they will work with us in a brotherly, Somali way", he told the BBC.⁴⁰

There is no doubt that the appeal of the unionist lobby in Somaliland draws much of its strength from the fact that today unity remains a realistic option. But to assume that recognition of Somaliland's sovereign status would wholly resolve the problem is as misplaced as the belief that separatists will meekly abandon their quest for sovereignty if confronted with an effective Somali government to the South.

The people of the disputed territories stand to lose the most if the simmering dispute over Somaliland's contested sovereignty erupts again into open conflict. As in the past, the front lines would run not only through their homelands but also through their communities, as kinsmen took opposing sides. Whatever the final determination of Somaliland's sovereign status, avoiding such a tragedy should be among the AU's top priorities.

III. SOMALILAND AND THE AFRICAN UNION

The recognition of new states is governed by a complex calculus of factors that includes international law, the self-interest of other states, politics, personality and strategic considerations – including the management or prevention of conflict. There are few hard and fast rules; the act of recognition by one state of another is ultimately a discretionary act. The type of recognition Somaliland is currently seeking – admission to the African Union – would require the approval of a simple majority of member states.⁴¹

If Somaliland's bid for admission to the AU is to be taken seriously, it must persuade the organisation that its request is justifiable under international law, serves the greater interest of the AU as a whole (or at least of enough individual member states to swing a vote) and would contribute to the stability and development of the region. It must also, in the words of one legal scholar:

...mitigate the potential negative aspects of its attempted secession. In particular, its effort must not appear to impoverish the rump state of Somalia, create an illiberal ethnocracy, trap "double minorities" within its borders or precipitate a rash of similar secession attempts in Somalia or elsewhere.⁴²

Some of these issues can be argued by reference to objective criteria, such as the principal features of statehood and applicable international law. Others, however, hinge on more subjective assessments, including the attitudes of individual governments, geopolitical interests and the quality of Somaliland's diplomacy (as well as that of its unionist rivals).

A. STATEHOOD AND RECOGNITION

1. The Montevideo criteria

The most broadly accepted definition of statehood, albeit overly simplistic and with a range of shortcomings, is probably that provided by the 1933 Montevideo Convention on the Rights and Duties of States. Its criteria include: a permanent population, defined territory, government and the capacity to enter into relations with

³⁹ Crisis Group interview, January 2006.

⁴⁰ BBC Somali service, 18 May 2006.

⁴¹ "Constitutive Act of the African Union", Lomé (Togo), 11 July 2000, Article 29.

⁴² McMullen, *op. cit.*, p. 428.

other states.⁴³ As witnessed repeatedly around the globe, fulfilling these criteria, or even functioning as a de facto state, does not automatically bestow international recognition or guarantee independence. However, Somaliland measures up well against the Montevideo criteria.

Permanent population. Somaliland's population is estimated at over three million.⁴⁴ If recognised, it would rank 38th among 55 African states. Although some inhabitants are nomadic pastoralists who practice transborder migration, the permanent population is stable.

Defined territory. Somaliland's territory is defined by three colonial treaties signed between the British on the one hand, and the French (1888), Italians (1894) and Ethiopians (1897) on the other. The boundaries, which encompass an area of 137,600 square kilometres, are those received at the moment of independence from the British in 1960. In terms of size, independent Somaliland would rank 36th among 55 African states. Under international law, boundary disputes do not invalidate a state's claim to a defined territory, although they often considerably complicate recognition by other states.

Government. Somaliland possesses a functioning central government that is in effective control of most of the territory to which it lays claim. In addition to the symbolic trappings of statehood – a national flag, currency, crest and the like – it has a constitution (approved by popular vote), democratically elected authorities at all levels and basic state institutions including a bicameral parliament, independent judiciary, permanent electoral commission, army and police and custodial forces.

Capacity to enter into relations with other states. Somaliland has entered into formal and informal cooperative arrangements with a wide variety of states and intergovernmental

organisations, including Djibouti, Ethiopia, Kenya, South Africa, Denmark, UK, U.S. and the UN. Cooperation has covered a range of issues, including security, trade, immigration and development assistance.

However, because Somaliland is part of a previously recognised state, the Montevideo criteria cannot be considered in the abstract, and they are unlikely to be the sole factors states take into account when deciding whether or not to grant explicit recognition or deal with the entity implicitly as an independent state. As discussed below, territorial integrity has traditionally been given heavy weight in international law and diplomacy. This is primarily due to concerns that any adjustments in borders and status could be expected to trigger a cascade of broader claims and counter claims leading to territorial competition and violence.

One of the factors that makes the Somaliland situation unique is that while it meets the Montevideo criteria, the larger recognised nation in which it is still formally embedded does not in many respects. For example, it could be argued that since Somalia has in effect had no government for an extended period of time, its own grounds for formal statehood under the Montevideo principles could at least be questioned.

In addition to the descriptive criteria of the Montevideo Convention, some scholars argue that statehood involves the assertion of a "claim of right".⁴⁵ Such a claim may be based on a variety of grounds, including self-determination, liberation from oppression or tyranny, violation of the terms of a voluntary union or mutual consent.

Attitudes toward recognition tend to differ not over whether Somaliland fulfils the factual criteria of statehood set out in the Montevideo Convention, but over whether it can legitimately claim a right to statehood and whether statehood would increase the potential for renewed conflict in Somalia. It is a debate that cannot be understood without reference to Africa's colonial past and attitudes on the continent towards self-determination and secession and the inviolability of colonial boundaries.

2. The declaratory school

The Montevideo Convention maintains that "the political existence of the state is independent of

⁴³ "Convention on the Rights and Duties of States", signed at Montevideo, 26 December 1933. The convention is a regional American pact, not directed toward the international community generally. Although it is only binding as treaty law on the western hemisphere states which have ratified it, its principles are considered widely acceptable as reflecting customary international law.

⁴⁴ Population estimate as of 1997. "Somaliland in Figures 2004", Somaliland Ministry of National Planning and Coordination (with the assistance of the UN Development Program and the World Bank), Hargeysa, 2004, p. 5.

⁴⁵ James Crawford, *The Creation of States in International Law* (Oxford, 1979), pp. 31-119.

recognition by the other states”.⁴⁶ This constitutes the essence of the “declaratory” school of thought, in which “the role of recognition is simply to acknowledge the fact that a territorial entity has satisfied the criteria for statehood”.⁴⁷ From this perspective, Somaliland is already a de facto state, whether or not other governments choose to recognise that fact.

