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Whose self-determination?

A critical examination on the right to self-determination and its role during the process of
decolonisation

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Summary

This essay seeks to analyse self-determination from a critical perspective based on postcolonial theory. By examining the historical roots of self-determination, its connection to international human rights as well as to concepts such as sovereignty and nationalism can be established. The examination also indicates that self-determination is closely intertwined with the history of European Enlightenment as well as European colonialism.

The right to self-determination is today seen as one of the fundamental human rights and is explicitly referenced to in various international instruments regulating human rights. However, the criteria for actually applying self-determination in practice are not clear and often result in complex questions. As self-determination is not seen as an absolute right, its practice may be further limited due to various factors, not least with reference to territorial integrity.

During the process of decolonisation, self-determination was often seen as synonymous with secession. However, due to the artificial borders established in the interests of colonial powers, secession and self-determination in postcolonial Africa have given rise to complex questions. By examining the situation on the Horn of Africa, this essay shows that these contradicting opinions regarding the inviolability of these colonial borders have led to modern day conflicts. For example, where Somalia applies the concept of an elastic state, its neighbouring countries do not.

Lastly, one could claim that the right to self-determination is built on the premise that the world should be ordered in nation-states. Not least is this apparent in the assumption of self-determination meaning that relevant groups want to achieve statehood or formal recognition within an already existing statehood.

Sammanfattning

Den här uppsatsen undersöker självbestämmanderätten ur ett kritiskt perspektiv, baserad på postkolonial teori. Genom att undersöka den historiska bakgrunden till självbestämmanderätten kan dess koppling till internationella mänskliga rättigheter samt till koncept såsom suveränitet och nationalism fastställas. Likväl bör det noteras att självbestämmanderätten är starkt sammanflätad med den europeiska upplysningstiden samt europeisk kolonialism.

Självbestämmanderätten ses idag som en av de grundläggande mänskliga rättigheterna och refereras uttryckligen till i ett antal internationella dokument rörande mänskliga rättigheter. Kriterierna för att faktiskt tillämpa självbestämmanderätten är dock inte tydliga och resulterar ofta i komplexa frågor. Eftersom självbestämmanderätten inte heller är en absolut rättighet, kan den begränsas av olika faktorer – inte minst genom referens till territoriell integritet.

Under avkoloniseringen ansågs självbestämmanderätten ofta vara synonymt med secession. På grund av de artificiella gränserna som skapades i kolonialmakternas intressen har dock secession och självbestämmanderätt i postkoloniala Afrika lett till komplexa frågor. Genom att undersöka situationen på Afrikas horn tydliggör uppsatsen att de motstridiga åsikterna kring de koloniala gränsernas okränkbarhet har lett till pågående konflikter. Där exempelvis Somalia tillämpar konceptet av en elastisk stat, gör dess grannar inte det.

Slutligen kan en hävda att självbestämmanderätten bygger på premissen att världen borde organiseras i nationalstater. Inte minst är detta märkbart i antagandet av att självbestämmanderätten innebär att relevanta grupper vill uppnå status som en nationalstat eller formellt erkännande inuti en redan existerande nationalstat.

Abbreviations

AU	African Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
OAU	Organisation of African Union
UDHR	Universal Declaration of Human Rights
UN	United Nations

1 Introduction

1.1 Background

At first glance, our modern world seems to be naturally ordered in a system of nation-states. However, many current political issues revolve around the complexity behind these ambiguous borders wherever groups proclaim a right to self-determination that challenges existing states. In a context of globalisation and technological developments, one could argue that physical borders should or could be declining in importance. Nonetheless, there are still many claims of self-determination throughout the world. Why is this?

1.2 Purpose and limitations

The purpose of this essay is to critically examine the right to self-determination as expressed through various international human rights instruments in relation to its application. The investigation will further focus on the context from which the right of self-determination grew and its application during the decolonisation process.

Self-determination is such a broad subject that covering all aspects of it would not be possible within the boundaries of this work. For its purpose, much of the historical roots covered will thus be mainly that of Europe from the 17th century until modern time. Nonetheless, the author wishes to emphasise the fact that other parts of the world naturally has contributed to the development of moral and ethics, including the right to self-determination. Furthermore, although self-determination has been and still is of relevance in large parts of our world, this essay will unfortunately limit itself to addressing the role of self-determination during the process of decolonisation in the Horn of Africa. Yet another limitation must be declared, as focus will be paid to the situation in Somalia and its neighbouring countries, i.e. not the entire region.

