Conrad Metz: Breaking Boundaries – Assessing the African Union's Legal Position on Self-Determination

The author is a law student in his 7th semester (University of Bayreuth). The article was written as part of the seminar "Researching key issues in African Law" (einfaches Seminar) with Prof. Dr. Thoko Kaime (Chair of African Legal Studies).

A. Introduction

The Organization of African Unity (OAU) was founded in 1963 as an umbrella association for the African continent in Addis Ababa. The charter of the OAU was signed by Heads of State and Governments of 32 independent African states at the end of the Addis Ababa conference.[1] The key aims of the OAU were to encourage political and economic integration among member states and to eradicate colonialism from the African continent. This is highlighted in the article II Charter of the OAU:

1. The Organization shall have the following purposes:

(a) To promote the unity and solidarity of the African States;

(b) To coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa;

(c) To defend their sovereignty, their territorial integrity and independence.

(d) To eradicate all forms of colonialism from Africa; and

(e) To promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.[2]

The Colonial borders in Africa have long been accepted as sacrosanct and not to be tampered with.[3] The OAU declared that "all Member States pledge themselves to respect the borders existing on their achievement of national independence", in other words to the principle of the inviolability of colonially inherited territorial integrity.[4] In the African context, the term *uti possidetis* entailed converting colonial borders into international boundaries since its launch in 1964.

In addition to the OAU Charter, the Banjul Charter also exists. This charter sets out a catalogue of human rights which is based more or less on the respective UN Charter.

The current basis of Human Rights in Africa is the African Charter on Human and Peoples' Rights, which due to its drafting in Banjul (Gambia), is also referred to as the Banjul Charter. This Charter was adopted in 1981 at the Assembly of the Member States of the OAU and came into force in October 1986.[5]

The Banjul Charter not only provides individual rights, but also rights designed for larger groups. These collective rights such as the right for self-determination or the right of decolonization can be proclaimed by the said groups.[6]

The OAU was disbanded on July 9th 2002 by its last chairman, the South African President Thabo Mbeki and replaced by the African Union. The African Union (AU) was established in 2001 as a continental organization aimed at promoting peace, stability, and development on the continent.

Despite the fact, that the Banjul Charter was issued by the OAU, it still applies for the AU, as it had decided to adopt the Banjul Charter into its rules and regulations.[7] Due to this decision the AU has the obligation to respect and protect the principles of the Banjul Charter.

The effectiveness of the AU is widely debated and an evaluation of the AU's legal stance in secessionist and self-determination movements in post-colonial Africa is necessary to assess its ability to effectively promote peace, stability, and development on the continent.

Self-determination is the most important term in this research project as the key reason of secession is self-determination, thus making it very important to define this word. During the French Revolution, self-determination was declared to be a right of

[1] *Edo/Olanrewaju*, An Assessmnent of the Transformation of the Organization of African Unity (O.A.U.) to the African Union (A.U), 1963 - 2007, Journal of the Historical Society of Nigeria, vol. 21 (2012) p. 41.
[2] Charter of the Organization of African Unity article II.
[3] *Bereketeab*, Self-determination and secession in: Bereketeab, Redie [ed.], Self-Determination and Secession in Africa (2015) p. 6.
[4] *Kuwali*, Acquisition of autonomy – Application of the right of self-determination in Africa in: Bereketeab, Redie [ed.], Self-Determination and Secession in Africa (2015) p. 23.
[5] *Bortfeld*, Der Afrikanische Gerichtshof für Menschenrechte (2005) p. 35.
[6] *Doehring*, International Public Law (2004) no. 1004.
[7] Assembly/AU/Dec.49(III) Rev.1.

nations to achieve statehood and sovereignty.[8] Since then, self-determination has become a political instrument in the quest by nations to determine their own future destiny.

During the course of this research activity, it was found that several authors were able to determine four types of self-determination movements in Africa.[9] The first instance are cases in which countries, that gained their independence after colonialism, were forcibly annexed by the neighbouring countries. This will be highlighted below by the cases of Namibia and Western Sahara. In the case of Namibia, the OAU was able to pave the way of Namibia's independence by lobbying at the United Nations (UN) to allow Namibia a seat at the UN General Assembly. For Western Sahara, the OAU was not able to find a decisive policy and had internal conflict between the leaders that were part of the OAU, given they had different opinions regarding the issue.[10]

The next instance of self-determination movements are cases in which parts of the country had secessionist sentiments and tried to secede from the postcolonial state. In most cases these movements were triggered by the absence of colonialism. The movement of Biafra falls into this category.

Rather distinct instances are cases in which countries rescinded their voluntary union with another country. This rather particular but complex issue will be highlighted in the case of Somaliland.

The last form of self-determination movement are movements that are not based on colonialism, but achieved independence. This case has been seen in South Sudan, in which this country was able to claim its statehood.

This research will have its main focus on Namibia, Western Sahara, Biafra, and Somaliland. In order to do so, the following sections will provide a brief overview of the historical, political, and geo-political context of the state in question and then expand on the legal stance of either the Organization of African Unity or African Union to evaluate its effectiveness.

B. The different forms of self-determination movements

I. Category 1: Self-determination as a cause of forced annexation

These cases of self-determination are cases in which the neighboring countries wanted to annex the country after the disappearance of the colonial powers.