A legal opinion prepared by the South African Ministry of Foreign Affairs advances the declaratory argument for recognition in the following terms:

Although Somaliland meets the requirements of statehood, since the declaration of independence, no country has recognised the Republic of Somaliland....Somaliland officials have mastered all the arguments and precedents for recognition, but the problem is in convincing the rest of the world, especially members of the African Union, that its case is special and deserves support.⁴⁸

The Somaliland government – also adopting the declaratory view – evidently anticipates that its de facto statehood will eventually translate into de jure recognition. President Rayale argued as part of a 2004 briefing paper that:

Independence for Somaliland is no longer a hope, but a reality; there is no turning back the clock. What remains is for the international community to come to terms with that reality and to arrive at the only possible conclusion: recognition of Somaliland as a rightful member of the world community of nations.⁴⁹

3. The constitutive school

International practice tends to be characterised less by declaratory theory, however, than by the argument of the “constitutive” school that recognition is an additional, and usually decisive, criterion of statehood. In other words, fulfilment of the Montevideo criteria is insufficient unless other states actually extend formal recognition.

Numerous cases can be found to substantiate the constitutive theory: Rhodesia, though governed and defended by its white minority regime for a number of years, was denied recognition because of the stigma of its racial policies; Katanga and Biafra, both of which at times manifested state-like characteristics, were denied recognition because of international opposition to acts of unilateral secession.⁵⁰ Speculation over Taiwan’s final status continues to this day.

As Somaliland’s experience demonstrates, recognition is more than a mere formality in the contemporary international system. Its denial places real constraints on the capacity to function as a modern state, both domestically and internationally. The government has no access to international financial institutions or direct bilateral assistance; trade – especially livestock export – is handicapped by the lack of recognised regulatory controls; foreign investors – among them banks and insurance companies – are reluctant to invest in a territory that is still legally part of a failed state and a designated war zone. The AU Commission has observed that lack of recognition “ties the hands of the authorities and people of Somaliland as they cannot effectively and sustainably transact with the outside [world] to pursue the reconstruction and development goals”.⁵¹

Somaliland has, nevertheless, been expected to shoulder some of the international duties of statehood. For example, the United Nations High Commissioner for Refugees has supervised the return to Somaliland from Ethiopia and Djibouti of over 200,000 refugees (a further 500,000 are believed to have repatriated themselves to Somaliland without any assistance); several European countries, including the UK, Denmark, the Netherlands and Sweden, have denied asylum to Somalilanders and repatriated them on the grounds that their homeland is safe and secure.

Although recognition may be a necessary condition for statehood, it is not sufficient. Fairly widespread recognition has not resolved the stalemate over Western Sahara or transformed Somalia’s TFG into a functional national authority. Recognition, it would seem, is most effective when bestowed upon a polity that already exhibits the de facto features of statehood.

Such contradictions have been lost neither on Somalilanders nor on international scholars. A prominent observer of the continent’s politics has observed that:

⁴⁶ Montevideo Convention, Article 3.

⁴⁷ Richard Caplan, *Europe and the Recognition of New States in Yugoslavia* (New York, 2005), p. 56.

⁴⁸ Tandeka Lujiza (Assistant State Law Adviser), “Somaliland’s Claim to Sovereign Status”, legal advisory prepared by the Office of the Chief State Law Adviser (International Law), Department of Foreign Affairs, South Africa, 29 April 2003, p. 5.

⁴⁹ “The Case for Somaliland’s International Recognition as an Independent State”, op. cit., forward by President Rayale, p. 2.

⁵⁰ Examples taken from Caplan, op. cit., pp. 51-53, 65.

⁵¹ “Resume: AU Fact-Finding Mission to Somaliland”, op. cit., paragraph 9.

Order is supposed to be the defining characteristic of a state, but Somaliland is recognised by no country in the world as a sovereign entity. Instead the world insists on clinging to the fiction that Somalia has a government that rules over a united territory. Understanding why the world pretends that Somaliland does not exist tells us much about the foibles of the international politics of recognition.⁵²

B. RECOGNITION OF NEW STATES IN AFRICA

International reluctance to come to terms with Somaliland begins in Africa. The UN and various Western donors have indicated at one time or another that Somaliland's broader prospects for international recognition hinge first upon the attitude of the African Union. David Shinn, a former U.S. ambassador to Ethiopia and a close observer of Somaliland has noted that:

There is considerable sympathy for what Somaliland has achieved by way of internal stability, free elections, and the initiation of a democratic system of government. But the U.S. and Western countries tend to defer to the African Union when issues concerning boundary change or sovereignty arise in Africa. It is highly unlikely that the U.S. would move to recognise Somaliland before the African Union did so or, at a minimum, several key African states opted to do so.⁵³

No non-African power has found a compelling reason to recognise Somaliland, although some AU officials feel that heightened Western concerns about international terrorism and access to oil might eventually force a change.⁵⁴ The UK has been particularly supportive of Somaliland: "Our policy is to do whatever we can to help, short of recognition", a foreign office official told Crisis Group.⁵⁵ A number of other European governments, including Denmark and Sweden, have also taken a special interest. But these attitudes are balanced within the European Union by the staunchly pro-unity posture of Italy and, to a slightly lesser degree, France. In the meantime, decisions concerning the

unity of the Somali Republic are in the hands of an organisation that remains deeply conservative in its approach to boundary and sovereignty issues.

1. The Organisation of African Unity

African coolness to the question of Somaliland reflects a long-standing continental consensus on the sanctity of colonial borders and concomitant intolerance to secession, which influenced international law on decolonisation from 1960 to the end of the Cold War. These principles, enshrined in the 1963 founding charter of the Organisation of African Unity (OAU), were intended mainly to shore up the stability of newly independent, multiethnic states whose inherited frontiers routinely divided nations, tribes and clans, sowing the seeds of potential secessionist movements across the continent. For example, they responded in part to Somalia's irredentist claims on Somali-inhabited regions of Kenya, Ethiopia and the French Somali Coast (*La Côte Française Somalienne*) (later Djibouti).⁵⁶

Between 1991 and 2000, the OAU did not address Somaliland's claims to independence, although it consented to the break up of two other unions.⁵⁷ In 1989, Senegal opted to terminate its seven-year merger with Gambia as the Senegambia Federation, and in 1993 Eritrea formally seceded from Ethiopia.⁵⁸ As already noted, many AU member states were opposed to Eritrean independence but a UN-supervised referendum (in which Eritreans voted overwhelmingly for independence) and a green light from Addis Ababa presented the continent with a *fait accompli*. In both cases, consent of the parties to separation meant that the OAU's role was merely to acknowledge the break-up. The path to recognition has always been far easier when the international community can sanction an agreement supported by the relevant parties: the

⁵⁶ In 1967 the colony was renamed the French Territory of Afars and Issas (*Territoire français des Afars et des Issas*); it became the Republic of Djibouti upon independence from France in 1977.