The subject of this essay is thus self-determination. However, self-determination does not have an exact definition despite it being expressed as a group right in various international human rights documents, e.g. ICCPR and ICESCR. In the context of this essay, the definition of self-determination will be broad, involving anything from complete sovereignty to relative autonomy, free determination of political status as well as free pursuance of economic, social, and cultural development. Nonetheless, the main focus of this essay will be on self-determination in terms of secession, i.e. the creation of a new and independent nation-state.

Lastly, self-determination will only be examined in its international legal context. Although domestic regulations of self-determination are interesting due to many factors, these will not be addressed in this essay.

1.3 Research questions

This essay will seek to answer the following sub-questions:

1. What is the historical background of the right to self-determination?
2. What are the criteria for applying the right to self-determination?
3. What was the role of self-determination in relation to the process of decolonisation?

1.4 Method and theory

The ambition of this essay is to offer a critical perspective on the concept of self-determination. This analysis will mainly be based on postcolonial theory. The term 'postcolonial' can be defined as coming after colonialism and imperialism, but still positioned within imperialism in its later sense of the global system of hegemonic economic power. Although scholars have differing opinions regarding the specific meaning of post-colonialism, this field is perhaps best defined as anti-colonial thinking that issued out of the

formal end of colonial rule.¹ Postcolonial critique can thus be said to be the product of resistance to colonialism and imperialism.²

Postcolonial theory covers a wide spectrum of key issues, ranging from the role of culture to questions regarding e.g. emigration and immigration. The core of postcolonial theory is to examine the impact of our colonial and imperial past on our present conditions. Thus, postcolonial critique incorporates political and theoretical practices whose reach extends back into the history to the colonial past as well as the day-to-day realities of the postcolonial present.³ In this essay, postcolonial theory is used to critically examine the effects of colonialism on the doctrine of self-determination in international law.

This essay relies upon the usage of a legal dogmatic method. This involves seeking to establish the content of the right to self-determination by analysing the application and interpretation of its legal sources. For the purpose of this essay, the analysis will focus on various international human rights documents regulating self-determination.

1.5 Material

Material used in this essay consists of both primary and secondary sources. Primary sources include the various human rights instruments in which the right of self-determination is expressed. As for secondary sources, doctrine from various scholars has been used.

1.6 Disposition

Understanding the right to self-determination requires knowledge about its historical context. Thus, the first part of this essay will discuss the origins and development of the right of self-determination.

¹ Young C. Robert, *Postcolonialism* (Cambridge: Blackwell, 2001), 51.

² *Ibid.*, 15.

³ *Ibid.*, 66.

Thereafter, the criteria for applying self-determination will be discussed by analysing the prerequisites stated in relevant international human rights documents. In this part, the limitations to applying self-determination will also be addressed.

The third part of this essay will discuss the role of self-determination during the process of decolonisation by focusing on specific regions in the Horn of Africa, namely Somalia and relevant territories in its nearby zone.

The concluding part of this work will aim to analyse the right of self-determination from a postcolonial perspective by using what has previously been discussed.

2 Historical background

2.1 Origins of self-determination

2.1.1 The Treaty of Westphalia

Finding an exact point of the development of self-determination is an inherently controversial and complex question. Nonetheless, for the purpose of this essay, such a departure point for self-determination must be identified.

In this context, the Treaty of Westphalia in 1648 can be said to have been the point where modern international law was invented by the former colonial powers, primarily situated in Western and Central Europe. This treaty can also partly explain the emergence of self-determination in terms of political sovereignty, as the treaty established the primacy of states based on territorial control.⁴ With the Treaty of Westphalia, the sovereign state became the primary actor in international geopolitics in Europe.⁵

2.1.2 Self-determination during the Enlightenment

The Enlightenment period, stretching from the 17th into the 18th century, has had an overall large impact on the history of human rights.⁶ Self-determination had an especially important role during this period as the ground upon which a new order, following the demise of the great empires, would eventually emerge. Intrinsically attributed with democracy and

⁴ Wright, Shelley, *International Human Rights: Decolonisation and Globalisation* (Oxon: Routledge), 25.

⁵ Delanty, Gerard, *Nationalism and Social Theory*, (London: SAGE Publications Ltd, 2002), 10.