1. Namibia

A prime example of this form of self-determination is Namibia, formerly known as South West Africa.

During World War I South African armies, under the leadership of General Jan Smuts and Louis Botha, invaded German South West Africa. The South African Armies outmanned and outmaneuvered the German forces in matter of a few weeks. Botha took Windhoek, the capital of Namibia, and on behalf of the Entente set up an interim military administration in July 1915.[11]

In 1929 the League of Nations was persuaded by evidence provided by European settlers that South West Africa was not prepared for independence. Consequently, the international community decided to grant South Africa a guardianship under a system of mandates. Through this guardianship, South Africa was able to take full legislative and administrative control and install the same racial discriminatory laws it had set in place domestically. The UN, the successor of the League of Nations, wanted to reassess the situation in South West Africa and replace the mandate with an international supervision by implementing the United Nations Transition Assistance Group (UNTAG) in 1978.[12]

This new idea of replacing the mandate with UNTAG established by the UN was however considered an intrusion by South Africa as it had taken over the role as a colonizer and not as a benevolent guardian.[13] The interest of South Africa was to annex South West Africa. South Africa even tried to persuade the UN General Assembly that the inhabitants desired the annexation.[14]

The OAU established the OAU Liberation Committee in 1963 with the goal to assist with financial, military,logistical aid

[8] *Kolla*, The French Revolution, the Union of Avignon, and the Challenges of National Self-Determination, Law and History Review (2013) p. 781.
[9] *Bereketeab*, Self-determination und Secession - a 21st Century Challenge to the Post-colonial State in Africa, The Nordic Africa Institute (2012) p. 1.
[10] *Hasnaoui*, Morocco and the African Union: A New Chapter for Western Sahara Resolution?, Arab Center for Research & Policy Studies (2017) p. 8.
[11] *Sparks*/*Green*, Namibia: The Nation after Independence (1992) p. 8.
[12] United Nations, Historical Background https://peacekeeping.un.org/sites/default/files/past/untagS.htm [accessed on 27 May 2023].
[13] *Adeoye*, The OAU and the Namibian Crisis 1963 - 1988. The African Review: A Journal of African Politics, Development and International Affairs, vol. 16, no. ½ (1989) p. 100.
[14] *Gilchrist*, Trusteeship and the Colonial System. Proceedings of the Academy of Political Science, vol. 22, no. 2 (1947) p. 100.

liberation and self-determination movements in Africa, as can be seen in the resolution for dissolution of this committee.[15] In particular the South West Africa People's Organization (SWAPO) was aided during the fight against the apartheid based South Africa to end its considered, illegal occupation of Namibia.

Another important factor was the decision of the International Court of Justice (ICJ) in 1971, in which it declared that South Africa was in no right to rule Namibia.

"In its Advisory Opinion of 21 June 1971, the Court found that the continued presence of South Africa in Namibia was illegal, and that South Africa was under an obligation to withdraw its administration immediately." - ICJ decision of 1971

Following the declaration of the ICJ, the OAU passed the resolution AHG/Res. 65 (VIII) with the call for an immediate withdrawal of South Africa from Namibia.[16] The OAU did not only pass this resolution but also continued to pass more resolutions to show Namibia its support. Furthermore, the OAU successfully lobbied for allowing SWAPO to be accepted in the UN with an observer status. The success of this lobbying was documented in the UN resolution A/RES/31/152 and A/RES/43/160.

"Noting that the Organization of African Unity and the non-aligned countries have recognized and invited the South West Africa People's Organization to participate in their meetings in an observer capacity".[17]

This shows the major work the OAU has done to help the situation of Namibiaas namely: the revocation of South Africa's Namibian mandate in the resolution 2145 (XXI)[18], the establishment of the UN Council for Namibia intended as an interim government, the adoption of the Name Namibia for the territory, the recognition of SWAPO as the sole representative of the Namibian people in the Resolution 385 [19] and also helped SWAPO to be represented and respected in the international community.[20] Furthermore, the OAU with support of other Member States was able to universally declare apartheid as a crime against humanity.[21] This declaration was documented in the Tehran Conference in 1968.[22]

The independence of Namibia in 1990 and the earlier recognition by the OAU in 1975 as well as by the UN in 1976 shows that the OAU was able to achieve one of its principal goals, the goal of promoting peace and security for all people of Africa. Furthermore, it shows that the Banjul Charter and in particular its article 20 (3) works and ensures basic human rights. This specific article obliges states to protect and aid liberation movements.

"All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural."[23]

After the declaration of the ICJ, the OAU and the UN put all their efforts into Namibia and aided them to independence. This has been a remarkable international effort. Looking back at the achievement of the OAU, the mechanism that have been set in place (noteworthy the resolutions 2145, 385), have played a key-role in this regard. The struggle for independence of Namibia can be considered as a successful case.

2. Western Sahara

Another great example for the category 1 type of self-determination movement is Western Sahara.