⁵⁷ The short-lived Mali Federation, which united French Sudan (later Mali) with Senegal, was established in June 1960, but Senegal withdrew in August of the same year, dissolving the union before the OAU was formed. Likewise, the 1958 merger of Egypt and Syria as the United Arab Republic was effectively terminated in 1961 by Syria's withdrawal, although Egypt continued to use the name until President Gamal Abdel Nasser's death in 1971.

⁵⁸ Unlike Somaliland, Senegal or Gambia, Eritrea was not a sovereign entity when it was federated with Ethiopia in 1950, but it had existed as a distinct colonial entity under Italian rule since 1890. Ethiopia subsequently dismantled the federation and effectively annexed Eritrea.

⁵² Jeffrey Herbst, "In Africa, what does it take to be a country?", *The Washington Post*, 2 January 2004.

⁵³ David H. Shinn, "Somaliland and U.S. Policy", *The Journal of the Anglo-Somali Society*, No. 38, Autumn 2005, p. 40.

⁵⁴ Crisis Group interview, Addis Ababa, March 2006.

⁵⁵ Crisis Group interview, London, March 2006.

Helsinki Final Act, for example, affirms both the inviolability of European borders and the right of self-determination, while acknowledging that borders can be changed peacefully and through agreement – principles that were severely challenged by the break-up of Yugoslavia.⁵⁹

2. The African Union

The African Union, which succeeded the OAU in July 2000, has retained many features of its predecessor, including its commitment to the unity and territorial integrity of member states.⁶⁰ Since Somalia is an AU member and its seat is no longer vacant, the admission of Somaliland would arguably violate this fundamental principle.⁶¹ “This is an issue that affects the status, the sovereign rights and the integrity of a member state”, an Ethiopian diplomat told Crisis Group. “This is not a routine matter; it is very sensitive”.⁶² But there are a number of reasons why the AU may take a fresh approach to the problem; indeed there are signs that it has begun to do so.

The AU was created to address the emerging challenges “that confront our continent and peoples in the light of the social, economic and political changes taking place in the world”.⁶³ The OAU, having overseen the process of decolonisation across the continent, had increasingly come to be perceived as an organisation adrift and ineffective. The AU was meant to revive collective arrangements among African states but with a new emphasis on economic integration; the promotion of peace, security and stability; and the advancement of human and peoples’ rights, democratic institutions and culture, good governance and the rule of law. The New Partnership for African Development (NEPAD), a core AU program, places these principles at the centre of its approach and includes a peer review mechanism intended to provide a measure of mutual accountability.

These new directions mean that the AU is less inclined to see the unity and territorial integrity of

states as an end in itself, but rather as a means to other goals. As noted above, in supporting the Comprehensive Peace Agreement signed in 2005, the organisation has already accepted the possible break up in six years time of Africa’s largest state – essentially an affirmation that Sudan’s unity and territorial integrity are subordinate to the achievement of lasting peace and security in the region after decades of war, and to the rights of the South Sudanese to determine their own future.

It is unclear whether the AU Commission’s active engagement on Somaliland has begun to awaken interest among member states or it is that interest that is driving the Commission. Certainly a growing number of African governments seem, if not sympathetic, at least resigned to the inevitability of engagement on the issue of Somali status. Two neighbours, Ethiopia (whose foreign minister recently announced that his government would be the “last” to recognise Somaliland) and Djibouti (which has in the past lobbied strongly in favour of Somali unity) have permitted Somaliland to open liaison offices on their soil and engage in a range of bilateral ties. South Africa has enjoyed an especially close relationship with Somaliland since the late President Egal first visited in 2002.

The attitudes of such governments, however, are entirely discretionary, since the AU lacks – in the words of a Commission official – a common policy on issues of “second-generation independence”.⁶⁴ The European Union, by contrast, moved – amid the bloodshed of Yugoslavia’s dissolution – to fill this gap in December 1991 with the adoption of a set of policy guidelines governing the recognition of new states in Eastern Europe and the former Soviet Union. These, in effect, amounted to a set of conditions to be met by candidates for statehood, including, *inter alia*, respect for the UN Charter and certain other international instruments, especially with regard to the rule of law, democracy and human rights; guarantees of the rights of minority groups; and a commitment to settle by agreement or arbitration all questions concerning state succession and regional disputes.⁶⁵

⁵⁹ Final Act, Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975.

⁶⁰ “Constitutive Act of the African Union”, Lomé (Togo), 11 July 2000, Article 3 (b).

⁶¹ Somalia’s seat at the AU fell vacant in 1991 after the collapse of the Barre regime. In 2001, the Transitional National Government (TNG) formed at Djibouti the previous year was permitted to reclaim the seat, which has been held since 2004 by the Transitional Federal Government (TFG). Neither the TNG nor the TFG has been able to pay its dues, however, so Somalia remains a non-voting member.

⁶² Crisis Group interview, Addis Ababa, January 2006.

⁶³ “Constitutive Act of the African Union”, *op. cit.*, preamble.

⁶⁴ Crisis Group interviews, Addis Ababa, March 2006.

⁶⁵ The Arbitration Commission of the Peace Conference for Yugoslavia (known as the Badinter Commission), played a central role in determining European policy towards the break up of the Socialist Federal Republic of Yugoslavia. The Commission was made up of five presidents drawn from among the constitutional courts of the then European Communities, and produced a series of opinions on the validity of the new states’ claims to independence and the conditions for recognition. The Commission determined, *inter alia*, that the break up of Yugoslavia was a case of dissolution rather than secession and acknowledged the right

C. RULES AND EXCEPTIONS: SELF-DETERMINATION, BOUNDARIES AND CONSENT

Broadly speaking, the formation and recognition of new states is guided by two potentially contradictory international norms: the right to self-determination and respect for the territorial integrity of states.⁶⁶ Self-determination, however, does not necessarily convey the right to secede from a state. The International Court of Justice has, in the case of Western Sahara, defined it as “the need to pay regard to the freely expressed will of the people”, suggesting that self-determination, under international law, is best read as the right of people to participate in their social, economic and political development. The relationship between self-determination and secession has been contentious, and a legal opinion on Somaliland written by the South African foreign ministry observed that:

while it does not authorise secession, the right to self-determination does not prohibit secession. Bangladesh successfully seceded from Pakistan in 1971, Eritrea seceded from Ethiopia in 1993, and it is arguable that the dissolution of Yugoslavia was in fact a case of secession of Slovenia, Croatia, Bosnia [and] Herzegovina and Macedonia from Yugoslavia.⁶⁷

Exercise of the right to self-determination in the vast majority of cases does not lead to boundary change or secession. When pursued by an ethnic or otherwise clearly defined group within a sovereign state, self-determination usually results in some combination of legal and political strategies involving autonomy, power and wealth sharing and human rights protection within that state. International law does, however, permit boundary change by peacefully negotiated agreement, and some countries’ constitutions provide for secession (usually after a high standard such as a referendum process is met), but the achievement of independence through such processes is the exception rather than the rule.

of its federal states to secede, on condition that they respected pre-existing boundaries (*uti possidetis*). The Commission’s work and influence was restricted to the former Yugoslavia, however. Several claims to statehood in Europe remain unresolved, including Kosovo, Abkhazia, and Transnistria, involving Serbia and Montenegro, Georgia and Moldova respectively.