⁶ Wright, 28.

understood as liberation from an alien rule, self-determination was linked with nationalism already during its origins.

The revolt of the New World British colonists in North America during the mid-1770s can be seen as one of the first assertions of the right to national and democratic self-determination. The notion of the will of the people as supreme was then explicitly expressed in the American Declaration of Independence of 1776. Continuing to the French Revolution in the years after the American Revolution, self-determination was considered a democratic ideal and supported the idea of governments being based on the will of the people instead of that of the feudal monarch.⁷ The effect of both the American and French Declarations were that rights, which had previously been viewed as the rights of a particular people, were now perceived as universal rights.⁸

2.2 Self-determination from the 19th century onwards

2.2.1 The Age of Empire

One of the most prominent features of the 19th century, also called the ‘Age of Empire’, can be claimed to be the conquest of non-European peoples for economic and political advantage by European powers. This imperial expansion of European empires noticeably also led to the universalization of international law as a consequence of it being extracted and applied in conquered territories. The claim of universality in this context implies international law as a body of law applicable to all states regardless of their specific and distinctive cultures, belief systems and political organisations.⁹ Not least, this universalization also took place in the field of human rights, which in turn also included self-determination.

⁷ Arrous B. Michel, *African Studies in Geography from Below* (Dakar: Codesria), 169.

⁸ Hunt Lynn, *Inventing Human Rights* (New York: Norton), 21.

⁹ Anghie Antony, *Imperialism, Sovereignty and the Making of International Law* (New York: Cambridge University Press, 2004) 32.

It can be argued that the concept of sovereignty can only be understood in term of its complex relationship with the colonial encounter. During the process of colonisation, European colonial powers were considered sovereign whilst non-European states were excluded from this realm of sovereignty. Since the non-European world was not considered sovereign, virtually no legal restrictions were imposed on the actions of European colonial powers in the non-European countries. It can thus be claimed that sovereignty was aligned with European ideals of social order, political organisation, progress and development through the process of colonisation.¹⁰ By the end of the 19th century, states (i.e. referring to sovereign European states) had come to represent the principle of independence in international law, meaning the power to exercise the functions of a state to the exclusion of all other states within defined territorial boundaries.¹¹

Furthermore, the growth of self-determination that would follow during the 20th century can in part be said to derive from the rise of the ideology of nationalism in Europe during the 19th century. Nationalism is in itself a complex concept, but can be described as a shared group feeling in the significance of a geographical and sometimes demographic region. European nationalist movements in the 19th century included those that led to the unification of states such as Germany and Italy as well as demands for the break-up of the Ottoman and Austro-Hungarian empires into their ethnic and linguistic components.¹²

2.2.2 First World War and its aftermath

By 1914, after numerous colonial wars, large parts of the territories of Asia, Africa and the Pacific were controlled by the major European states.¹³ However, it took the disintegration of the Austro-Hungarian and Ottoman Empires after the Second World War in 1918 for self-determination to

¹⁰ Anghie, 102.

¹¹ Wright, 9.

¹² Arrous, 64.

¹³ Anghie, 33.

receive prominent sympathisers in Europe. International figures as ideologically diverse as Lenin and US president Wilson both supported self-determination in terms of autonomy granted to nationalities or minorities within a state. Thus, the use of self-determination in an international legal context was primarily developed during the immediate post-First World War period.

The Versailles Peace Treaty of 1919 attempted to give every ethnic and/or linguistic group its own state, influenced by the 19th century nationalism. In his Fourteen Points Programme, president Wilson himself included an explicit commitment to the principle of self-determination. The overall effect was a powerful ideological legitimisation to the idea that nations must be realised in states. Consequently self-determination, despite its vague content, became an accepted term of use in international relations.

2.2.2.1 The League of Nations

After the First World War, the international organisation League of Nations was created with the purpose of maintaining international peace. However, Article 22 of the League's Covenant stipulated that mandated territories were to be guided by 'advanced nations', which essentially legitimised the colonialism.¹⁴ While promoting self-determination in Europe, the League administered the former German colonies and territories of the now non-functioning Ottoman Empire through a system of "mandates" justified by European advancement over other peoples in accordance with colonial thinking.¹⁵ Thus, the League of Nations did not recognise self-determination as applicable to all humankind.