Spanish colonialism in the north-west part of Africa officially began in 1884. Up until the 1970s Spain had, to a certain degree, administrative control of the region after officially decolonizing. But Spain was faced with increasing resistance from the population of Western Sahara. Morocco and Mauritania had made plans on claiming the land of Western Sahara. Morocco made their claim on historical context and Mauritania based their claim on the shared dialect, cultural history and geopolitical expediency.[24] In 1975 the International Court of Justice (ICJ) was able to decide that the claims of Morocco and Mauritania respectively, had no basis.[25]

[15] AHG/Res. 228 (XXX).
[16] AHG/Res. 65 (VIII).
[17] UN General Assembly, Observer status for the South West Africa People's Organization, 20 December 1976, A/RES/31/152, https://www.refworld.org/docid/3b00f0e63c.html [accessed on 27 May 2023].
[18] United Nations, U.N. General Assembly Resolution 2145 (XXI) of 27 October 1966, https://www.aalco.int/9thsession/Part 19.pdf [accessed on 15 May 2023].
[19] UN Security Council, Security Council resolution 385 (1976) [Namibia], 30 January 1976, S/RES/385 (1976), https://www.refworld.org/docid/3b00f1732c.html [accessed 15 May 2023].
[20] *Adeoye* (n. 13) p. 101.
[21] *Gawanas*, Namibia and the African Union (2014) p. 256.
[22] Tehran Conference, 22 April–13 May 1968, https://legal.un.org/avl/pdf/ha/fatchr/Final_Act_of_TehranConf.pdf [accessed on 17 May 2023] p. 4.
[23] Article 20 (3) of the African Charter on Human and Peoples' Rights.
[24] *Porges*, Western Sahara and Morocco: Complexities of Resistance and Analysis in: de Vries, Lotje/Engleberts, Pierre/Schomerus, Mareike [eds.], Secessionism in African Politics (2019) p. 133.
[25] *Porges* (n. 24) p. 134.

"The Court concludes that at the time of colonization by Spain there did not exist between the territory of Western Sahara and the Mauritanian entity any tie of sovereignty, or of allegiance of tribes, or of simple inclusion in the same legal entity"[26]

Disregarding the decision of the ICJ, Spain still signed the Madrid Accords, thereby dividing the territory between Morocco and Mauritania.[27] This had the consequence that the "Popular Front for the Liberation of Saguia el-Hamra and Río de Oro" (POLISARIO), which was formed by natives that had to stop the fight against the colonial power of Spain and focus its efforts against Morocco and Mauritania respectively.[28] Initially the goal of the POLISARIO Front was to *"Opt for revolutionary violence and armed struggle as the means by which the Saharawi population can recover its total liberty and foil the maneuvers of Spanish colonialism*"[29]

During this time the Sahrawi Arab Democratic Republic (SADR) was proclaimed as the government of Western Sahara, with the government in exile in Algeria, by the POLISARIO Front on the 27th of February 1976 and later recognized and admitted by the OAU in 1984.[30]

Since the beginning of the movement, Algeria had supported the POLISARIO front with political, military and diplomatic backing. Libya endorsed in cooperation of the OAU Liberation Committee, the entry of the POLISARIO into the OAU. With the efforts of Algeria and Libya the issue around Western Sahara was allowed to be re-opened and discussed as shows resolution of the OAU AHG/Res. 92 (XV).

Following a number of subsequent summits held throughout the continent, particularly the Addis Ababa Summit, where a SADR delegation was invited to attend the conference, the Moroccan delegation left the meeting, later stating that the invitation extended to the SADR delegation was unacceptable for them and resigned from the OAU.[31]

In 1991 the United Nations Mission for the Referendum in Western Sahara (MINURSO) was established by Security Council resolution 690 of 29 April 1991 (S/RES/690(1991)) in accordance with settlement proposals accepted on 30 August 1988 by Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro. The main mission of this mandate was to supervise a referendum to determine the future of the Western Sahara:[32]

"Decides to establish, under its authority, a United Nations Mission

for the Referendum in Western Sahara in accordance with the report of 19 April 1991"[33]

MINURSO, with support of the AU, implemented measures to safeguard human rights. Furthermore the AU was instrumental in helping to provide humanitarian aid to refugees. Through this work MINURSO was key to alleviate some of the suffering experienced by the people of SADR.

The OAU was never able to come to a decision with regards to the issue of Western Sahara and never managed to find a solution either. After analyzing the withdrawal of Morocco from the OAU it shows that the OAU had no power as Morocco could do what it wanted to and not being interested in the prosperity of the African continent either. If it was so easy for Morocco to leave the organization it means that the actions the OAU can take are not respected and even its stance within Africa would not be respected.

„It started to be spoken of internationally as the „Dictators Club", where corruption and authoritarianism prevailed among its members, who became caught up in proxy disputes fought on behalf of the Cold War superpowers."[34]

In 2017, after 33 years of staying out of the OAU/AU, Morocco re-enteredthe AU. Banerjee argues that this does not mean that the Moroccan entry to the AU results in a state recognition. It only means that as a Member of the AU, Morocco has obligations under the Constitutive Act of the African Union. This means that all obligations are applicable between Morocco and SADR, both members of the AU.[35] This interpretation seems reasonable as it only means that there is a certain normative respect between both states, which obviously is a step to the future.