⁶⁶ See the United Nations International Covenant on Economic, Social and Cultural Rights, (entered into force on 3 January 1976), and the Helsinki Final Act, *op. cit.*

⁶⁷ Tandeka Lujiza, “Somaliland’s Claim to Sovereign Status”, *op. cit.*

Unilateral secession is perhaps the least common expression of self-determination. The preamble to the United Nations 1948 Universal Declaration of Human Rights recognises the right to rebellion as a last resort against tyranny and oppression. Some international legal scholars have taken this argument a step further, arguing that “human rights jurisprudence in general, and more specifically, the principle of self-determination, serve as the theoretical and normative basis of the right to secede”.⁶⁸ However, read broadly, such an interpretation would give the green light for secession to a far larger group than the international community would wish to encourage or in the past has accepted. The Somaliland authorities have long argued that atrocities committed in the North by the Barre regime provide adequate grounds for not only self-determination but also separation from the state responsible for those crimes. These arguments appeared to resonate with the 2005 AU fact-finding mission to Somaliland, which reported that the “plethora of problems confronting Somaliland [are in part] the legacy of a political union with Somalia, which malfunctioned, [and] brought destruction and ruin, thereby overburdening the population”.⁶⁹

In Africa, no bid for unilateral secession has yet succeeded: Biafra, Katanga, Casamance and Cabinda – to name just a few – all remain firmly attached to their parent states. Whether Somaliland achieves the distinction of being the first depends in part upon its circumstances, including its brief, but legal, period of independence in 1960, its claim to recognised international borders relating to that period and the prolonged absence of a credible authority in Somalia from whom to obtain consent. In the cases of both the former Soviet Union and the former Yugoslavia, the international community ultimately acknowledged existing republic boundaries as the new borders for the successor states as a means to limit territorial contests.

1. *Uti possidetis juris*

In the African context, the exercise of self-determination is inextricably linked to the principle of respect for pre-existing boundaries (*uti possidetis juris*).⁷⁰ Article 4 of the Constitutive Act of the African Union binds member states to respect “borders existing on achievement of independence”.⁷¹

⁶⁸ Hoyle, *op. cit.*, p. 84.

⁶⁹ “Resume: AU Fact-Finding Mission to Somaliland”, *op. cit.*, paragraph 7.

⁷⁰ The full term is *uti possidetis [juris], ita possideatis* (“as you possess [in law], so you may possess”).

⁷¹ “Constitutive Act of the African Union”, *op. cit.*

As noted above, Somaliland's case for admission to the AU is highly unusual in that it would involve restoring borders it possessed both as a colonial entity and as an independent state and which were established by three treaties the UK concluded with France, Italy and Ethiopia respectively. Although the period of independent statehood prior to union with Somalia was brief, from a legal standpoint this in no way diminished Somaliland's de jure sovereignty during that period, nor the reality of its borders existing on achievement of independence, as per Article 4.

From the AU's perspective, this distinction may be critical: the borders received by Somaliland at the moment of independence were those of the British Somaliland Protectorate, not the Somali Republic. As such, an independent Somaliland could be considered as satisfying the requirement of *uti possidetis juris* and being technically consistent with Article 4.

An internal AU document obtained by Crisis Group suggests that senior AU Commission officials believe this is one of Somaliland's strongest arguments: "A strict interpretation of [Article 4 of the AU Constitutive Act] actually provides Somaliland with the legal sanction that it seeks".⁷² It would also make it much harder for secessionist movements elsewhere on the continent to claim Somaliland as a precedent. The potential independence of southern Sudan in 2011—although it would result from the operation of a mutually agreed peace settlement—arguably poses a more difficult problem for the AU since it could encourage secessionist groups elsewhere to believe that armed struggle will be rewarded with the prospect of independence at the bargaining table. The AU, like much of the international community, evidently hopes that eventuality will not come to pass.

2. Mergers and divorces

An argument closely related to *uti possidetis juris* is that Somaliland's pursuit of independence is a case not of secession but rather dissolution of a voluntary union between two independent states. A number of AU members are also the offspring of failed unions: Mali, Senegal, Gambia and Egypt have all withdrawn from unions with their borders intact. The break-up of Czechoslovakia may be considered a somewhat analogous European case in point, though that union

lasted three quarters of a century. The break-up of the Soviet Union is also analogous in that it was notionally voluntary, and the "newly independent states" had mostly all been independent at some earlier period (though often centuries ago). The Soviet case marked a change—or at least a gloss on—the previous rule that an entity had only one opportunity to exercise self-determination. The record of historical independence was an important factor in this, however.

The AU has also accepted the independence of territories that never previously enjoyed full sovereignty. Eritrea was initially federated with Ethiopia and then annexed before it achieved independence in 1993. Polisario's effort to reverse Morocco's 1976 annexation of the Western Sahara territory after Spain's withdrawal has been facilitated by its characterisation as a "decolonisation" struggle. Both Eritrea and the Democratic Arab Sahrawi Republic are now full members of the AU, although Western Sahara remains largely under Moroccan control, and some countries have revoked their earlier recognition under Moroccan pressure.

The AU's tolerance of dissolved unions, however, appears to be subject to two conditions: respect for the principle of *uti possidetis juris* and the consent of both partners.

3. Consent

The question of consent plays a major, though not necessarily decisive, role in whether separatist entities achieve international recognition. By and large the international community approves neither of unilateral secession nor the dissolution of unions against the wishes of one party. As a British diplomat told Crisis Group, "the best way to set the scene for Somaliland's independence would be to ensure some kind of 'velvet divorce'".⁷³

Somalia has been poorly positioned to engage in talks regarding either independence or significant autonomy for Somaliland. It lacked any form of government between 1991 and 2000 and was unable to express an opinion on Somaliland's declared withdrawal from the union. The current TFG is still struggling to overcome internal divisions and establish its authority inside its de facto share of the country. It remains to be seen whether it will do so before its mandate expires in 2009. In the meantime, it would probably collapse if it attempted to compromise the unity or territorial integrity of the country as it perceives it. In essence, keeping discussion of Somaliland's status in

⁷² AU document obtained by Crisis Group. Unionists could argue that at the time of the OAU's formation in 1963 and Somalia's admission, the borders in question were those of Somalia and not of the former British and Italian-administered territories. The AU Constitutive Act, however, makes no reference to the borders at admission, only independence.