2.2.3 The creation of the United Nations

The League of Nations was considered a failure, especially considering its inability to prevent the Second World War. Nonetheless, the astronomical

¹⁴ Article 22, The Covenant of the League of Nations, http://avalon.law.yale.edu/20th_century/leagcov.asp.

¹⁵ Hunt, 200.

deaths of the Second World War prompted the Allies to improve on the concept of an international organisation. Already in 1942, the necessity of establishing yet another international organisation based on the principle of sovereign equality of all peace-loving states and open to membership by all such states for the maintenance of international peace and security was decided upon.¹⁶

A conference held in San Francisco in 1945 set up the basic structure for a new international body – the United Nations. It would have a Security Council dominated by the great powers, a General Assembly with delegates from all member countries, and a Secretariat headed by a secretary-general to act as an executive. Fifty-one countries signed the United Nations Charter as founding members in June 1945.¹⁷

Despite its current image, the initial focus of the United Nations was not considered to be human rights. In 1944, Great Britain and the Soviet Union had both rejected proposals to include human rights in the charter of the United Nations. Not the least, Britain feared the encouragement such an action might afford to independence movements in its colonies.¹⁸

Pressure of putting human rights on the agenda of the United Nations came from different directions. Many small and medium-size states in Latin America and Asia urged more attention to human rights, in part because they resented the dominance of the great powers over the proceedings. In addition, a multitude of religious, labour, women's, and civic organisations directly lobbied for the UN to focus more explicitly on the question of human rights.¹⁹ Thus, human rights were put in the UN Charter with Article 1(2) explicitly stating that one of the purposes of the UN was 'respect for the principle of equal rights and self-determination of peoples'.²⁰

¹⁶ Hunt, 201.

¹⁷ Ibid., 202.

¹⁸ Ibid., 203.

¹⁹ Ibid., 204.

²⁰ Article 1(2) of the Charter of the United Nations, <http://www.un.org/en/sections/un-charter/un-charter-full-text/index.html>.

With the establishment of the UN, a different conception regarding self-determination emerged. Self-determination now applied to states rather than nationalities or minorities. In the aftermath of the Second World War and the early days of the Cold War, the state-centred conception was meant to protect the autonomy and sovereignty of UN members, so as to forbid international aggressions but also to legitimate state action against internal groups that locally happened to disrupt the universal peace project. As will be shown below, self-determination was furthermore selectively accepted as a basis for attaining independent statehood. In the decolonisation context of the 1950s and 1960s, the right to self-determination was more or less regarded as a preserve of ex-colonies who started to fill the ranks of the UN as newly independent members.²¹

2.2.4 International human rights documents

2.2.4.1 Universal Declaration of Human Rights

As explained above, the UN initially only focused on international security issues and did not devote much attention to the issue of human rights or self-determination. However, a Human Rights Commission was set up in 1946 with the task of drafting an international bill of human rights.²² A long process finally resulted in the General Assembly approving the Universal Declaration of Human Rights in December 1948.

The right to self-determination is not explicitly mentioned in the UDHR. However, Article 15 of the Declaration states that everyone has the right to a nationality and that no one should be arbitrarily deprived of a nationality or denied the right to change nationality. This can be seen as a clear indication of how the world during the 20th century and onwards continuously ordered its affairs within an international system increasingly based on the prominence of states and the concept of territorial integrity.

²¹ Arrous, 70.

²² Hunt, 203.

As a declaration, the UDHR is a resolution and not a binding treaty. Thus, the UDHR can be said express set of aspirations rather than a readily attainable reality. It outlined a set of moral obligations for the world community, but it had no real mechanism for enforcement.²³

2.2.4.2 ICCPR and ICESCR

As shown above, the UDHR is mainly of basic and general character – especially in its regulation of self-determination. Even so, it took until 1954 for the UN Commission to complete the drafts of what would become the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both covenants were presented and adopted by the General Assembly in 1966 and entered in force by 1976 – more than twenty years after the completion of its drafts. Both ICCPR and ICESCR were promulgated by the United Nations to transform the provisions of the UDHR into binding international law enforceable in the states that ratify these treaties or, at the least, providing a basis for assertions that those states have a legal obligation to comply with their provisions.²⁴

Common Article 1 of both human rights covenants state that “All peoples have the right of self-determination. By virtue of (that) right they freely determine their political status and freely pursue their economic and cultural development”. The right of self-determination can thus be perceived as one of the fundamental human rights. It was not until the conclusion of these two international human rights covenants that some form of legal definition to the right of self-determination was provided. The definition used in these articles is largely repeated in all the subsequent international and regional human rights treaties and documents that contain a right of self-determination.