Although these actions can help in the short term, these are not proactive measures. In the case of SADR, they merely try to "make the best" of the situation. Looking back on the effectiveness of the AU measures that resulted from their

[26] Advisory Opinion of 16 October 1975 of the ICJ.
[27] *Hasnaoui*, Morocco and the African Union: A New Chapter for Western Sahara Resolution?, Arab Center for Research & Policy Studies (2017) p. 3.
[28] *Besenyö*, Guerilla Operations in Western Sahara: The Polisario versus Morocco and Mauritania, Connections: QJ 16 (2017) p. 24.
[29] Political Manifesto of May, 10 1973, Sahara Libre (Polisario Front, Algiers) No 13.
[30] *Hasnaoui* (n. 27) p. 1.
[31] *Dahmani*, 12 November 1984: When Morocco withdrew from the Organization of African Unity, Yabiladi (2017).
[32] *Balboni*, Peacekeeping Operations in Situations of Conflict: The Case of MINURSO in: Besenyö, János/Hddleston, R. Joseph/Zoubir, Yahia H. [eds.], Conflict and Peace in Western Sahara (2021) p. 1.
[33] S/RES/690 (1991).
[34] *Hasnaoui* (n. 27) p. 9.
[35] *Banerjee*, Moroccan Entry to the African Union and the Revival of the Western Sahara Dispute, Harvard International Law Journal (2017) p. 36.

resolutions and legal framework, these were not effective for the SADR.

As an example, the Resolution Assembly/AU/Dec.693(XXXI) only reiterates the need for support of the UN-led missions, this is a great notion, but it will never develop into an actual solution. Not at least if all countries do not work for the same solution. This Morocco does not consider as a realistic solution from their perspective.

Since being founded in 1976 SADR shas not gained independence and the issue is still a pending issue, waiting for a solution. This goes to show that MINURSO was a failure, it has been more than 30 years and the international community is no closer to a solution. Some factors that caused this are the limited resources given to the mission, despite its complex mandate and the biased approach of some members of the UN Security Council. Examples of biased members are the United States and most importantly France, both which have a good relationship with Morocco.[36]

II. Category 2: Self-determination as a cause of secession from the postcolonial state

In the case of the Biafra region in Nigeria the self-determination movement started as a secession from the postcolonial state. In this case, the country inherited the border from the colonial powers but some people in the nation did not feel part of the new postcolonial state. Here, the larger political party used force or oppression to prevent this movement. The use of force was justified by arguing that these movements would disturb the safety and stability of the country.

Biafra

In 1966, the newly independent government of Nigeria faced a secessionist movement in the eastern region, where the ethnic group of the Igbo dominated. The secessionist movement, led by the Igbo political leader Chukwuemeka Odumegwu Ojukwu, declared the independent state of Biafra. The state fought a three year-war for self-determination but suffered defeat by the federal forces in 1970.[37]

The fact that there was a long civil war with many deaths shows that the Nigerian government was not able to find a cohesive solution between all ethnicities in Nigeria as well as the bad governing by using violence against the ethnic movements. In fact, the use of violence backfired which led to a growth of ethnic and regional "republics" in Nigeria.[38]

As mentioned above in the introduction the OAU was formed in 1963, so the "Biafra uprising" that started in 1966 was a new confrontation of the organization and it did not know how to approach this situation. The only usable legal text in this case was the Charter of the OAU that proclaimed in article II

"To defend their sovereignty, their territorial integrity and independence".[39]

And in article III it stated that:

"Respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence."[40]

Upon reading these articles it seems coherent that the OAU and its Member States did not consider helping the Biafra movement as these articles affirm that the states should mutually respect each other, and their territorial boundaries. This respect must arise even in the cases of intra-national disputes thus creating a duty not to support secessionist movements or to recognize the legitimacy of any secession movement. That this interpretation of the articles results in this form of duty can be seen in the stances of the African states regarding similar issues, such as Southern Sudan and Eritrea.[41]

Another evidence that this interpretation is *lex communis*, is that the OAU finalized the resolution AHG/Res. 51 (IV) in which it had stated that the issue in Nigeria was of an internal kind and so handed over the responsibility to Nigeria.

"Recognizing that situation as an internal affair, the solution of which is primarily the responsibility of Nigerians themselves,"[42]

The OAU took a strong stand in favor of Nigeria and established a Consultative Committee of six heads of state to investigate the Nigerian situation. The OAU and the Consultative Committee was very much in favor of the unity of Nigeria and the suspension of the conflict between the two parties. That this is the case can be seen in the Resolution of the OAU established in 1960:

"APPEALS solemnly and urgently to the two parties involved in the civil war to agree to preserve in the overriding interest

[36] *Solà-Martín*, Lesson from MINURSO: A contribution to a new thinking, International Peacekeeping, Issue 13 (2006) p. 366.
[37] *Onuoha/Obi*, Nigeria and the Biafran war of secession in: Bereketeab, Redie [ed.], Self-Determination and Secession in Africa (2015) p. 180.
[38] *Ukiwo*, Violence, Identity Mobilization and the Reimagining of Biafra, AJOL Vol. 34 No. 1 (2009) p. 12.
[39] Article II Charter of the OAU.
[40] Article III Charter of the OAU.
[41] *Blay*, Changing African Perspectives on the Right of Self-Determination in the Wake of the Banjul Charter on Human and Peoples' Rights, Journal of African Law, vol. 29, no. 2 (1985) p. 147.
[42] AHG/Res. 51 (IV).

of Africa, the unity of Nigeria and accept immediately suspension of hostilities and the opening without delay, of negotiations intended to preserve unity of Nigeria and restore reconciliation and peace that will ensure for the population every form of security and every guarantee of equal rights, prerogatives and obligations;"[43]

The stance of the OAU is very clear in this case. The highest priority of the country is the ensuring the sacrosanctity of the borders. It is arguable that in this case the legal stance of the OAU was effective, as the resolutions stated that the borders should not be changed. Whether this stance is healthy for the future of Africa and the African Union, is another question.