⁷³ Crisis Group interview, London, March 2006.

abeyance until the situation in Somalia is fully settled holds Somaliland hostage to events over which it has very little control.

However, while desirable, mutual consent to separation is not a requirement of international law, and several states have been formed and recognised without it. “By applying for admission to the AU, Somaliland has not requested Somalia’s permission”, a senior AU Commission official told Crisis Group. “This is important, since they don’t actually need to”.⁷⁴ Moreover, as Kenyan scholar Ali Mazrui recently argued in a lecture at the University of Hargeysa, it may be claimed that Somalia has forfeited its moral authority to deny Somaliland a divorce:

What if the marriage included spouse abuse?
In a union between two individuals, wife
beating can be grounds for divorce. Is it not
about time that partner-abuse became grounds
for divorce in a marriage between states also?⁷⁵

One possible scenario involves the recognition of Somaliland by individual states in Africa and elsewhere on the basis of principle or interest, whether strategic or commercial. This could create tensions within the AU, however, and lead to a situation analogous to that of Western Sahara, which a number of AU states refuse to recognise. Alternatively, the AU might consider establishing a mechanism, along the lines of Europe’s Badinter Commission, to study the matter and reach a conclusion on behalf of the organisation.

IV. PREVENTIVE DIPLOMACY: THE ART OF THE POSSIBLE

An AU determination of Somaliland’s claim to statehood is at least still some way in the future but cannot be postponed indefinitely. In the meantime, there is a need to ensure that Somaliland’s contested sovereignty leads neither to armed conflict nor to an intractable political stalemate from which war appears – to one side or the other – the only exit. This will require firm and timely preventive diplomacy from the African Union.

Achieving a mutually acceptable outcome will not be easy: leaders in Hargeysa and Mogadishu do not even agree on whether they are still part of the same country. They are bound by different constitutions, accountable to different parliaments and sensitive to the opinion of different constituencies. Many southern Somalis bridle at the very mention of the term “Somaliland”, while many Somalilanders consider talk of unity to be treasonous. It is no more realistic to expect Somaliland’s leaders to tear up the constitution and revoke the 1991 declaration of independence than it is to demand that Somalia’s current leaders risk shattering the fragile transitional government by blessing the break up of the Somali Republic.

Given these constraints, the prospects for a negotiated or mediated settlement seem fairly remote. A more realistic AU objective, therefore, might be an “ad hoc compromise” – an agreement by the two sides to an arbitral process. If that proves unattainable, the AU should be prepared to consider a more prescriptive mechanism akin to Europe’s Badinter Commission.

A. PERSPECTIVES ON UNITY

Most southern Somalis, and a significant minority of Northerners, are deeply opposed to Somaliland’s independence. They perceive the union to be “sacrosanct” (*muqadis*) and disparage Somaliland’s claims to independence as the ambitions of a clan-based elite lacking broad support. Many perceive Somaliland’s very existence to be evidence of foreign (principally Ethiopian) desire to dismantle the Somali state and enfeeble the Somali nation. Only a strong, united Somali state, they believe, can protect and preserve pan-Somali interests. A prolific Internet commentator has asserted that:

In an era when nation states are uniting to form powerful economic blocs, it is sad to hear calls for further divisions in Somalia....The [S]outh

⁷⁴ Crisis Group interview, Addis Ababa, January 2006.

⁷⁵ Ali A. Mazrui, “Africa’s Bondage of Boundaries: Can the Shackles Be Loosened?”, public lecture delivered at Hargeysa University under the chairmanship of the President of the University, Hargeysa, Somaliland, 22 March 2006.

needs the [N]orth for its potential mineral and oil deposits and the [N]orth needs the [S]outh for its potential to become the breadbasket of Somalia and other neighbouring countries as well as for its human resources for economic growth and security.⁷⁶

Most unionists do not accept that the separatists have a legitimate cause but an imposed union would likely be violent and unworkable. Somalia is unlikely to possess adequate coercive means to impose its will on Somaliland for many years. In the foreseeable future, Somali unity, even if merely of a legal kind, can be imposed only by the international community – primarily the AU – through continuing denial of recognition to Somaliland.

1. A voluntary union?

The best – perhaps the only – hope for a genuine, stable union lies in reviving the voluntary nature of the merger. As a former Somali diplomat has phrased the challenge, “what would it take to restore the lost faith and trust of our brothers and sisters of the [N]orth in the union so that they might one day return as equal partners in the unification they joined with the [S]outh in 1960”⁷⁷ Some persuasive answers have been advanced by a Southern political figure and former diplomat, Mohamed Warsame Kimiko, who has argued that preservation of the union would require Southern leaders – at a minimum – to:

- (a) accept the equality of the two peoples (North and South) who together formed the Somali Republic in 1960;
- (b) accept the inalienable right of the people of Somaliland to self-determination and the opportunity to determine their own destiny (united or separated);⁷⁸
- (c) accept and acknowledge the legitimate grievances of the people of Somaliland and express brotherly sympathy with them;
- (d) condemn the atrocities perpetrated by the Barre regime against the people of Somaliland; agree to renegotiate completely the 1960 act of union; and

- (e) accept that a fair and free referendum be conducted in the North, so as to ascertain definitively the genuine wishes of the people of Somaliland, and abide by the results.⁷⁹

It is difficult to assess whether today’s Southern political leaders are prepared to accept such principles as a basis for dialogue, since they have put forward no concrete proposals. However, assuming that a peace process could be structured around such principles, it is unlikely that the current Transitional Federal Charter could serve as a basis for fruitful negotiation since it assigns Somaliland a status on par with other states of the federation – superficially an even less favourable arrangement than the 1960 union.

From Somaliland’s perspective, renegotiation of the 1960 merger between two sovereign equals would probably be the only admissible way of preserving some trace of the union. This might produce a loose union arrangement along the lines proposed by Kenyan Ambassador Bethuel Kiplagat, who served as his government’s special envoy to the Somali peace process. “Possibilities include a ‘confederation’ or an ‘association’ of states”, he told Crisis Group. “We could envision a [joint] parliament that meets one or two times a year, like the AU parliament or the East African Community”.⁸⁰

In order to conclude such a deal, a Somali federal government would have to satisfy not only Somaliland’s demands but also those of its state authorities, who might resist an asymmetrical union. From a southern perspective, the constitution-making

⁷⁶ Ali H. Abdalla, “The Hidden Conspiracy to Balkanize Somalia”, 2 April 2006, at http://www.wardheernews.com/Articles_06/April/02_hidden_conspiracy.html.