²³ Hunt, 204.

²⁴ Neier, Ayeh, *The International Human Rights Movement* (Oxfordshire: Princeton University Press, 2013), 63.

The period in which virtually all the colonial nations in Asia, Africa, and the Caribbean were gaining their independence was still in its early stage when the UDHR was adopted. In contrast, by 1966, when ICCPR and ICESCR were adopted and submitted to member states for ratification, many former colonies had already gained their independence and had become members of the world body. Recognition of a right to self-determination was therefore immensely important to them in the early years of their existence as independent states.²⁵

2.2.4.3 The Declaration on Granting of Independence to Colonial Countries and Peoples

In the context of the process of decolonisation during the 1960s, an understanding of self-determination as a right of peoples emerged. In other words, self-determination evolved from a mere principal of international law into a right of peoples. This is expressed by the adoption of the Declaration on the Granting of Independence of Colonial Countries and Peoples in December 1960. With the Declaration, it became clear that the right to self-determination in the form of independence was seen as applicable to peoples under colonial rule, alien subjugation, domination or exploitation.

Article 2 of the Declaration emphasises that "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development". However, four articles later, the same Declaration stipulates that "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations".²⁶ This can be interpreted as an expression of the principle of territorial integrity being regarded as more important than the right to self-determination in the eyes of the UN.

²⁵ Neier, 64.

²⁶ Article 2 and 4 of The Declaration on Granting of Independence to Colonial Countries and Peoples, [http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/1514\(XV\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/1514(XV)).

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

On 24 October 1970, the United Nations General Assembly adopted resolution 2625, i.e. Declaration on Principles of International Law concerning Friendly Relations on Co-operation among States. This declaration was a further refinement on the regulation of self-determination under international law. The declaration introduces the requirement that states need be representative of all the people in their territories irrespective of 'race, creed or colour'.²⁷ This expanded the meaning of self-determination to include a process that allows all sections of the people of a state to be represented in the political process, or to freely participate therein on the basis of equality.

²⁷ Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, 24 October 1970, available at [http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/2625\(XXV\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/2625(XXV)).

3 Applying the right to self-determination

3.1 Criteria for applying the right to self-determination

Common Article 1 of ICCPR and ICESCR states²⁸:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

The right to self-determination is thus a collective right, meaning that no individual on his or her own can claim this right. It can only be enjoyed by an individual by virtue of his or her affiliation with a "people" that enjoys this right collectively because geography, history, ethnicity, religion, language, culture, or some combination of these factors gives them status as a people and, therefore, a basis for the formation of a state of their own.

²⁸ Article 1 of ICCPR <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. and Article 1 of ICESCR <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

Although common Article 1 of both covenants stipulates that the subject to the right of self-determination is "people", it does not provide a definition of "people". Nonetheless, there seems to be wide international consensus that this right applies to colonial peoples, as expressed in the previously mentioned in The Declaration of Granting of Independence to Colonial People.

However, neither ICCPR nor ICESCR contain details regarding decision-making or what the outcome of practicing the right to self-determination would be. Furthermore, there is no definition of what constitutes a nation or what the delimitation between nations should be. Consequently, there are conflicting definitions and limitations for which groups that may legitimately claim the right to self-determination.

3.2 Methods of exercising the right to self-determination

The abovementioned Declaration on Principles of International Law sets out the principal methods on how the right to self-determination can be exercised. It exemplifies methods such as establishing a sovereign and independent state (secession), the free association or integration with an already existing independent state, as well as the emergence into any other political status freely determined by a people. In other words, self-determination can be exercised externally through methods of secession and irredentism, or internally within the boundaries of an existing state, e.g. the right to democratic representation. For the purpose of this essay, it is thus important to remember that there is no explicit provision for the right to secession in current international law as self-determination entails different methods.

3.3 Limitations

With the exceptions of absolute rights such as the prohibition on torture, almost all human rights have limitations on their exercise.²⁹ These limitations are to protect the rights of others or the general interests of the society, e.g. public order and public health. As the right of self-determination is not an absolute right, it has such limitations on its exercise.