III. Category 3: Self-determination as a cause of rescission of voluntary annexation

This section analyzes the legal stance of the African Union regarding the difficult and complex situation in Somaliland.

Modern Somaliland is a composition of the former British protectorate of Somaliland and the former UN Trusteeship under the administration of Italy in 1960. The Isaaq clan, a clan that was predominant in the northern region, had been marginalized and thus an all-out civil war given over the time period 1988 to 1991.[44]

Founded by a group of Isaaq people living in Saudi Arabia in April 1981, the Somali National Movement (SNM) was created with the objective of overthrowing Siad Barre's dictatorial government.[45] The *de facto* Republic of Somaliland was founded on May 18th of 1991, when the leaders of SNM and other representatives of other northern clans met at the Grand Conference of Northern Peoples and recalled the 1960 Act of Union, which had unified the British colony and the Italian Trusteeship. The authorities of Somaliland called for independence using multiple arguments in their favor.[46]

Naturally, the question arises what the stance of the AU is and in what way the AU supported the independence movement of Somaliland. The documents of the OAU and the AU have emphasized the inviolability of borders. The AU based their stance on the Charter of the OAU and the Constitutive Act of the African Union, in this case especially article 4b:

"*Respect of borders existing on achievement of independence*"

Adding to that, it may be argued that, by voluntarily joining a union and later rescinding its independence, Somaliland consummated its right of self- determination by using self-determination to join a union. Consequently, it cannot revoke that right of self-determination.[47]

In 2005 President Dahit Rayale Kahin of Somaliland submitted its application for its acceptance into the AU. As a result, fact-finding missions had been issued by the AU to Somaliland in 2005 and 2008. Both Missions came back with the same result: The claim of Somaliland is different to all other claims and should be judged "from an objective historical viewpoint and moral angle vis-à-vis the aspiration of the people".[48]

Somalia's Transitional Federal Government (TFG), which is struggling to establish its authority in southern Somalia is strongly in opposition of the independence.[49]

The most important aspect of recognition Somaliland wishes to have, is to be admitted to the AU. According to article 20 of the Constitutive Act of the African Union this approval would require the simple majority of the member states.

"1. Any African State may, at any time after the entry into force of this Act, notify the Chairman of the Commission of its intention to accede to this Act and to be admitted as a member of the Union.

2. […] shall be decided by a simple majority of the Member States."[50]

The issue of the recognition of statehood has to be assessed based on objective and subjective criteria, including the attitude of individual governments and geopolitical interests of these governments.[51]

The most accepted objective criteria are the Montevideo criteria that have been codified in the 1933 Montevideo Convention on the Rights and Duties of States. The Convention states that the criteria for statehood include a permanent population, a defined territory, government, and the capacity to entertain diplomatic relations.[52]

[43] AHG/Res. 58/Rev. 1 (VI).
[44] *Lewis*, Understanding Somalia and Somaliland - Culture, History, Society (2009).
[45] *Hoch/Rudincová*, Legitmization of Statehood in de facto states: a case study of Somaliland, AUC Geographica 50/1 (2015) p. 40.
[46] *Bradbury* et al., Somaliland: Choosing Politics over Violence, Review of African Political Economy, vol. 30, no. 97 (2003) p. 457.
[47] *Hoehne*, Against the Grain: Somaliland's Secession from Somalia in: de Vries, Lotje/Engleberts, Pierre/Schomerus, Mareike [eds.], Secessionism in African Politics (2019) p. 254.
[48] *Presidency of Somaliland*, The recognition of Somaliland – Growing international engagement and backing (2013) p. 2.
[49] *International Crisis Group*, Somaliland: Time for African Union Leadership, International Crisis Group Africa Report, n. 10 (2006) p. i.
[50] Constitutive Act of the African Union, Lomé (Togo), 11 July 2000, article 29.
[51] *International Crisis Group* (n. 45) p. 10.
[52] "Convention on the Rights and Duties of States", signed at Montevideo, 26 December 1933.

Overall Somaliland satisfied each criterion. The territory was clearly marked by its colonial borders which have been demarcations made by British colonial rule. Evidence that Somaliland exercised its power of the territory is that in 2014 Ethiopia and Somaliland agreed on a transit cooperation.[53] According to the Ministry of Foreign Affairs and International Cooperation of Somaliland, Somaliland has a population of 5.7 million people [54], Somaliland issues passports and South Africa is one of the countries which accepts this form of identification.