⁷⁷ Abdullahi Dool, *Failed States: When Governance Goes Wrong* (London, 1998), p. 309.

⁷⁸ The author seems to be affirming the voluntary nature of the union and the freedom of Somaliland to choose between independence or some kind of association with the South.

⁷⁹ Mohamed Warsame Kimiko, “My Turn: A blueprint for the resolution of the North-South question”, undated open letter, c.2000. Kimiko’s letter also called upon Northern leaders to accept that Somaliland “remain” part of the Somali Republic unless determined otherwise by referendum.

⁸⁰ Crisis Group interview, Nairobi, February 2006. The term “confederation”, like “federation”, is not susceptible to precise definition. As noted in Crisis Group Europe Report N°108, *After Milosevic: A Practical Agenda for Lasting Balkans Peace*, 1 April 2001, footnote 91: “Any federation involves a distribution of powers between central and regional entities within a single sovereign entity. Existing federations around the world spread across a continuum of such arrangements, from those where most power is exercised by the centre, to “thinner” federations where much more authority is exercised by the constituent regional entities than by the central government. The expression “confederation” is sometimes used to describe federations at the “thinnest” end of the federation spectrum, but is more often used these days to describe a group of sovereign entities who agree to pool or share certain of their powers in the common interest – e.g. the European Union”.

process required by the current transitional charter offers an opportunity to explore options. Alternatively, once a new Somali constitution has been approved by parliament and endorsed by popular referendum, the scope for making significant concessions – and thus for a mutually acceptable compromise – would likely be drastically reduced.

2. Somaliland barriers to dialogue

It would be difficult for Somaliland's authorities to contemplate even engaging in this type of dialogue, since the independence agenda is advocated by broadly legitimate and functioning representative institutions. The constitution requires the government to safeguard independence, and elected officials are sworn to uphold the constitution. Leaders who express willingness to compromise risk the wrath of the electorate, perhaps even treason charges and demands for dismissal or impeachment. Any revision of Somaliland's status would require a constitutional amendment, approved by two-thirds of both houses of parliament in separate votes. Even then, such a fundamental change would arguably need to be submitted to a new referendum.

For the present Somaliland government to attempt such a move would be tantamount to political suicide: the president has a minority mandate (less than 42 per cent of the popular vote), and his party controls only 40 per cent of the votes in parliament. Given the pluralistic nature of the political system, it is unlikely that a future government would approach the level of public and legislative support that would give it confidence to broach the subject. One must also ask why, in view of the political risks, it would want to.

B. PERSPECTIVES ON SEPARATION

Perspectives on an agreed separation mirror almost exactly those on unity. Many separatists consider Somaliland's independence "sacred" and non-negotiable. They reject the notion that Southerners have any role to play in determining Somaliland's status and believe Somaliland merits recognition, whether Mogadishu consents or not. Somaliland's application for AU membership is further evidence that its leaders neither expect nor seek the South's agreement to a divorce.

Obtaining Somalia's consent to separation promises to be no less complex than securing Somaliland's acquiescence to a negotiated union. The Transitional Federal Charter stipulates that the territorial integrity and sovereignty of the Somali Republic – within the

boundaries established by the act of unification in July 1960 – "shall be inviolable and indivisible".⁸¹ When Prime Minister Ali Mohamed Geedi stated in a November 2005 interview with the BBC that his government would not object to Somaliland's international recognition, he was roundly condemned for a treasonable offence.⁸²

To amend the constitution to permit secession, a motion would have to be put forward by not less than one third of the members of the Transitional Federal Parliament and approved by at least two thirds – a highly unlikely prospect. Moreover, the Transitional Federal Institutions (TFIs), as a provisional authority, arguably have no mandate to tackle such fundamental questions rather than leave them to an elected national government.⁸³ Since the TFG is already a year and a half behind schedule in implementing the transitional charter and much of southern Somalia remains unstable or insecure, it is doubtful that such a government will be installed on schedule in 2009.

Some observers fear that even raising the Somaliland issue could destabilise the peace process in the South. It is not entirely clear why this should be the case. The Somaliland government has not participated in any Somali peace talks since 1991, including the conference that led to the formation of the TFG. Despite demands from various Somali leaders, including President Abdillahi Yusuf, that Somaliland do so, the IGAD Facilitating Committee that guided the peace talks and the donors who funded them acknowledged that Somaliland was not party to the process and would have to be addressed at a later stage.

Within the context of the TFI, the correct venue for addressing the Somaliland question is presumably the Federal Constitutional Commission (FCC), which has a duty to ensure that a federation is achieved within the time frame set out by the Transitional Federal Charter. According to the Charter, the

⁸¹ "The Transitional Federal Charter of the Somali Republic", Article 2.1.

⁸² See, for example, Abdi I. Samatar, "Somali Prime Minister: An Act of Betrayal, Venality, and Incompetence!", undated open letter, at <http://www.somaliawatch.com/articles/incop.html>.

⁸³ In an interview with the Addis Ababa-based newspaper, the *Sub-Saharan Informer*, on 29 November 2005, Prime Minister Ali Mohamed Geedi of the TFG reportedly indicated that his government would engage Somaliland in dialogue within the course of its five-year mandate but made no reference to the Federal Constitutional Commission provided for in the Transitional Federal Charter. <http://djobnews.blogspot.com/2005/11/exclusive-interview-with-somalia-prime.html>.

Commission should have been established in early 2005 and should complete its work in late 2006, but it has yet to be formed. When it is eventually established, it will not have the luxury of ignoring the Somaliland issue: it cannot develop a constitution that excludes Somaliland, since that would be politically unacceptable and a violation of the Transitional Federal Charter. Nor is the FFC likely to be able to persuade Somaliland to participate in a TFG-led constitutional dialogue. The likely outcome of its endeavours, therefore, is a constitution that reflects public sentiment within the South but that Somaliland would find unacceptable. The question is not whether the Somaliland issue should be addressed at this stage, but rather how and under whose auspices.