3.3.1 Rights of others

Both ICCPR and ICESCR state "Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is provided for in the present Covenant".³⁰ This limitation applies to, amongst others, the right to self-determination. Thus, where there are another people with the right of self-determination within the state or region or a people who are few in number with the right of self-determination within a larger population (as with most colonial territories), the right is limited in its exercise in order to take into account the rights of others.

3.3.2 Territorial integrity

The Declaration on Principles of International Law recognises territorial integrity as a limitation on the exercise of self-determination by stating that "Nothing in the foregoing paragraph (recognising the right of self-determination) shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a

²⁹ Moeckli, Shah and Sivakumaran, *International Human Rights Law* (Oxford: Oxford University Press, 2014) 345.

³⁰ Article 5 ICCPR <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> and Article 5 ICESCR <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

government representing the whole people belonging to the territory without distinction to a race, creed or colour”.³¹

Governments often claim the principle of territorial integrity as a limitation on the exercise of self-determination. This relies upon the assertion that an existing state should not be divided up and often claiming to be broadly based on the general interests of international peace and security. National self-determination as such appears to challenge the principle of territorial integrity of states, as it implies that the legitimatising a state relies upon the will of the people. This suggests that a people should be free to choose their own state and its territorial boundaries. However, there are far more self-identified nations than there are existing states. In combination with the fact that secession is a rare occurrence, it can be interpreted as indicative of the fact that the principle of sovereign territorial integrity prevails over national self-determination.

3.3.2.1 The principle of *uti possidetis juris*

The principle of *uti possidetis* originally derived from Roman private law. Its original meaning holds that pending litigation, the existing state of possession from immovable property is retained. Translated into international law, the principle stipulates that states emerging from colonial administrative control must accept the pre-existing colonial boundaries. Its purpose claims to be achieving stability of territorial boundaries and to maintain international peace and security.³² However, many of the territorial boundaries in question were created in the interests of the colonial powers and often failed to relate to natural or cultural boundaries understood by the people on the ground.³³ As will be shown below, the principle of *uti possidetis* has failed to prevent boundary disputes following the process of decolonisation.³⁴

³¹ The Declaration on Principles of International Law, <http://www.un-documents.net/a25r2625.htm>.

³² Moeckli, Shah and Sivakumaran, 346.

³³ Moeckli, Shah and Sivakumaran, 347.

³⁴ Craven, Matthew, *The Decolonization of International Law: State Secession and the Law of Treaties*, (Oxford: Oxford University Press, 2009), 103.

4 Self-determination and decolonisation

4.1 General background

Colonisation has a long history and has expressed itself in various shapes throughout the world during its past and current history.³⁵ This part of the essay will focus on colonisation and decolonisation in the Horn of Africa, with special attention given to the situation in Somalia and its neighbouring countries. The Horn of Africa is a peninsula in East Africa and refers to a zone of countries of, amongst others, Somalia, Eritrea, Kenya and Ethiopia.³⁶

Beginning in the later part of the 19th century, European powers considered Africa to be a rich source of needed raw materials. This led to the imperial urge for territorial colonisation and hence, the European powers turned to Africa to create new empires. In East Africa, the leading colonial powers were England, Italy and France.³⁷ By 1885, the European powers issued the Berlin Act, which, amongst other, promoted the doctrine of effective occupation of claimed territories in western Africa. The Berlin Act states that whichever power occupied a coastal area was entitled to claim exclusive rights to exercise political influence for an indefinite distance inland. In the wake of the rush to apply this clause, European powers began to declare spheres of influence. The borders that were created were thus in the administrative interests of the colonial powers and seldom adhered to the cultural or historical traditions of the colonised territories.³⁸

³⁵ Wright, 8.

³⁶ Omeje, Kenneth, *The Crises of Postcoloniality in Africa* (Dakar: Codesria, 2015), 123.

³⁷ Omeje, 124.

³⁸ Arrous, 165.

The general process of decolonisation throughout the world started in the 20th century, following the two world wars. Initially begun by the League of Nations, decolonisation was made one of the central concerns of the United Nations.³⁹ With the adoption of the Declaration on Granting of Independence to Colonial Countries and Peoples in 1960, the legal linkage between self-determination and decolonisation became obvious.