Somaliland established a government that mainly relies on community-based leadership and an inclusive council of elders in terms of an effective and powerful political structure. In December 2002 Somaliland took the first step towards changing this system by holding multi-party elections for district councils. These were followed in April 2003 by presidential elections.[55]

Additionally, Somaliland had held elections for its parliament in 2005 and lastly in 2021. Its presidential elections had taken place in 2003, 2010 and 2017.[56] The fact that elections are held on a regular and periodic basis suggests that Somaliland has a functioning political system. In comparison to Somalia and Puntland, the administration of Somaliland is rather stable.[57]

In regard to the criterion of diplomatic relations, Somaliland has fared well, it has established offices in Addis Ababa, Djibouti, London, Sana, Nairobi, Washington DC, Brussels, South Africa, Sweden and Oslo, and its passport are recognised by South Africa, Kenya, Djibouti, and Ethiopia.[58]

This shows that Somaliland fulfills each criterion of statehood and therefore, in accordance with the Montevideo Convention, should claim full rights for statehood. It is now the job of the surrounding countries and the AU to accede to their claim for statehood.

The problem is that the fulfillment of the Montevideo Criteria is not enough.

It is in Africa where the international resistance to recognizing Somaliland begins. That this is the case, can be seen in the comment of David Shinn, a former US ambassador to Ethiopia:

"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 recognize Somaliland before the African Union did so or, at a minimum, several key African states opted to do so."[59]

As mentioned above the African Union retained many features of its predecessor, including its commitment to the unity and territorial integrity of member states. Now that Somalia is a member of the AU it would violate the law to accept Somaliland into the AU before it is not an official country.

Other arguments Somaliland used to claim its statehood are the *uti possidetis*, and that the case of Somaliland is not a secessionist one but merely the dissolution of a voluntary union.

The argument of *uti possidetis* is based on the respect of pre-existing boundaries.[60] The case of Somaliland is based on the fact that it already had a border as an independent country, this border had been established by a treaty formed by the colonial powers in 1960. The borders that Somaliland acquired at independence were those of the British Protectorate of Somaliland, not the Somali Republic. Therefore, an independent Somaliland could be considered as meeting the requirements of *uti possidetis* and technically compliant with article 4 of the Constitutive Act of the AU.[61]

The other argument brings the idea forward, that the case of Somaliland is not a case of secessionism but of dissolution of a voluntary union. The dissolution of the union should not be a problem as there are some AU member states that are a result of a failed union, e.g., Egypt. Egypt was part of the United Arab Republic, which failed because of the Syrian coup d'état in 1961. [62] Egypt entered the AU as a member in 1963. [63] Following this idea, it should not be any problem for Somaliland to enter the AU after being recognized.

As a more extreme example the AU even accepted states that had no full independence at the time of acceptance. This is the case, as mentioned above, with the Democratic Arab Sahrawi

[53] Curated Content "Ethiopia and Somaliland agree on importance of transit cooperation mechanisms" *Horn Affairs* (2014).
[54] *Ministry of Foreign Affairs and International Cooperation Somaliland*, Republic of Somaliland: Country Profile 2021 (2021) p. 13.
[55] *Bradbury* (n. 46) p. 455.
[56] Hadia Medical Swiss, Report on Elections in Somaliland, https://www.hadiamedical.ch/DE/pdf/Somaliland%20Elections.pdf [accessed on 8 August 2024].
[57] *Beyene*, Declaration of Statehood by Somaliland and the Effects of Non-Recognition under International Law, Beijing Law Review 10, no. 1 (2019) p. 197.
[58] *The Brenthurst Foundation*, African Game Changer? The Consequences of Somaliland's International (Non) Recognition-Discussion Paper 2011/05, (2011) p. 22.
[59] *Shinn*, Somaliland and U.S. Policy, The Journal of the Anglo-Somali Society, No. 38 (2005) p. 40.
[60] *International Crisis Group* (n. 49) p. 15.
[61] *International Crisis Group* (n. 49) p. 16.
[62] *Al-Gumhuriyah al-Arabiyah al-Muttahidah*, "Chapter 18: The United Arab Republic" in: Oron, Yitzhak [ed.], Middle Eastern Record Volume 2 (1961) p. 577.
[63] African Union, Member States, https://au.int/en/member_states/countryprofiles2 [accessed on 9 June 2023].

Republic. In this case SADR was able to be accepted into the OAU without having full autonomy over its territory.

The decisions made by the OAU/AU often appear inconsistent. The SADR was accepted into the AU, whereas Somaliland not. Despite Somaliland being a functioning country, meeting all Montevideo criteria, it still remains unrecognized. Its current objective is not to secede, but to dissolve this voluntary union.

C. Reasons why the OAU/AU discouraged self-determination

In the past there had been many reasons as to why African States and therefore the OAU discouraged the secessionist self-determination. From these reasons two arguments were predominant. The first argument was that self-determination opposes the idea of African Unity and secondly, that a certain "domino effect" would ensue if one state successfully claims its independence.

The background of the first argument is that self-determination promotes territorial division and therefore would stand against the goal of unity in the African continent. That this theory is predominant can be shown by looking at the views African leaders had. For example President Nyerere of Tanzania stated that the secession of Biafra was a set-back for the African Unity.