Another common objection to engagement with Somaliland is that it could lead to the “Balkanisation” of Somalia. There are several reasons why this is unlikely: separatist sentiment has taken hold nowhere else in Somalia. With the exception of the Somaliland separatists, Somalis tend to be fiercely nationalistic and committed to the resurrection of their country. Leaders from across the land, including the government of the relatively autonomous region of Puntland, took part in the Somalia National Reconciliation Conference (2004-2006) and are represented in the TFIs. Since only Somaliland can cite previous international boundaries, the AU’s insistence on *uti possidetis juris* means no other part of Somalia could make a similar claim to independence (although, admittedly, legal technicalities often have little to do with the demands of secessionist movements). The AU Commission has already advised member states that Somaliland’s claim to sovereign status is sufficiently well-founded and exceptional that it “should not be linked to the notion of ‘opening a Pandora’s box’”.⁸⁴

Somaliland’s leaders argue that separation would be better for both Somalia and the region. “We would be free to play a constructive role among our brothers and sisters in the South”, President Rayale told Crisis Group.⁸⁵ In his letter requesting admission to the AU, he argued that this would definitively bury the notion of Somali irredentism that was so destabilising for the region between 1960 and 1978.⁸⁶ Few Southern

leaders, however, have suggested that Somalia would be better off without Somaliland.⁸⁷

A more plausible set of concerns relates to the future relationship between Somalia and an independent Somaliland. As in the case of Ethiopia and Eritrea, there is a risk that residual misunderstandings on a range of issues could lead to conflict. Critical aspects of the relationship between Somalia and Somaliland would have to be addressed if they were not to perpetuate mistrust and animosity between the neighbours. Political and security issues, especially as they relate to management of the common border would be particularly sensitive because of the divided loyalties of the communities in those areas. Economic relations would also be complex. People and goods flow in both directions; many Somalilanders retain properties in Somalia, while southern capital is a growing share of investment in Somaliland; and agreement would have to be reached with Somalia’s foreign creditors on the share of the national debt that Somaliland should assume.

Some observers fear Somaliland would become a target of deliberate destabilisation efforts. As one expert on security and terrorism in Africa has noted: “Somaliland is a fragile entity in a fragile region with large Islamic populations – all demonstrably susceptible to radicalisation”.⁸⁸ Concerns that recognition could “galvanise Arab and Islamist interests against a perceived ‘Ethiopian’ agenda”⁸⁹ have been thrown into sharp focus by the efforts of a Mogadishu-based jihadi Islamist network to disrupt the recent parliamentary elections. The plot was foiled by the Somaliland security services, and several conspirators are in custody in Hargeysa; officials close to the investigation told Crisis Group the militants objected not only to independence, but also to the Western-style electoral system that allows women to vote and stand for office.⁹⁰ Sheikh Hassan Dahir Aweys, a prominent jihadi Islamist leader from Mogadishu, has cited Somaliland’s ties with Addis Ababa as evidence that

⁸⁴ “Resume: AU Fact-Finding Mission to Somaliland”, op. cit., paragraph 8.

⁸⁵ Crisis Group interview, Hargeysa, October 2005.

⁸⁶ Rayale, “Somaliland’s Request for Membership”, op. cit.

⁸⁷ Mohamed Dheere, a faction leader known for extravagant statements, did recently state that Somaliland had only been a burden on the South: “If they want to secede and take with them their parasitic dependency, let them go”. Interview with Radio Golis, cited in “Where the Ignorant Rule, the Masses Agonise”, Wardheer News editorial, 31 December 2005, at http://www.wardheernews.com/Editorial/editorial_28.htm.

⁸⁸ Kurt Shillinger, “Recognizing Somaliland: Forward Step in Countering Terrorism?”, *RUSI Journal* (Royal United Services Institute for Defence and Security Studies), April 2005, available at www.rusi.org/publications/journal.

⁸⁹ Crisis Group interview, Somali analyst, Nairobi, February 2006.

⁹⁰ Crisis Group interviews, Hargeysa, January 2006.

Ethiopia seeks to break up Somalia, while arguing that Ethiopia has always been Somalia's enemy.⁹¹

Some security analysts argue that these are precisely the reasons why Somaliland merits international recognition and support. A recent article published in the U.S. argues that Washington should take the lead in "not only recognising, but actively supporting Somaliland, a brave little land whose people's quest for freedom and security mirrors America's values as well as her strategic interests".⁹² At a meeting in Addis Ababa hosted by the U.S.-led Combined Joint Task Force – Horn of Africa, senior military officers from across the region agreed that an independent Somaliland would be the "first constitutional Muslim democracy in the Horn of Africa (HOA) and [a] proven partner in GWOT [Global War on Terror]", while helping to secure strategic waterways in the Gulf of Aden and the Red Sea.⁹³ The ambassador of an African state currently on the UN Security Council expressed the same sentiment to Crisis Group: "Increasingly, given the imperative of the regional counter-terrorism strategy, I cannot see how Somaliland would be overlooked".⁹⁴

V. CONCLUSION: AU ENGAGEMENT WITHOUT PREJUDICE

Somaliland's application for membership gives the AU an opportunity to prevent a deeply rooted dispute from evolving into an open conflict. "It has gone beyond the stage where we can ignore it or wish it away", a senior diplomat from an African state on the UN Security Council told Crisis Group.⁹⁵ The challenge to the AU is not whether it should become engaged, but how.

The AU's response to President Rayale's petition need not imply recognition of Somaliland but it should recognise the existence of a dispute over its status. AU intervention should be designed to create an environment favourable to dialogue, understanding, and peaceful settlement of differences without prejudice to the final outcome. As Professor Mazrui has argued, "the AU should serve as a kind of court, providing Somaliland with an opportunity for a fair hearing of its case".⁹⁶

The constraints discussed above underscore how difficult it will be for the AU – or any third party – to establish a process of negotiation or mediation between the two sides. The AU may find it easier to obtain agreement from the parties to a process akin to an arbitral mechanism, which would allow both to argue their cases to a third party, but it is unlikely that either would accept a ruling that went against it. Consultation, followed by a collective AU decision may be the only alternative.

A. AU COMMISSION

The first step in this process should be for the AU Commission Chairperson to name a senior envoy for the issue, with a mandate to:

- ❑ consult with all relevant parties, including the TFG and Somaliland authorities, traditional elders and civil society, neighbouring states, IGAD and other concerned governments;
- ❑ report to the Peace and Security Council within six months on the outcomes of these consultations and the legal dimensions of the dispute; and
- ❑ provide a set of options to advance a solution.

⁹¹ "Sheekh Xasan Daahir Aweys oo ka digay burbur ku yimaada DFS", 2 May 2006, available at www.shabellenews.com/2006/may/n6966.htm.

⁹² J. Peter Pham, "Strategic Interests: Facing Reality in Somalia", *World Defense Review*, 11 May 2006, available at www.reportingwar.com/pham051106.shtml.

⁹³ Documents obtained by Crisis Group.

⁹⁴ Crisis Group interview, New York, February 2006.

⁹⁵ Crisis Group interview, New York, February 2006.

⁹⁶ Crisis Group interview, Hargeysa, March 2006.