Decolonisation thus became the principal expression of self-determination. Indeed, in the 1960s and 1970s, nationalist movements framed their struggle for national liberation in anti-colonial terms, for it was seen as providing the necessary international legitimacy and legality to their claims for self-determination and independence.⁴⁰

The anti-colonial struggle that took place in Africa during the 20th century experienced an inherent conflict between the remnants of colonial attitudes and the desire to cut clean from the colonial past. The end result has often been a borrowing from both the pre-colonial and colonial past in order to shape new African features in relation to decolonisation. Naturally, the examples provided in this essay do not provide a comprehensive overview and should not be interpreted as being universal for anti-colonial movements. Nevertheless, using decolonisation in the Horn of Africa as an example provides important insights into how self-determination may or may function in practice.

4.2 The Horn of Africa

Prior to 1869, European contact with the Horn of Africa had in general been limited. However, the opening of the Suez Canal in 1869 meant that attention was given to the strategic importance of the area. The borders in the Horn of Africa is in large a result of this so-called European scramble

³⁹ Anghie, 196.

⁴⁰ Wright, 20.

for African territories, referring to when the British, French and Italian interests converged competitively in and around the Horn.⁴¹

The process of decolonisation in the 20th century resulted in the creation of new and independent states. In connection to this, questions regarding the impact of colonialism on the African continent surfaced. An illustrative example is the founding of the Organisation of African Unity (the OAU) in the 1960s, where it was debated how much of the colonial legacies that should be accepted. One side argued that the colonial territorial boundaries had to be dismantled and that the concept of elasticity of new states should be adopted. Examples of those advocating this policy are Somalia and Ethiopia. The other side instead believed that the colonial state boundaries should be inviolable with hopes that keeping the colonial boundaries would prevent new conflicts regarding this issue. The end result was a settlement favouring those who desired to uphold the sanctity of colonial boundaries, with the effect of secession being discouraged.⁴²

With the passage of time, a number of states that were newly independent in 1966 when ICCPR and ICESCR were promulgated, or that were about to achieve their independence, have become opponents of further efforts to secure independence for groups claiming a right to self-determination. Many secessionist movements have been vigorously opposed by African governments and by the Organisation of African Unity (OAU) and its successor, the African Union (AU), which have adhered to the view that redrawing colonial-era boundaries would have disastrous consequences despite the fact that those boundaries were arbitrary and established in disregard of tribal and linguistic territories.⁴³

4.2.1 Somalia

Prior to colonisation, the established polities in the area of modern Somalia consisted of large tracts of land that were open politically or physical or

⁴¹ Omeje, 130.

⁴² Omeje, 124.

⁴³ Neier, 65.

both.⁴⁴ However, Somalia became the focus of inter-imperial rivalry in mid-19th century together with large parts of the current Horn of Africa, where the prominent colonial powers were Britain, France, Italy, and Ethiopia.

Somalia is an intriguing example for the purpose of this essay as it has been multiple colonised by different powers. Moreover, the conflicts arising from the situation of Somalia has affected much of the Horn of Africa, as its neighbouring countries are now involved. Boundaries ‘arrangements’ between Britain, France, Italy and Ethiopia during its colonisation of Somalia led not only to the partition of a single people amongst a number of unevenly assembled colonies, but also to the creation of two self-contained and exclusively Somali territories: the British Somaliland Protectorate in the north and Italian Somalia of the south.

In 1948, the United Nations received a petition calling for its assistance in unifying the several Somali territories. Explicit reference was made to the right to national self-determination and preservation of human rights for the so-called Somali people, meaning the peoples in the territories of ex-Italian Somaliland, French Somaliland, NFD (Northern Frontier District of Kenya), British Somaliland and Ethiopian Somaliland to be united.⁴⁵ Thus, after the Second World War, the United Nations returned Somalia to Italy in 1950 with instructions to prepare the colony for independence in ten years. The British had decided to give their Somaliland independence at the same time so as to encourage a new united Somalia.

In 1960, the southern Italian Somalia and northern British Somaliland merged to form the Somali Republic. At independence, Somalia was one of the few African countries that fiercely disputed and rejected the status quo of the boundaries established during colonisation, i.e. the principle of *uti possidetis juris*. The political leaders of the new Somali state tried to forge a sense of Somali unity in hope of covering up differences arising from

⁴⁴ Arrous, 161.