"Africa needs unity. We need unity over the whole continent, and in the meantime we need unity within the existing States of Africa. It is a tragedy when we experience a setback to our goal of unity. But the basis of our need for unity, and the reason for our desire for it, is the greater well-being, and the greater security, of the people of Africa. Unity by conquest is impossible."[64]

It is plausible that the stance of the OAU was similar to other leaders of African countries and shows the overall political bias the OAU had. This further proves that for the leaders, territorial unity is a precondition for continental unity. Essentially territorial unity only concerns the "inter-group relations within a given state system" and continental unity is "an issue of international relations and follows the dictates of the foreign policy of the states concerned"[65]. Following this idea, it means that the first stage is the territorial unity in the African continent, thus not allowing self-determination movements as it hinders territorial integrity. Consequently, the absence of territorial unity hinders the realization of continental unity, which is and was the ultimate goal of the AU and OAU. As mentioned above, this reason was not only maintained by the AU and OAU but also from the leaders of the member states. As an example, the Emperor Haile Selassie of Ethiopiawho was part of the Consultative Committee of the OAU, said in a meeting of the committee that:

"The national unity and territorial integrity of member states is not negotiable. It must be fully respected and preserved. It is our firm belief that the national unity of individual African states is an essential ingredient for the realization of the larger and greater objective of African Unity."[66]

The "unity argument" seems reasonable to a point where the will of the people overweighs the need for a united Africa.

The other argument that has been raised is the fear of the "domino effect" on the African continent. The "domino effect" means *"a cumulative effect produced when one event sets off a chain of similar events"*[67] The idea of the domino theory dates to the Cold War and started off as an expression of U.S. foreign policy in order to maintain anti-Communist and committed pro-western governments in the states of Southeast Asia. It suggests that a communist government in one nation would quickly lead to a communist takeover in neighboring states, falling like a row of dominoes.[68]

In the case of Africa, it is assumed that if an ethnic group successfully claims its statehood, it may trigger the "domino theory", as the recognition of self-determination of one ethnic group could trigger this theory and lead to chaos and instability.[69] Collins writes that allowing these secessionist groups the right of self-determination would create a state of constant instability and uprisings. Self-determination would bring anarchy rather than true self-determination.[70]

Taking a closer look at Africa and international politics shows that the domino effect is not found in reality. It is indefensible as it is very much the case that an ethnically homogeneous and cohesive state like Somalia, where 85% of the population are

[64] Tanzania Government's statement on the recognition of Biafra (1968) p. 5.
[65] *Blay* (n 41) p. 154.
[66] *Ijalaye*, Was 'Biafra' at Any Time a State in International Law?, The American Journal of International Law, vol. 65, no. 3 (1971) p. 556.
[67] American Heritage® Dictionary of the English Language, Fifth Edition 2011, https://www.thefreedictionary.com/domino+effect [accessed on 22 May 2023].
[68] *Silverman*, The Domino Theory: Alternatives to a Self-Fulfilling Prophecy, Asian Survey, vol. 15, no. 11 (1975) p. 916.
[69] *Forsberg*, Do Ethnic Dominoes Fall? Evaluating Domino Effects of Granting Territorial Concessions to Separatist Groups, International Studies Quarterly, vol. 57, no. 2 (2013) p. 332.
[70] *Collins*, Self-Determination in International Law: The Palestinians, Case W. Res. J. Int'l L. 137 (1980) p. 150.

ethnic Somali [71], are fighting a war between themselves because part of Somaliland wants to secede from Somalia.

Conversely, Ethiopia, an ethnically diverse nation which consists of various ethnic groups such as the Oromo (25.8%) and the Amhara (24.1%)[72], has fully embraced a united country. Ethiopia has not encountered significant problems with other self-determination movements within its borders.

Even more so, there are enough precedents outside of Africa, which counter the existence of a "domino effect". Pakistan, for example, is still intact after the secession of Bangladesh. Malaysia is also intact after Singapore leaving.[73] Even in the African context there is precedent, for instance in Ethiopia. The country was intact after the war with Eritrea, and in fact they were the first country to recognize the statehood of Eritrea after its referendum.[74]

As a result, both arguments have been addressed, and led to the conclusion that there is little to oppose the right of self-determination within the post-colonial climate. The more urgent issue to address is the question of how good governance in self-determination movements can contribute to broader regional stability and development.

D. Recommendations on a better management of self-determination claims

All the sections given above have analyzed the stance of the African Union. This section will however focus on recommendations regarding a better management of self-determination claims.

I. Regional Integration

Bereketeab, an Associate Professor of Sociology and Senior Researcher at the Nordic Africa Institute of Uppsala University, brings forward that regional integration could come with a number of benefits, especially for cases where there are open borders that allow free movement. Also in cultural terms, regional integration can achieve lesser conflicts between different ethnicities and can greatly empower ethnicities economically, culturally, and politically. Bereketeab argues that by supporting regional integration, improvement on two different levels are given: on an intra-state and on an interstate level. Conflict and wars between ethnic groups may be resolved or forestalled, this is advantageous because cases of self-determination could be resolved with communication.[75]

Regional integration that encourages regional peace, security, and stability will yield benefits in areas such as democratization, state-building, and economic development, and will prevent destructive nationwide conflicts.[76]

Thomas Tieku, an Associate Professor of Political Science at King's University College of Western University in Canada, supports the view of Bereketeab and notes that, in order to have a peaceful co-existence on the African continent there should be regional integration.[77] Only by this integration the Pan-African ideals, the liberal principles, such as respect for the rule of law, human rights, good governance, and the participation of African citizens in public affairs and the creation of regional bodies that address cultural, ethnic, and political issues can be realized thus allowing a continent which unifies each and every one and cares for the rights of minorities that have been marginalized by governments.[78]

This means that the management of security, stability and development can only be efficient and successful if a continental approach on this issue is followed.