B. PEACE AND SECURITY COUNCIL (PSC)

The PSC should consider taking parallel steps to familiarise its members with the issue. These could include an Arria-style consultation involving respected scholars, diplomats and legal experts familiar with the dispute.⁹⁷

C. INTERIM STATUS

During the period that the dispute is under review, the AU should assign Somaliland an interim status analogous to the observer status it has granted 31 non-African states, or the status of the Palestinian Authority at the UN. This would ensure that the AU's engagement was genuinely "without prejudice", permitting both parties opportunities to interact with member states prior to a final determination.

Such interim observer status at the AU would allow representatives of the Somaliland government to:

- ❑ be present for open sessions of the AU relevant to Somaliland's status;
- ❑ have access to non-confidential AU documents dealing with the status issue;
- ❑ participate in meetings to which they were invited, without the right to vote; and
- ❑ be authorised by the chairperson of any meeting to which they were invited to take the floor to make a statement on the status dispute or to respond to questions addressed to them by member states.⁹⁸

Since Somalia is already a full member of the AU, awarding interim observer status to Somaliland would help to ensure that both sides to the dispute received a fair hearing. However, some diplomats are concerned that giving Somaliland observer status would prejudice the outcome of the dispute, by creating a halfway house to independence from which there

would be no going back.⁹⁹ This need not be so: the AU Executive Council retains the option to suspend or withdraw accreditation if an observer is deemed to have lost its representative character or otherwise ceases to meet the criteria for accreditation. This would obviously be the case were the status dispute to be resolved in a fashion that left Somalia a fully unitary state, but not necessarily were Somaliland to remain within a confederal, or even a federal arrangement. In the meantime, Somaliland's observer status would signify that the AU was fully seized of the problem. As a senior U.S. official told Crisis Group, "observer status would signify that you have a legitimate case, and if an effective Somali government comes into being that you have a legitimate dispute".¹⁰⁰

Ultimately, there are only two possible outcomes to this dispute: some form of united Somali state (whether in the form of a federation, confederation or a unitary arrangement involving considerable autonomy), or independent neighbours. The AU's challenge is to provide timely, neutral leadership in order to ensure a just, peaceful and enduring settlement.

Hargeysa/Addis Ababa/Brussels, 23 May 2006

⁹⁷ The Arria Formula, named for Ambassador Diego Arria of Venezuela, is an informal format for briefing the United Nations Security Council on international peace and security issues. A member of the Council convenes and chairs the consultation outside the Council chambers, which typically involves a briefing by persons or groups considered as expert in the matter under discussion.

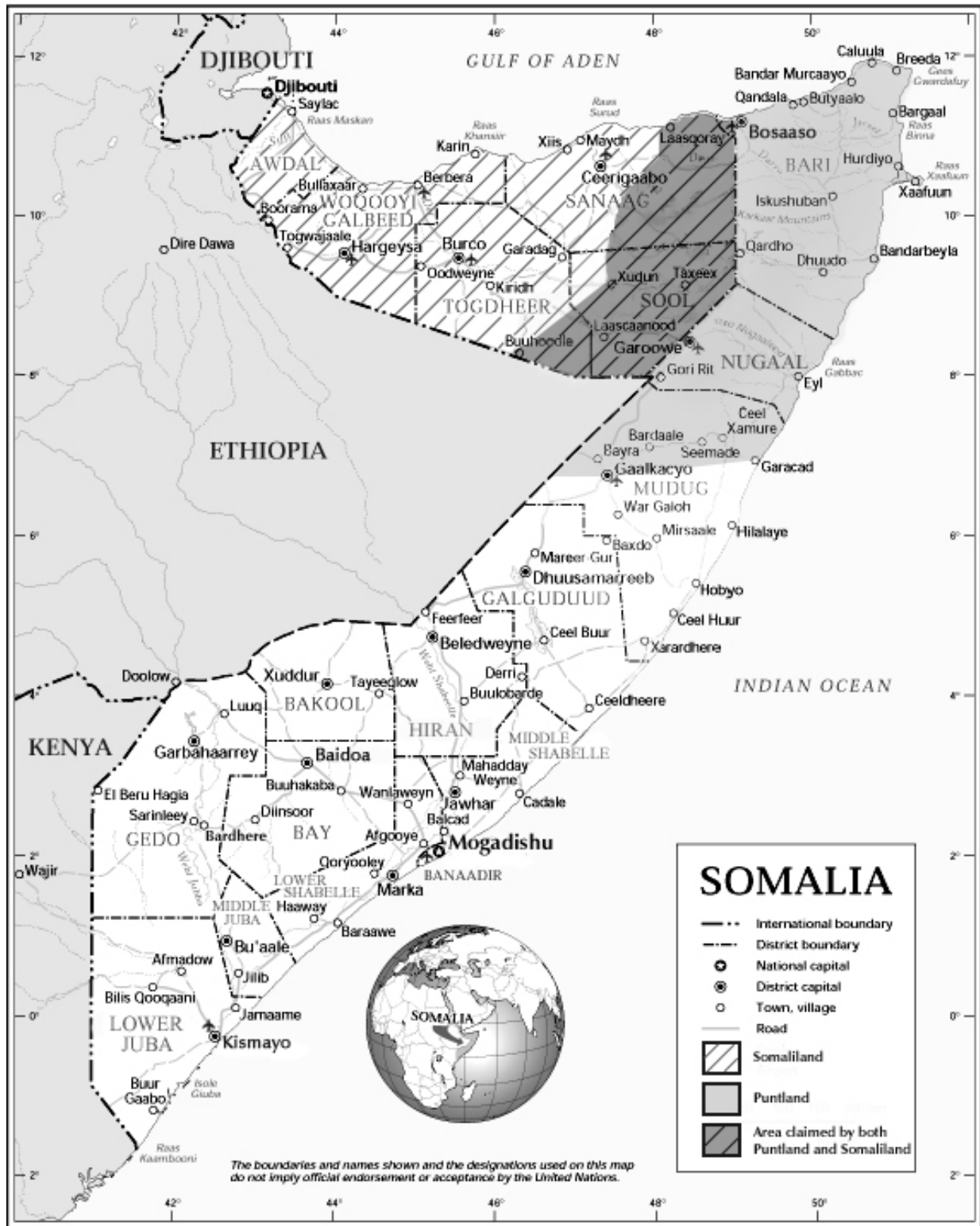
⁹⁸ AU Executive Council, "Criteria for Observer Status and for a System of Accreditation within the AU, July 2005". Decision of the Seventh Ordinary Session, Sirte (Libya), 1-2 July 2005.

⁹⁹ Crisis Group interviews in Washington D.C., Brussels and Nairobi, January-March 2006.

¹⁰⁰ Crisis Group interview, Washington D.C., March 2006.

APPENDIX A

MAP OF SOMALIA



Sources: United Nations, ICG interviews, February 2002.