⁴⁵ Arrous, 168.

competing pre-colonial and colonial experiences. This ambition expressed itself through the abovementioned adoption of the concept of elasticity of state as a unifying ideology to create, instil, and perpetuate a sense of Somali homogeneity across boundaries. Thus the British and Italian Somalilands together mounted an ambition of unity of Somali people through the idea of the “Greater Somaliland”, i.e. a new and elastic Somali state. The foundation of this idea was that wherever there were people of Somali ethnic background, that territory was part of the Somalia state.⁴⁶

Since independence, Somalia has championed the cause of self-determination in their co-nationals in Ethiopian and Kenyan territories. However, the concept of state elasticity adopted by Somalia did not converge with the opinion on the existing borders of the OAU or the neighbouring countries in the area. The OAU, as previously mentioned, instead adopted the principles of respect for the sovereignty of all states and non-interference in their internal affairs with the effect of affirming the inviolability of African ex-colonial boundaries in accordance with the principle of *uti possidetis juris*.

Partly due to the ideology of elasticity colliding directly with the concept of incontractibility of colonial boundaries, conflicts quickly arose in this part of postcolonial Africa. For example, a quasi-war between Kenya and Somalia as well as a real war between Ethiopia and Somalia developed. By the 1990s, Somalia had disintegrated into fractions unwilling or unable to reinstate a viable Somali state.⁴⁷ In 1991, Somaliland declared its independence following the collapse of the Somali state. Though Somaliland function autonomously, its separation from the state of Somalia is yet to be recognised internationally. Today, many no longer consider Somalia a functioning state and the belief in unification through the concept of a Greater Somalia has in large ceased to exist.⁴⁸

⁴⁶ Omeje, 132.

⁴⁷ Omeje, 134.

⁴⁸ Neier, 65.

5 Analysis and conclusions

By examining the historical roots of self-determination, it is evident that its development is closely intertwined with ideas from the European Enlightenment as well as with the history of European colonialism. The creation of new nation-states after 1945 indicates that the principle of self-determination seems to be built on the premise that distinctive groups will inevitably move towards statehood or a formal relationship within an already existing state in such a way that it can be easily accommodated within international law.

Originally used in the French and American Declaration as a mean of justifying the struggle against feudal authorities, self-determination has now evolved into being a fundamental principle in international human rights law. However, the lack of exact definitions and regulations in international law seems to make the exercise of the right to self-determination dependent on the particular context and resolution of a dispute. During the process of decolonisation, self-determination was often seen as synonymous with secession. However, the borders created by colonial empires provided a source of conflict as these artificial limitations seldom coincided with national, cultural or historical groupings. This impact of colonialism is evident when examining the situation on the Horn of Africa and in particular Somalia's claims on territories in the zone. Contemporary conflicts in this area can partly be explained with reference to the differing opinions regarding whether or not the colonial borders should be regarded as inviolable, i.e. if the principle of *uti possidetis juris* is legitimate. The situation on the Horn of Africa can thus be said to illustrate the shortcomings of the state-centred conception of self-determination. Postcolonial Somalia thus also addresses situations where reunification, legalised by self-determination, can only be achieved at the territorial expense of neighbouring states.

It is evident that decisions about self-determination and independence touches upon a broad spectrum of questions that are not easily answered. Does self-determination mean a right to secession? Does self-determination constitute a right of fragmentation or a justification for the fragmentation of nations? Does self-determination mean the right of people to sever association with another power regardless of the effect on involved parties?

Africa has long observed taboos against changing the national boundaries given newly independent countries during decolonisation. Whether or not boundaries were optimal, many African countries thought that trying to rationalise them risked continent-wide chaos. This can be shown in the support for the inviolability of colonial borders expressed by organisations such as the OAU. Nonetheless, one can argue that the formal acquisition of sovereignty and equality did not translate into the stability that the newly emerged postcolonial states hoped for. If sovereignty doctrine was forged in the colonial encounter, then questions emerge as to how successfully postcolonial states could and can deploy sovereignty for the purpose of revealing and remedying that past.

In conclusion, the contemporary world order appears to be designed around the concept of the nation-state to such extent that this order seems naturalised and self-evident. However, changing values in an increasingly globalised international community should be reflected in the future exercise of the right to self-determination. Perhaps a development away from a state-based and solely state-interested system towards a more flexible system is more appropriate.

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