II. Clearly defined legal framework

As discussed previously, self-determination and statehood claims have been handled differently every time. This has caused confusion and distrust of the system. In another paper Bereketeab argues that there should be less geostrategically driven interventions. A balanced and benevolent external engagement with the African continent would greatly contribute to unity, peace, security, stability, and development.

To date, the principles guiding international recognition, secession and self- determination have been highly ambiguous and contradictory. Indeed, geostrategic interests seem to determine the granting of recognition. This has created confusion and uncertainty. A uniform and predictable principles regarding self-determination and secession may spare the continent unnecessary political and legal turmoil.[79]

[71] CIA, The World Factbook: Ethiopia, https://www.cia.gov/the-world-factbook/countries/ethiopia/#people-and-society [accessed on 22 May 2023].
[72] CIA, The World Factbook: Somalia, https://www.cia.gov/the-world-factbook/countries/somalia/#people-and-society [accessed on 21 May 2023].
[73] *Blay* (n. 41) p. 155.
[74] *Alterman*, Independence Movements and Their Aftermath: Evaluating the Likelihood of Success, Center for Strategic and International Studies (CSIS), (2019) p. 3.
[75] *Bereketeab* (n. 3) p. 14.
[76] *Fábián*, France and MINURSO in: Besenyö, János/Huddleston, R. Joseph/Zoubir, Yahia H. [eds.], Conflict and Peace in Western Sahara (2021) p. 288.
[77] *Tieku*, Explaining the clash and accommodation of interests of major actors in the creation of the African Union, African Affairs, Volume 103, Issue 411 (2004) p. 257.
[78] *Tieku* (n. 81) p. 256.
[79] *Bereketeab* (n. 3) p. 12.

Even UN Secretary-General Boutros Boutros-Ghali, stated that endless fragmentation and disintegration would stand in the way of peace, security, and economic well-being.[80] That is why Bereketeab argues that for the claim of self-determination and secession there is the necessity of alternative mechanism and body.[81]

III. Support of international organizations

Regional and international organizations such as the UN, EU and AU are organizations that form the daily lives of each and every one on the world. They therefore have the utmost responsibility to enact laws and policies that will spare Africa from devastating conflicts by being clear and respect minorities and marginalized groups.[82]

The issue here is that their resolutions are not legally binding, even though the regional and international organizations can contribute to the formation of law. Resolutions of these organizations play a significant role in creating international law, they are practiced repeatedly and consistently by the members of these organizations thus becoming customary law.[83]

E. Summary

This research examined the different self-determination movements in Namibia, Western Sahara, Biafra, and Somaliland together with the respective roles of the African Union and the Organization of African Unity. Only in the case of Namibia was the stance of the African Union and the Organization of African Unity beneficial in the quest for independence.

The Sahrawi Arab Democratic Republic (SADR) was proclaimed as the government of Western Sahara. The Organization of African recognized this in 1984, however was not able to find a solution to the issue of Western Sahara, which is still an ongoing conflict. The most important factor was the biased approach of certain members of the UN Security Council, as example the United States and especially France which have a good relationship with Morocco.

Biafra and Somaliland are the cases in which the OAU and the AU appears to have done little to aid these movements. In the case of Biafra, the OAU stated that this issue was an internal problem of Nigeria and that it should be solved by themselves. In the instance of Somaliland, the AU merely passed resolutions ensuring their support to the actions of the UN, but it did not have an initiative of its own.

The following arguments have been crystallized:

1. The fear that the permission of secessionist movements will stand against the idea of continental unity. This argument has been refuted, by scrutinizing the geo-political situation of Somalia and Ethiopia. In Somalia, where most of the people have the same ethnic origin, people still fight against each other. The situation of Ethiopia is comparatively calm albeit Ethiopia is one of the most diverse countries in Africa with many different ethnicities.

2. The leaders of the AU do not want the “domino effect” to happen on the continent, which means that if one part secedes then the whole country would collapse. This argument has also been refuted. Ethiopia is a well-established country, even after the secession of Eritrea.

The African Union's position has been of an ambivalent nature. On the one side, the AU has been put into place to promote peace and stability and ensure the right of self-determination based on the Banjul Charter. This part of the stance has allowed Namibia to gain its independence from the Trusteeship of South Africa. On the other side, as the successor of the OAU, the AU has a predetermined stance regarding the sacrosanctity of the borders given by the colonial powers. This policy that the AU follows is documented in several documents of the OAU and the AU. Thus, the AU must follow this doctrine and cannot allow the possibility of the secession of self-determination movements. The ambivalence of this stance can be seen, in the bipolarity of both countries SADR and Somalia.

[80] *Mayall*, Sovereignty, Nationalism, and Self-Determination in: Moran, Michael [ed.], Political Studies (1999) p. 475.
[81] *Bereketeab* (n. 3) p. 13.
[82] *Bereketeab* (n. 9) p. 4.
[83] *Blay* (n. 41) p. 152.